

O.S./279/2024

KAMS300020742024



**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC, HUNSUR**

Dated this the 4th day of April 2026

**Presided Over by Smt. Bhagyamma
B.Com. L.L.B.,**

O.S./279/2024

PLAINTIFFS :

1. Shahada Banu,
W/o late Khazi Mohammed
Azizulla,
Aged about 61 years,
2. Aisha Azeez,
D/o late Khazi Mohammed
Azizulla,
Aged about 50 years,
3. Mohammed Yaseen,
S/o late Khazi Mohammed
Azizulla,
Aged about 49 years,

Plaintiffs-1 to 3 are
residents of # 1473,
Khazi Mohalla,
Hunsur City, Hunsur.

4. Rabiya Azeez,
D/o late Khazi Mohammed
Azizulla,

Aged about 45 years,
R/o # 149, 1st Stage,
5th Main, 6th Cross,
Rajiv Nagar,
Mysuru City, Mysuru.

(By Sri SHJ, Adv.)

- DEFENDANTS :** //Vs//
1. Mahaboob bi,
W/o late Khazi Mohammed
Azizulla,
Aged about 61 years,
 2. Arshiya Aziz,
D/o late Khazi Mohammed
Azizulla,
W/o Mohammed Ghouse,
Aged about 45 years,
 3. Ameen Raza,
S/o late Khazi Mohammed
Azizulla,
Aged about 43 years,
 4. Moin Raza @ Syed Nouman,
S/o late Khazi Mohammed
Azizulla,
Aged about 42 years,
- Defendants-1 to 4 are
R/at # 1473,
Khazi Mohalla,
Hunsur City,
Hunsur.
5. Mohud Yosuf,
S/o Hamsa,
Aged about 55 years,
R/at # 1833,
Old B.M. Road,
Near Old KSRTC Bus stand,

Hunsur Town, Hunsur.

**(By Sri AS, Adv. For
Def.No.1 to 4 and
Sri IS, Adv. For Def.No.5)**

PARTIES TO IA.NO.1

APPLICANT : Mohammed Yaseen
Plaintiff No.3
//Vs//
OPPONENT : Mohud Yosuf
Defendant No.5

ORDER ON IA.NO.I

The learned counsel for applicant / plaintiff No.3 has filed this I.A under Order XXXIX Rule 1 and 2 of CPC seeking ad-interim order of temporary injunction against the respondent/defendant No.5 directing to deposit the rent of Rs.37,000/- to be paid in respect of schedule property till the disposal of the suit, in the interest justice and equity.

2. Description of suit schedule property:

All that piece and parcel of the commercial property bearing No.23333722, property No.1-2-65, old No.272/2/1833/A-2, Assessment No.272/2/1833/A-2, measuring East-West 6.248412, North-South 24.384049 bearing ground floor and 1st floor, situated at old B.M. Road, Hunsur Town, bounded on

East by - Property of Mohammed Khalimulla

West by - Property of Ramakrishna

North by - Property of George Hunt

South by - Old B.M. Road.

3. In the sworn affidavit, the plaintiff no.3 stated on oath that the suit schedule property originally belonged to late Khazi Mohammed Azizulla, who is the common ancestor of the plaintiffs and defendants No.1 to 4. After his demise, the plaintiffs and defendants No.1 to 4, being his legal heirs, have succeeded to the property and are in joint possession and enjoyment of the same as co-sharers. The applicant contends that there has been no partition of the suit schedule property by metes and bounds and, therefore, each of the co-sharers is entitled to an undivided share in the property as well as in the income derived therefrom. It is further contended that defendant No.5 is a tenant in respect of the suit schedule property and was inducted into possession by the deceased owner. After the death of the original owner, the tenancy continues, and the rent payable by defendant No.5 constitutes income from the joint family property. Therefore, all the co-sharers, including the plaintiffs, are entitled to proportionate share in the said rental income. The grievance of the applicant is that defendants No.1 to 4, taking advantage of the absence of formal partition, have been attempting to assert exclusive control over the suit schedule property and the income arising therefrom. It is alleged that defendant No.4, in particular, is unlawfully collecting or directing the tenant to deposit the entire rent to his account, thereby depriving the plaintiffs of their legitimate share. The applicant submits that such conduct is illegal, arbitrary, and detrimental to the rights of the plaintiffs. The applicant has also contended that the alleged Will set up by defendants No.1 to 4 is not genuine and is created with an intention to defeat the lawful rights of the plaintiffs. According to the applicant, the said Will is not

