



**IN THE COURT OF THE SENIOR CIVIL
JUDGE AND JMFC AT SHIGGAON.**

DATED THIS THE 27th Day of SEPTEMBER 2022

**Present: Smt. Fairoza H.Ukkali,
B.A.LLM.,
Senior Civil Judge & J.M.F.C.,
Shiggoan.**

O.S. 37/2022

Plaintiffs: Abdulkhadar S/o Babajan Dharwad
and others

V/s

Defendants: Smt. Hasinabi
W/o Moulali Dharwad and others

I.A.I/2022

Applicant: Abdulkhadar S/o Babajan Dharwad
and others

V/s

Opponents: Smt. Hasinabi
W/o Moulali Dharwad and others



ORDER ON IA NO.I

The plaintiffs have filed this application seeking an order of temporary injunction restraining the defendants their agents, servants or any one acting on behalf of them from constructing the house in the suit property.

2. In the affidavit, the applicant has stated that propositus deceased Babajan S/o Abdulrehaman Dharwad has died on 19.05.1994 and his wife Smt. Jilekhabi has died leaving behind the plaintiffs and defendants No.1 to 5 as legal heirs and they have inherited the suit property and tenants-in-common. Defendants No.1 to 5 without taking permission from Taluka Municipal Council Shiggaon are



illegally constructing the house in the suit property though the plaintiffs and defendants are having joint rights, ownership and possession over the same. The defendants having refused the legal share of the plaintiffs in the suit property and are illegally putting up the construction. That the plaintiffs have made out prima facie case and balance of convenience is in their favour and if an order on temporary injunction is not granted, they will be put into irreparable loss and injury. Hence the plaintiffs have prayed to allow the application.

3. The defendant No.1 on behalf of herself and on behalf of minor defendants No.2 to 5 has filed written statement and has filed memo adopting the said written statement as objection to IA No.I. The



averments of the written statement in brief are as under :

The defendants have admitted the relationship between the parties. The defendants have denied the suit property being the tenants-in-common property of the plaintiffs and defendants. Defendants have stated that the plaintiffs are never in possession of the suit property. That during the lifetime of the propositus deceased Babajan, he and his son deceased Moulali the husband of defendant No. 1 and father of defendants No.2 to 5 were residing in suit property and after the death of Babajan and Moulali, the defendants are in possession of the suit property and when the plaintiffs caused obstruction for their possession panchayat was called and as per the consent letter



dated 22.01.2022, which is signed by plaintiffs No. 1, 2, 10 and defendant No.1. The defendants being in possession of the suit property has constructed a house in the suit property. That the plaintiffs have no prima facie case and no balance of convenience lies in their favor and if an order of temporary injunction is granted much hardship and injury will cause to the defendants. Hence the defendants have prayed to dismiss the IA No.I with cost.

4. I have heard on I.A.No.I on both side and perused entire records.

5. The following points arise for my consideration:

- 1) Whether the plaintiffs have made out prima-facie case for granting an order of Temporary injunction?



- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) Whether loss or injury will cause to the plaintiffs, if an order of temporary injunction is refused?
- 4) What order?

6. My answers to the above points are as follows:

Point No.1	:	In the Negative,
Point No.2	:	In the Negative,
Point No.3	:	In the Negative,
Point No.4	:	As per final Order, for the following;

REASONS

7. **POINT No.1:** The plaintiffs by contending that they having inherited the suit property after the death of propositus Babajan as tenants-in-common and are in joint possession have filed the suit claiming partition and have filed IA No.I seeking an order of temporary restraining the defendants from



putting up construction of the house in the suit property. The defendants have admitted the relationship between the parties, but have denied the suit property being the tenants-in-common property of the plaintiffs and defendants and have contended that the propositus Babajan and his son deceased Moulali the husband of defendant No.1 and father of defendants No 2 to 5 were in possession of the suit property and after the death of Babajan and Moulali, the defendants are in possession of the suit property and as per compromise consent letter was executed on 22.01.2022 and accordingly the defendants being in possession are putting up the construction of the house.



8. The learned counsel for plaintiffs argued that the suit is for partition and pending suit the defendants are attempting to put up the construction in the suit property and if they do so, it will cause much hardship and injury to the plaintiffs who are having their share in the suit property and hence has prayed to allow IA No.I. The learned counsel for defendants argued that the defendants being in possession of the suit property have already completed the construction of the house and therefore if an order of temporary injunction is granted it will cause much hardship and injury to the defendants.

9. The suit is for partition and relationship is not in dispute. The defendants have also not disputed that the suit property was originally belonging to



the propositus namely Babajan. The plaintiffs have stated that after the death of Babajan they and defendants have inherited the suit property and it is the say of the defendants that after the death of the Babajan and Moulali, they are in possession of the suit property and as per the consent letter dated 22.01.2022, the defendants being in possession are putting up construction of the house.

10. The plaintiffs as well as the defendants have produced photographs of construction. On perusal of the photographs produced by the plaintiffs, it is forthcoming that the construction is in progress. On perusal of the photographs produced by the defendants, it is forthcoming that the construction of the house has already completed and only finishing work is pending. Thus the relief of the



plaintiffs seeking an order of temporary injunction restraining the defendants from putting up the construction of the house has become infructuous, as the construction has already been completed.

11. Another aspect is that an order of temporary injunction can be granted, if the suit property is being damaged. In this case the defendants by putting up the construction of the house are improving the suit property and are not damaging the same. If the plaintiffs establish their right of partition in the suit property they will very well get the same, even if the construction of the house is completed and for future loss and consequences the defendants will be liable. Thus no prima facie case has been made out by the plaintiffs for granting an



order of temporary injunction. Hence Point No.1 is answered in the **Negative**.

12. **POINTS No.2 AND 3:** Both these points are taken up together for common discussion to avoid repetition of facts. In view of the reasons on point No.1, as the plaintiffs have failed to make out a prima facie case, no balance of convenience lies in their favour. At this stage it is considerable that the construction of the house has almost completed and only finishing work is pending and if at this stage an order of temporary injunction is granted much hardship and injury will cause to the defendants, as they have invested money for the construction material. Per contra no injury or hardship will cause to the plaintiffs, if an order of temporary injunction is refused because, they are having every right to



get adjudicate their claim of partition in the suit property in which the defendants have put up construction and the defendants will be liable for the future decision of the case. Hence Points No. 2 and 3 are answered in the **Negative**.

13. **POINT No.4**: For the aforesaid reasons and findings on Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A No.I filed under Order XXXIX Rule 1 and 2 R/w Sec 151 of CPC is dismissed.

Considering the relationship between the parties, no order as to cost.

(On my dictation transcribed and typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 27th Day of September 2022.)



(FAIROZA H.UKKALI)
Senior Civil Judge & J.M.F.C.,
Shiggaon.



(Operative portion of the order pronounced in the
open Court , vide separate
sheet)

ORDER

I.A No.I filed under Order XXXIX
Rule 1 and 2 R/w Sec 151 of CPC is
dismissed.

Considering the relationship between the
parties, no order as to cost.

Judge & J.M.F.C.,

Senior Civil

Shiggaon