

KAMS310006372024

**IN THE COURT OF ADDL. CIVIL JUDGE & JMFC, HUNSUR****Dated this the 7th day of July, 2025****:Present:****Smt. Namrata S Hosmath, B.A., LL.B.,
Addl. Civil Judge & JMFC,
Hunsur.****O.S. No.161/2024****PLAINTIFF : Sri. Ramegowda****// Vs //****DEFENDANT : Smt. Jayamma and others****PARTIES TO I.A. NO.I****APPLICANT : Sri. Ramegowda****// Vs //****OPPONENTS : Smt. Jayamma and others****ORDERS ON IA NO.I**

The plaintiff has instituted the present suit seeking partition and separate possession of the suit schedule property. Along with the suit, the plaintiff has filed an Interlocutory Application, numbered as I.A. No.1, under Order XXXIX Rules 1 and 2 read with Section 151 of the

Code of Civil Procedure. Through this application, the plaintiff prays for an ad interim order of temporary injunction restraining defendant No.10, his agents, servants, or any person acting on his behalf, from carrying out any construction or developmental activities over the suit schedule property pending disposal of the suit.

2. In the affidavit accompanying the application, the plaintiff has contended that the suit schedule properties are ancestral joint family properties of both the plaintiff and the defendants. It is asserted that the plaintiff and defendants are joint owners and in joint possession of the suit properties. No partition has taken place between the parties in respect of these properties, either by metes and bounds or otherwise. The plaintiff further alleges that defendant No.10 has hatched a plan to usurp the plaintiff's rights and claims to have acquired ownership over Item Nos.1 and 4 of the suit schedule properties based on a Will allegedly executed by Sannegowda, the father of both the plaintiff and defendant No.10. The plaintiff contends that the said will is forged, fabricated, and not binding upon his share in the properties. It is further stated that defendant No.10, taking undue advantage of the said Will, filed an application to change the katha in his name. Aggrieved by the same, the plaintiff approached the Tahsildar, Hunsur Taluk. The Tahsildar passed an order in favour of defendant No.10, which led the plaintiff to approach the Assistant Commissioner, who in turn directed the plaintiff to seek appropriate remedy before the civil court.

3. The plaintiff has submitted that defendant No.10 has, without consent and behind the plaintiff's back, started construction over Item No.1 of the suit schedule property, which is the subject matter of

dispute. The plaintiff has asserted that he has a lawful share in the said property and that the construction is being carried out illegally. Hence, the plaintiff was constrained to file the present IA. The plaintiff submits that the prima facie case and balance of convenience lie in his favor, and if the application is not allowed, the plaintiff will suffer great hardship and irreparable injury, which cannot be compensated. Therefore, the plaintiff prays to allow the application.

4. For the sake of clarity, this Court would like to mention that the suit comprises five suit schedule properties. However, in the present interlocutory application, the plaintiff has sought relief only in respect of Item No.1 of the suit schedule properties.

The description of suit schedule property is as follows:

Item No.1: Land bearing Sy.No.39/3 measuring 00.04 guntas, situated at Thondalu Village, Kasaba Hobli, Hunsur Taluki, Mysuru District. Bound on:-

East by :- Land of Gopala Shetty,

West by :- Road,

North by :- Land of Lakkegowda,

South by :- Land of Bhagyamma,

5. Defendant No.10 has filed a memo stating that the counterclaim filed by him may be treated as objection to I.A. No.1. He has admitted the relationship between himself and the plaintiff. He further contends that he has acquired ownership over Item Nos.1 and 4

of the suit schedule properties by virtue of a registered Will dated 16.07.2002, executed by their father, Sannegowda. Based on this Will and his possession, the katha of the said properties stands in the joint names of the plaintiff and defendant No.10. It is also submitted by defendant No.10 that except for Item Nos.2 and 3, all other properties are his self-acquired properties. He has already invested approximately Rs.15,00,000/- in construction over Item No.1 of the suit schedule property. Further, it is submitted that Item No.5 of the suit schedule property was purchased by him under a registered sale deed dated 12.07.2005. defendant No.10 has claimed that since Items 1, 4, and 5 are his self-acquired properties, the plaintiff has no right, title, or interest in them, and hence, the application deserves dismissal.

6. Additionally, defendant No.10 has filed a memo stating that he has already invested approximately about Rs. 10,00,000/- in the suit schedule property. It is contended that if this court comes to the conclusion that the suit schedule property is an ancestral property, then he is willing to vacate the suit schedule property.

7. The plaintiff has filed objections to the said memo, reiterating the averments made in the plaint. The plaintiff asserts that he has a rightful share in the suit properties and that defendant No.10 is carrying out illegal construction without obtaining permission from the concerned authorities. He further contends that the memo filed by defendant No.10 is not maintainable either in law or on facts.

