

KAMD600006062024



**IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC AT PANDAVAPURA**

Dated this 27th day of April -2026

PRESENT :

SRI.BABU N., B.com, LL.B.
I Addl. Senior Civil Judge & JMFC,
Pandavapura.

O.S.No.53/2024

PLAINTIFFS : K.J.Manjunatha and another

V/s

DEFENDANTS : Nagesh and others

PARTIES IN I.A.I

APPLICANT : K.J.Manjunatha Plaintiff

V/s

OPPONENTS : Nagesh and others
..... Defendants

**ORDER ON I.A.No.I FILED UNDER ORDER XXXIX
RULES 1 AND 2 R/w SEC.151 OF CPC**

Plaintiffs have filed the application for temporary injunction restraining the defendants or any body acting on their behalf from obstructing the plaintiffs' use of the bore well situated in the suit schedule item No.1 and cow shed situated in the suit schedule item No.2 pending disposal of the suit.

2. In the affidavit annexed to the application it is stated that, a bore well is dug in the suit schedule item No.1 for

agricultural purpose and a cow shed is constructed in the suit schedule item No.2 for the purpose of joint family use and that, the plaintiffs and defendants have purchased cows separately in order to meet their day to day expenses and that, the defendant No.1 has colluded with other defendants and is obstructing the plaintiffs from using the bore well and the cow shed stating that, partition has already taken place and that, the defendant No.1 has filed a complaint against the plaintiffs before Pandavapura Police and that, the defendant No.1 has threatened the plaintiff from using the bore well and the cow shed and locked the bore well motor set and that, it has become difficult for the plaintiffs to use water from the bore well and tie cows in the cow shed and that, it has also become difficult for the plaintiffs to rear cows and that, the RTC and genealogy clearly show that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants and hence it is necessary to grant an order of temporary injunction as prayed for in the application.

3. The defendant No.1 has filed written statement denying the plaint averments and contended that, partition has already taken place between the plaintiffs and defendants No.1 and 2 orally during the life time of their father and that, the suit schedule item No.1 was divided between the plaintiffs and defendant No.2 and that, the suit schedule item No.2 was allotted to plaintiff No.1 and that, the plaintiff has dug a bore well in the said property out of his own income and also with the help of his wife's parents and that, the suit schedule item No.3 was divided into 4 shares and allotted to the plaintiffs and defendants No.2 and that, the suit schedule item No.4 is also divided and allotted to plaintiffs and defendants No.1 and 2 about 5 decades ago and that, the suit schedule properties is

also divided between the defendant No.2 and plaintiff No.1 and that, both of them are residing separately in their respective houses and that, the marriage of defendant No.3 was performed prior to 1984 and that, the application is filed with a malafide intention to grab the bore well and cow shed of defendant No.1.

4. Following points do arise for consideration:

1. Whether the plaintiffs have made out prima facie case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs would suffer irreparable loss if temporary injunction as prayed for is not granted?
4. What order?

5. Having heard learned counsel for the respective parties and considered the material on record, I have answered the above points as below:

Point No.1:- In the Affirmative

Point No.2:- In the Affirmative

Point No.3:- In the Affirmative

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

REASONS

6. POINT No.1:- The plaintiffs have sought for an order of temporary injunction restraining the defendants or any body acting on their behalf from obstructing the plaintiffs' use of the bore well situated in the suit schedule item No.1 and the cow shed situated in the suit schedule item No.2.

7. The plaintiffs have filed the suit for partition and separate possession of the suit schedule properties. According

to plaintiffs, themselves together with defendants constitute Hindu Undivided family and that, the suit schedule properties are their ancestral and joint family properties and that, the plaintiffs and the defendants are in joint possession and enjoyment of the suit schedule properties. It is also their case that, a bore well is dug in the suit schedule item No.1 out of the joint family income for agricultural purpose and a cow shed is also constructed in the suit schedule item No.2 for rearing cows. The plaintiffs have pleaded that, they have got 2/5th share in the suit schedule properties.

8. The defendant No.1 alone has contested the suit denying the plaintiffs' case stating that, the properties are already partitioned orally during the life time of father of the plaintiffs and defendants No.1 and 2.

9. The plaint is annexed by a copy of genealogy and RTCs.

10. A perusal of RTC annexed to the plaint shows that, the suit schedule properties are entered in the name of Jayamma W/o Javarayigowda. As per the genealogy described in the plaint, the said Jayamma W/o Javarayigowda is the mother of the plaintiffs and the defendants. Thus, the material on record shows that, the revenue records pertaining to suit schedule properties still stand in the name of mother of the plaintiffs and the defendants.

11. The defendant No.1 has contended that, the ancestral and joint family properties are already partitioned between the plaintiffs and the defendants No.1 and 2 during the life time of their father itself. However, the material on record shows that, the revenue records pertaining to the suit schedule properties are still entered in the name of their mother. This shows that,

the oral partition, as pleaded by the defendant No.1, is in dispute. As the revenue records on hand are still entered in the name of mother of the plaintiffs and the defendants it appears that, the ancestral and joint family properties of the plaintiffs and the defendants are not yet partitioned between them in accordance with law.

12. The contention of the defendant No.1 that, partition has already taken place orally is a disputed fact which cannot be decided at this pre-trial stage. Till the said dispute is resolved the plaintiffs and defendants are equally entitled make use of the bore well and the cow shed. Therefore, it has to be said that, the plaintiffs and defendants being children of Jayamma in whose name the properties still stand, are equally entitled to use the bore well and cow shed situated in the suit schedule properties. Under these circumstances, the plaintiffs have made out prima facie case. **Hence I answer point No.1 in the Affirmative.**

13. Point No.2:- As the material on record clearly shows that, there was no partition of ancestral and joint family properties between the plaintiffs and the defendants the balance of convenience lies in favour of the plaintiffs as they have got right of share in the ancestral and joint family properties. **Hence I answer Point No.2 in the Affirmative.**

14. Point No.3:- As the material on record clearly shows that, the plaintiffs have got right of share in the suit schedule properties if the defendants are not prevented from obstructing the plaintiffs' use of the bore well and the cow shed then the plaintiffs would suffer irreparable loss and injury which cannot be compensated in terms of money. **Hence I answer Point No.3 in the Affirmative.**

15. POINT No.4:- Having answered Points No.1 to 3 in the Affirmative, I proceed to pass the following;

ORDER

The IA No.I filed under Order 39 Rule 1 R/w Sec.151 of CPC is allowed.

The defendants or anybody acting on their behalf are temporarily restrained from obstructing the plaintiffs' use of bore well situated in the suit schedule item No.1 and cow shed situated in the suit schedule item No.2 pending disposal of the suit.

(Dictated to the Stenographer, transcribed by her, transcript corrected, then signed and pronounced by me in the open Court on this the 27th day of April-2026)

(BABU N.)
I Addl. Senior Civil Judge & JMFC,
Pandavapura.

