



OPPONENTS :1. Swamygowda  
DEFENDANTS S/o late Karigowda & Others  
R/o House No. 2, Kaveri Nagara, 2<sup>nd</sup>  
stage, Shrirama Nagara, Main Road,  
D. Shri Shivakumaraswamyji circle,  
Mandya City.

(BySri.D.J.G.Adv)

**ORDER ON I.A.NO.1 FILED BY THE PLAINTIFF UNDER  
ORDER 39 RULES-1 AND 2 OF CPC**

The plaintiff has filed the instant application under Order 39 Rules 1 and 2 of CPC praying this court to grant an order of temporary injunction against the defendant No. 9 to restrain him from carrying out any construction activity over the suit property till disposal of the suit.

2. The brief facts which constrained the plaintiff to file the instant application as stated in the affidavit are that, she has filed suit for Partition and Separate Possession in respect of suit property. She contended that the suit schedule property is the undivided joint family property of the plaintiff and defendants. The suit property bearing Sy. No. 10/1 measuring 1 acre 0.14 guntas is in the name of Bettamma W/o Karigowda, the mother of the plaintiff. The defendant No. 9 being the son of Puttarajegowda, the brother of the plaintiff is trying to construct house in the schedule property. As such if the construction is made over the suit schedule property creates great loss and injury to the share of the plaintiff since

the property is not partitioned. Though request has been made to the defendants to not to carry any construction over suit property the defendants are not heading to her request rather continuing their construction over the suit property for which it constrained to file the present application and prays to allow the application.

3. Per contra, defendant No.9 is placed exparte.

4. Heard counsel for plaintiff. Perused the pleadings, I.A. No.1, affidavit and documents on record. The following points would arise for determination of this Court.

1. Whether the plaintiff has made out prima-facie case?
2. Whether the plaintiff shows the balance of convenience lies in her favour?
3. Whether the plaintiff prove that if the instant application is not allowed, the irreparable loss and injury would be caused to her?
4. What order?

5. This Court answer the above points as follows:

**Point No.1** : In the affirmative

**Point No.2** : In the negative

**Point No.3** : In the negative

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

**REASONS**

**POINT NO.1:**

6. The plaintiff has filed the instant application under Order 39 Rules 1 and 2 of CPC praying this court to grant an order of temporary injunction against the defendant No. 9 to restrain him from carrying out any construction activity over the suit property till disposal of the suit. Counsel for plaintiff vehemently argued that the defendant No.,9 is constructing house over the suit schedule property Sy. No. 10/1 measuring 1 acre 0.14 guntas. The plaintiff is claiming 1/6th share including application schedule property. The plaintiff has produced documents to show that the properties are joint family properties, by producing these documents has made out prima facie case to go for trial.

7. The plaintiff has produced 8 RTCs including application schedule property, photograph and CD, Genological Tree, Demand register extract. The photograph produced by the plaintiff shows the alleged construction by the alleged defendant in an agricultural land. It is well known that injunction cannot be granted to an agricultural land. The application schedule

property measures 1 acre 0.14 guntas land, the plaintiff is claiming 1/6th share. By looking into the alleged photograph the measurement of the construction is not with respect to 1 acre 0.14 guntas whole of land, but a portion of that. Therefore rights of the plaintiff over the suit schedule property needs to be adjudicated. As such the plaintiff has made out prima facie case to go for trial. Therefore this court answers Point No.1 in the affirmative.

**POINT NOS. 2 AND 3:**

8. Since these points are inter-connected with each other taken up together for determination to avoid repetition of facts and circumstances of the case.

9. The Hon'ble High Court of Karnataka in **Sri Gowrishankara Swamigalu Vs Sri. Siddhaganga Mutt**, in ILR **1989 KAR 1701** held that :

**“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.”**

**'The moment prima facie case is made out, the Court is expected to look into existence of other points namely balance of convenience and irreparable hardship and inconvenience that would be caused'**

**10.** As per the case of the plaintiff that her father and mother died living behind them one Lakshamma, Kempamma, Swamigowda, Jayamma, Puttarajegowda and Bhagyamma, the plaintiff without partitioning the properties of their joint family. The said Lakshamma and Puttarajegowda has also expired. The defendant No. 9 being the son of Puttarajegowda alleged to be constructing building/house over the application schedule property, who is also a co-sharer of the suit schedule properties including application schedule property. It is settled law that injunction cannot be granted against the co-sharer of the suit schedule properties. Therefore at this stage it is to be presumed that the plaintiff and defendants are the members of the joint family. The photographs produced by the plaintiff, prima facie shows that construction of the building/house is half the way and undisputedly the construction work has been carried out upon the investment of the alleged defendant No. 9. Therefore if construction work is stopped it is for the defendants, loss would be caused. Therefore balance of convenience is lies in favour of defendant and irreparable loss and injury would be caused to the defendant No. 9 if the instant application is allowed. Therefore this court answered Point Nos.2 and 3 in the negative.

**POINT NO.4:**

**12.** In view of the discussion made above on point Nos.1 to 3, this Court proceeds to pass the following:

**O R D E R**

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC is hereby dismissed with costs.

(Dictated to the stenographer ,computerized by him, corrected by me and then pronounced in the open court on this the **28<sup>th</sup> day of July 2022**)

**(Smt. SHAKUNTHALA R.)**  
Addl.Civil Judge and  
JMFC, K.R.Pete.

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