



**IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
AT RANEBENNUR.**

Dated on this 02nd day of July 2026

**Present: Sri. ADITHYAKUMAR H.R, B.A.LL.B.
Prl. Civil Judge & JMFC.,Ranebennur.**

ORIGINAL SUIT NO.400/2023

Plaintiff: Krishnappa S/o Hanumanthappa
Gondawara

(Rep. By Sri. H.H.T. Adv.)

V/s

Defendants: Smt. Hemavathi W/o Vinayaka
Gondawara & others.

(Dfts. Rep. By Sri. P.R.K. Adv.)

I.A. NO. I CAUSE TITLE.

Plaintiff/

Applicants : Krishnappa S/o Hanumanthappa
Gondawara

-Vs.-

Opponents/

Defendants: Smt. Hemavathi W/o Vinayaka
Gondawara & others.

**ORDER ON IA NO. I**

The application under consideration is filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w. Sec. 151 of CPC, seeking that the defendants be restrained from putting up any construction or house in the suit schedule property till the disposal of the suit.

2. Brief facts of the case necessary for the purpose of disposing the application are as under:

The plaintiff has filed this suit seeking the relief of partition and separate possession. One Hanumanthappa is the common propositus, he and his wife both are died. The Plaintiff is the son of the propositus. The defendants are wife and children of elder son of the propositus. The suit schedule property is the ancestral and joint family property and no kind of partition has ever taken place. The Plaintiff having the $\frac{1}{2}$ share in the suit property, when the Plaintiff demanded to effect the partition, defendants refused the same. Hence, this suit.

2.1. In support of the application the plaintiff himself has sworn to the affidavit accompanying the application reiterating the plaint averments and he has further contended that, the defendants colluding with CMC have obtained permission and also started to construct a house in the suit property. Despite



the request of the Plaintiff, they have continued with the illegal construction. If that is happened the very purpose of filling this suit will be frustrated and it is the plaintiff who will be subjected to irreparable loss if the application is rejected. On the other hand, no harm or prejudice will be caused to the defendants if the interim order as sought for by the plaintiff is granted. On these grounds, the applicants seeks that this Court be pleased to allow the application as prayed for.

3. Upon due service of the suit summons, the defendants have made their appearance before the court through their common counsel and filed their common objection contending that, the present application is neither maintainable in law nor on facts; the applicant has not come before the court with clean hands and the plaintiff failed to show their prima facie case to grant the temporary injunction and also the balance on connivance is not in his favour. Further, denied the nature of the suit as claimed by the Plaintiff.

3.1. It is specifically contended that, the Plaintiff had filed a suit in OS No.37/2015 before the Hon'ble Senior Civil Judge, Ranebennur seeking the relief of partition and separate possession, the same was dismissed and RFA is pending before the Hon'ble High Court. Despite of that, the present suit is filed



only to harass them. It is also contended that, both parties have been in separate possession of the suit property, the Plaintiff has been residing in the half portion of the suit property on eastern side and the present defendants have been residing in the remaining half portion on the western side. The house existing in the suit property is old mud house and to protect from the raining season they have started construction works obtaining necessary permission. They also denied the alleged cause of action. Among these grounds the defendants sought for rejection of the application.

4. Heard the arguments of Counsel for either side, perused the materials available on record.

5. After carefully analyzing and upon the perusal of the plaint, affidavit sworn to the application and the objection put forth by the defendants and other materials available on record, the following points arise for my consideration.

POINTS

I. Whether the plaintiff has made out a prima-facie case to grant the relief as sought for in the IA-I.?

II. Whether the plaintiff proves that balance of convenience lies in his favour as regards the IA-I.?



III. Who will be put to irreparable loss and injury if the IA-I is rejected or granted.?

IV. What order?

6. After giving its anxious consideration and after carefully perusing the documents produced at this stage of the matter, this court answers the aforesaid points as under:

Point No.1 : In the Negative.

Point No.2 & 3 : In the Negative.

Point No.4 : As per final order for the following

REASONS

7. Point No. 1:

The provision that the Plaintiffs seek to invoke here is Order XXXIX Rule 1 and 2 of Civil Procedure Code. After perusal of the prayer sought in the IA-1 it is needless to state that the case of the Plaintiff, as regards the IA-1 falls within Clause (c) of Order XXXIX Rule 1 of Civil Procedure Code, which verbatim reads as follows :

*“Where in any suit it is proved by affidavit or otherwise :-
(inter alia).*

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.”



The reason why this court considers that the relief sought by way of this application falls within the ambit of clause (c) is because, the said clause seeks to protect the applicant from two apprehensions either dispossession or causing injury to the plaintiff's property; and because the relief sought by the plaintiff by way of this application is to restrain the defendants from interference, it becomes obvious that the apprehension of the plaintiff is that the activities of the defendants if not curtailed would cause injury to the plaintiff possession over the suit schedule property. Needless to state in order to successfully maintain this application the plaintiff should first demonstrate existence of *prima-facie* case in their favor.