8. Heard and perused the materials on record.

9. The following points arise for my consideration:-
- 1) Whether plaintiff have made out a prima-facie case in his favour?
 - 2) Whether the balance of convenience is in favour of the plaintiff?
 - 3) Whether the plaintiff would suffer irreparable injury, if the temporary injunction is not granted??
 - 4) What order?
10. My findings on the above points are as under:-
- 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

11. **POINT NO.1**:- The plaintiff has filed the present I.A. No.1 under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking an order of temporary injunction to restrain defendant No.10 from proceeding with the construction of a building over Item No.1 of the suit schedule property until the final disposal of the suit. It is the case of the plaintiff that the suit property is ancestral property belonging to the joint family of the plaintiff and defendants. According to the plaintiff, no partition has taken place between the parties as of date, and the plaintiff

continues to be in joint possession of the suit property along with the defendants. The plaintiff claims to have undivided rights and an equal share in the suit schedule property. It is further contended that defendant No.10 is carrying out construction over Item No.1 of the suit schedule property without the plaintiff's knowledge or consent. The plaintiff apprehends that if defendant No.10 is permitted to proceed with the construction, the plaintiff's rights over the property may be prejudiced. Per contra, defendant No.10 disputes the ancestral nature of the suit property and contends that he has acquired ownership of Item No.1 of the suit schedule property by virtue of a registered Will dated 16.07.2002, executed by the father of both the plaintiff and defendant No.10. He further asserts that the property is his self-acquired property and not subject to partition.

12. Upon careful perusal of the plaint, I.A. No.1, the accompanying affidavit, the written statement, and the documents produced by both parties, it appears that the question as to whether the suit schedule property is ancestral or self-acquired cannot be conclusively decided at this interlocutory stage. Such a determination requires a full-fledged trial, including examination of oral and documentary evidence.

13. The plaintiff relies on judgments such as (2009) 4 SCC 780 and ILR 2002 KAR 2750, which pertain to proof of Will. However, this Court cannot examine or rule upon the genuineness of the Will at this stage. The plaintiff also relies on writ proceedings where the change of katha based on the Will was quashed. However, If the plaintiff is

aggrieved by the orders passed by the AC court and DC court, he should approach the competent court addressing his grievance, this court lacks jurisdiction to review those orders.

14. Furthermore, the plaintiff has admitted in his pleadings that the construction by defendant No.10 has progressed significantly. The construction has reached first-floor, this can be seen in the photos produced by the defendant No.10. At this stage of construction, granting an order of temporary injunction would not serve any effective purpose and would instead prejudice the defendant No.10, who has already made substantial financial investment in the construction.

15. The plaintiff has also alleged that defendant No.10 is proceeding with construction without obtaining the requisite permission from the competent local authority. However, this Court is of the opinion that if the construction is indeed being carried out without license or approval, it is well within the jurisdiction of the concerned local authority to initiate appropriate action in accordance with law. Therefore, solely on this ground, this Court cannot intervene and grant an order of injunction.

16. The ownership and share of each party in the suit schedule property can only be finally adjudicated through a comprehensive trial. Expressing any opinion at this stage would prejudice the merits of the case and affect the rights of the parties. Hence, this Court is of the considered view that the plaintiff has failed to establish a prima facie

case for grant of temporary injunction. Accordingly, Point No.1 is answered in the negative.

17. **POINTS NO.2 & 3** :- These points have been taken up together as they can be conveniently addressed through a common discussion.

In view of the finding recorded in point No.1, wherein, it has been held that the plaintiff has not made out a prima-facie case, it is not necessary to delve into the question of balance of convenience and irreparable loss. This approach is supported by the decision of Hon'ble High Court of Karnataka in Gowrishankara Swamigalu v. Sri Siddhaganga Mutt, ILR 1989 Kar 1701, wherein it has been held-

"...The existence of a prima-facie case in the matter of granting injunction is really the harbinger or all the 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. ..."

Applying the above principles to the present case, since the plaintiff has failed to establish a prima facie case, the further questions of

balance of convenience and irreparable injury do not arise for consideration.

18. However, in order to safeguard the rights of the plaintiff, if he succeeds in the suit, the defendant No.10 shall not claim for equity in the Final Decree Proceedings on the basis of the alleged construction undertaken during the pendency of the suit. This observation is made solely to ensure that any rights the plaintiff may have in the suit schedule property are not prejudiced by the construction activity. Accordingly, for the foregoing reasons, points No.2 and 3 are answered in the negative.

19. **POINT No.4:** In the light of the discussion, reasons and answers to points No.1 to 3, it is just and proper to pass the following,

ORDER

I.A. No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of CPC, is hereby dismissed with cost.

For compliance U/Sec. 89 CPC by
18.08.2025.

(Dictated to the Stenographer, directly on computer, typed by him, corrected, signed and then pronounced by me in the open Court on this the 7th day of July, 2025)

(Namrata S Hosmath)
Addl.Civil Judge & JMFC.,
Hunsur.