binding on the plaintiffs and its validity is a matter to be adjudicated during trial. Until such adjudication, the defendants cannot claim exclusive entitlement to the property or its income. It is further urged that if defendant No.5 is permitted to continue depositing the rent in favour of defendant No.4, it would result in unjust enrichment of the defendants and cause financial prejudice to the plaintiffs. The applicant submits that there is every likelihood that the defendants may misappropriate the rental income, making it difficult for the plaintiffs to recover their rightful share even if they ultimately succeed in the suit. The applicant therefore contends that there exists a strong prima facie case in favour of the plaintiffs, as they are undisputedly legal heirs and co-sharers of the property. It is further contended that the balance of convenience also lies in favour of granting injunction, as no prejudice would be caused to the defendants if the rent is protected or deposited before the Court, whereas refusal of injunction would result in continuous loss to the plaintiffs. The applicant also asserts that irreparable injury would be caused if the injunction is not granted, inasmuch as the plaintiffs would be deprived of their lawful share in the income of the joint family property and may face difficulty in recovering the same at a later stage. On these grounds, the applicant has prayed that this Hon'ble Court be pleased to grant a temporary injunction restraining defendant No.5 from depositing rent in favour of defendant No.4 or any other defendant in the interest of the plaintiffs pending disposal of the suit. They have got prima facie case and balance of convenience lies in their favour and they will be put to irreparable loss. If T.I is granted, no hardship or injury would be caused to the defendants. Hence, prayed to allow the I.A.

4. Per contra the learned counsel for defendants no.1 to 4 and the defendant-5 have filed written statement and memo to consider the same as objection to the said I.A. The defendants No.1 to 4 contend that the suit itself is not maintainable either in law or on facts and is liable to be dismissed. They admit that the suit schedule property originally belonged to late Khazi Mohammed Azizulla; however, they assert that during his lifetime, he executed a Will dated 12.02.2024 in favour of defendant No.4, thereby bequeathing the suit schedule property exclusively to him. It is their specific case that, in view of the said Will, defendant No.4 has become the absolute owner of the suit schedule property and is entitled to its possession and income. They deny that the plaintiffs have any joint share or co-ownership rights in the property. They further contend that the plaintiffs are fully aware of the Will and the arrangement made by the deceased, but have nevertheless filed the present suit with an intention to unlawfully claim a share in the property. According to them, the plaintiffs are attempting to create a false claim over the suit schedule property despite having no right, title, or interest therein. The plaintiffs have not at all made out any prima facie case, so also the balance convenience is not in their favour. If temporary injunction is granted, the loss and hardship would be caused to him which cannot be measured by way of pecuniary measures. If an order is not granted there is no loss or hardship of whatever kind to plaintiffs. He has denied all other allegations and the application is devoid of merits and prayed to reject the same with costs.

5. It is also contended that the defendant No.5-tenant is rightly paying/depositing rent as per the directions of defendant No.4, who is the lawful beneficiary under the Will. Therefore, the plaintiffs are not entitled to seek any restraint order against the tenant. On these grounds,

defendants No.1 to 4 pray for dismissal of the application as well as the suit. the defendant No.5 contends that he is a bona fide tenant in occupation of the suit schedule property under a valid rental arrangement originally entered into with late Khazi Mohammed Azizulla. After the death of the original owner, the tenancy has continued without interruption. He submits that he has been regularly paying/depositing rent and is complying with the directions issued by defendant No.4, who claims entitlement to the property based on the Will executed by the deceased. It is further contended that he is not concerned with the internal disputes between the plaintiffs and defendants No.1 to 4 regarding title or partition of the property. His only obligation is to pay rent to the person lawfully entitled to receive it, and he cannot be compelled to decide inter se rights of the parties. he stated that the plaintiffs have not paid or demanded rent from him earlier and have now unnecessarily dragged him into the litigation. He apprehends that granting the injunction would expose him to multiple and conflicting claims regarding payment of rent. On these grounds, defendant No.5 prays for dismissal of the application against him.

6. Heard and perused the materials available on record. Learned counsel for plaintiffs also filed written arguments.

7. The points that would arise for my consideration are as under:

i)Whether the plaintiffs have made out prima facie case for grant of temporary injunction as prayed?

ii)Whether the plaintiffs prove that balance of convenience lies in their favour?

iii)Whether the plaintiffs will be put to irreparable loss or injury, if temporary injunction is not granted?

iv) What order?

8. My answers to the above points are as under:-

Point no.1 to 3 : In the Negative

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

REASONS

9. POINTS NO.1 to 3: All these points are interconnected to each other, as such they are taken together for common discussion.

At the outset, it is well settled that while considering an application for temporary injunction, the Court has to examine three essential ingredients, namely: (i) existence of a prima facie case, (ii) balance of convenience, and (iii) likelihood of irreparable injury. The applicant contends that the suit schedule property is a joint family property belonging to the plaintiffs and defendants No.1 to 4 and that the parties are in joint possession as tenants-in-common and the defendant No.5 is a tenant under the family and that the plaintiffs are entitled to receive proportionate rent pending disposal of the suit. The affidavit filed in support of the application reiterates that the plaintiffs have a lawful share in the property and that defendants No.1 to 4 are attempting to deprive them of their legitimate rights by diverting the rental income. However, a careful perusal of the written statement filed by defendants No.1 to 4 discloses a serious dispute regarding the very title and succession to the property. It is specifically pleaded that the property originally belonged to late Khazi Mohammed Azizulla and during his lifetime, he executed a Will dated 12.02.2024 in favour of defendant No.4, thereby bequeathing the suit schedule property exclusively to him. On the strength of the said Will, defendant No.4

claims exclusive right over the property and asserts authority to collect rent from the tenant. The defendant No.5, who is admittedly in possession of the property as a tenant, has contended that he is occupying the premises under a valid rental arrangement originally entered into with the deceased owner and that after his demise, he has been depositing rent in accordance with the instructions of defendant No.4, he being a bonafide tenant is not concerned with the interse disputes among the co-sharers. Thus, the pleadings on record clearly indicate that the question of title, succession, and entitlement to receive rent is seriously disputed and hinges upon the validity and effect of the alleged Will. These are matters which require full-fledged trial and cannot be conclusively adjudicated at the interlocutory stage.