7.1. At the very outset it would be incumbent upon this court to clarify that, the rule that before the issue of a temporary injunction, the court must satisfy itself that the plaintiff has a *prima-facie* case, it does not mean that, the court should examine the merits of the case closely and come to a conclusion that the plaintiffs have a case in which they are likely to succeed. All that, the court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects.



7.2. Keeping the above principles in mind, let this court turn to the documentary evidence available on record. With these aspects in mind when the records are perused, it becomes evident that the plaintiff claims his *prima-facie* case on the suit schedule property based on the joint possession and existence of equal rights. Defendants have denied the same and also contended previous partition by metes and bounds.

7.3. As per the own plaint averments and genealogy it is undisputed fact that, the propositus also had two other children by name Lalitha and Prabhakar. They are not parties to the present suit. Even there is no pleadings by the Plaintiff to show why they were not made as parties to the suit despite having the knowledge of the suit. Thus, it *prima-facie* establishes that, the suit is bad for non joinder of necessary parties.

7.4. It is also to be noted that, the plaintiff has already instituted a suit for partition in OS No.37/2015 and appeal preferred against the decree is also pending before the Hon'ble High Court. Such being the case, the Plaintiff could have been filed necessary application in the pending appeal itself. However, he has filed a separate suit to relitigate on the same property against the same parties.



7.5. It is further contended that, if the defendants are permitted to proceed with the construction, the nature and character of the property would be altered and his right would be prejudiced. The defendants contended that, they have been in separate possession of their $\frac{1}{2}$ share in the suit property and the proposed construction is being made to protect the house.

7.6. It is a settled law that, every co-sharer is deemed to be in possession of each inch of the joint family property until partition is effected by metes and bounds. Mere raising of construction by one co-charer over a portion of the joint property does not by itself amount to exclusion of the other co-sharer from his rights in the property. Any construction made during pendency of this suit shall remain subject to the outcome of this suit and shall not create any independent equity in favour of the defendants. Even his construction is raised, the rights and share of the Plaintiff can be worked out at the stage of final decree proceedings. Thus, the Plaintiff has failed to prove the prima-facie case to allow the application.

7.7. It is settled law that, the grant of injunction is a discretionary relief, the exercise thereof is subject to the Court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is



probability of his being entitled to the relief asked for by the plaintiff or defendant and the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue, before the legal right would be established at the trial and further that, the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Hence, at this stage, without going in to the merits of the case and holding mini trial, this court is of the considered that, the plaintiffs failed to prove their *prima facie* case to grant the Temporary Injunction as claimed in the present application. As such this court proceed to answer the Point No.1 in the **Negative**.

8. Points No.2 and 3:

To avoid the repetition and ambiguity these two points are taken together for the consideration.

8.1. This Court has already gone on to hold on merits that, the plaintiff has failed to prove the existence of *prima-facie* case in their favor, under such circumstances this Court need not look into the other aspects i.e., balance of convenience and also irreparable loss and this view of the



Court is further supported by the decision passed by Hon'ble Apex Court in *Kashi Math Samsthan & Anr. Vs. Srimad Sudhindra Thirtha Swamy & Anr.*-**AIR 2010 SC 296** wherein it is held that :

“ In order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that, he has made out, prima-facie case to go for trial, the balance of convenience is also in his favor and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima-facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”

(emphasis supplied.).

8.2. The same view was also held by the Hon'ble High Court of Karnataka in *Sri Gowrishankara Swamigalu Vs Sri Siddhaganga Mutt* reported- **AIR 1989 KAR 1701**, wherein it is held that :

The existence of a prima-facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of



injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself."

But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between."

(Emphasis supplied.)

So this Court, in view of its conclusion arrived at regarding *Point No.(i)*, this court is of the opinion that this Court need not proceed to consider the other aspects. Hence, in view of the above discussion and abiding by the legal principle laid down in the above decisions, this Court holds Points No.(ii) and (iii) ***do not survive for consideration of this Court.***

9. Point No. 4:

For the foregoing reasons and in view of the finding given by this court on Point No. I to III, this court proceeds to pass the following:



ORDER

**“IA No. I filed U/O. XXXIX Rule 1 and 2
R/w. Sec. 151 of CPC by the plaintiff is
hereby dismissed.**

No order as to cost.”

**(Dictated to the Stenographer directly on the computer, transcript is
corrected and signed by me and then pronounced by me in the open
court on this 02nd day of July, 2026).**

**(ADITHYAKUMAR H.R)
Prl. C.J.& JMFC Court,
Ranebennur.**