10. It is trite law that a prima facie case does not mean a mere arguable case, but a case which raises a bona fide contention requiring investigation and which shows a probability of the applicant's entitlement to relief. In the present case, in view of the competing claims based on inheritance and testamentary succession, this Court is of the opinion that the applicant has failed to establish a clear, undisputed, and enforceable right warranting grant of injunction. Accordingly, this Court holds that the applicant has not made out a prima facie case for grant of temporary injunction.

11. The next aspect to be considered is whether the balance of convenience lies in favour of the applicant/plaintiffs. It is an admitted fact that defendant No.5 is in possession of the suit schedule property as a tenant and the rent is being regularly paid, the tenancy is subsisting and there is no allegation of default in payment of rent. If the relief sought by the applicant/plaintiffs is granted, it would effectively restrain the tenant from continuing the existing mode of rent payment

and would interfere with the ongoing arrangement between the tenant and defendant No.4. Such interference at this stage, when the rights of the parties are yet to be adjudicated, would lead to uncertainty and may expose the tenant to multiple and conflicting claims. On the other hand, if the injunction is refused, no prejudice would be caused to the applicant/plaintiffs as the rental income can always be accounted for and appropriately apportioned at the time of final adjudication of the suit. The rights of parties can be safeguarded by directing that the rent so deposited shall be subject to the result of the suit. Thus, the comparative inconvenience that would be caused to the parties clearly tilts in favour of refusing the injunction. Accordingly, this Court holds that the balance of convenience does not lie in favour of the applicant/plaintiffs.

12. The third requirement is whether the applicant/plaintiffs would suffer irreparable injury if the injunction is not granted. The only grievance of the applicant/plaintiffs is that he is not receiving his alleged share of rent. Such injury is purely monetary in nature. It is well settled that where the injury complained of is capable of being compensated in terms of money, the same cannot be termed as irreparable injury. In the present case, if the applicant/plaintiffs ultimately succeeded in the suit, they can always claim their share in the rental income along with appropriate reliefs. There is no material placed on record to demonstrate that non-grant of injunction would result in any irreversible or irretrievable harm. Hence, this Court is of the opinion that no irreparable injury would be caused to the applicant/plaintiffs, if the relief of injunction is denied. In view of the foregoing discussion, this Court is of the considered opinion that the applicant/plaintiffs has failed to satisfy any of the essential ingredients

required for grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC.

13. On a careful and anxious consideration of the rival pleadings, this Court finds that the relief sought by the applicant/plaintiffs is wholly misconceived at the interlocutory stage. The foundation of the plaintiff's claim rests on an alleged joint ownership, which is seriously disputed by defendants No.1 to 4 on the basis of a registered Will said to have been executed by the original owner in favour of defendant No.4. The validity, genuineness, and legal effect of the said Will as well as the consequent rights of the parties are the matters, which can be adjudicated only upon full-fledged trial and appreciation of evidence. At this stage, this Court cannot embark upon a mini-trial to determine title or entitlement to rental income. Further, the defendant No.5 is an admitted tenant, who is under a legal obligation to pay rent and cannot be compelled to withhold or alter such payment based on unresolved interse disputes among the claimants as I have already adverted. So, the granting of injunction as prayed would not only interrupt an existing and undisputed tenancy arrangement, but would also expose the tenant to conflicting claims and multiplicity of proceedings. On the contrary, the refusal of injunction does not cause any irreversible prejudice to the applicant/plaintiffs as the rental income can always be duly accounted and adjusted at the time of final adjudication. It is well settled that temporary injunction cannot be granted in cases where the right itself is in serious dispute and the alleged injury is compensable in monetary terms. Therefore, in the absence of a clear prima facie right and in view of the balance of convenience being against the applicant/plaintiffs, this Court is of the considered opinion that the application deserves to be rejected. As

such, the plaintiffs have also failed to prove that balance of convenience lies in their favour and if temporary injunction is refused no harm will be caused to plaintiffs. Therefore, this court is of the considered opinion that, the plaintiffs are not entitled for ad-interim temporary injunction as prayed by her. Hence, **point No 1 to 3 are answered in the negative.**

14. POINT NO.4:- In view of my findings on the above points, this court proceeds to pass the following:

ORDER

I.A.No.I filed by the applicant/plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby dismissed. Under facts and circumstances of the case, no order as to costs.

[Dictated to the Stenographer directly on computer, corrected and signed by me, then order pronounced in the Open Court, on this the 4th day of April, 2026].

(BHAGYAMMA)
I Addl. Senior Civil Judge & JMFC.,
Hunsur.