

KAMS310004912020



**IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,
HUNSUR**

:PRESENT:

**SMT. NAMRATA S HOSMATH, B.A., LL.B.,
I ADDL. CIVIL JUDGE & JMFC,
HUNSUR.**

DATED THIS THE 16TH DAY OF APRIL, 2026

O.S. No.75/2020

<u>PLAINTIFF:</u>	Smt. Vanajakshi W/o Manjunath, Aged about 31 years, R/at Sheerenahalli Village, Hirikyathanahalli Post, Gavadagere Hobli, Hunsur Taluk. (By Sri. N.N., Advocate)
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// Vs //

<u>DEFENDANTS:</u>	1. Sri. Doddegowda S/o Ujjanigowda, Aged about 60 years. 2. Sri. Ravikumar S/o Doddegowda, Aged about 40 years. 3. Smt. Suchitra W/o Jagadeesh, Aged about 49 years, All are R/at Sheerenahalli Village, Hirikyathanahalli Post, Gavadagere Hobli, Hunsur Taluk. (Defendant No.3 by Sri. N.S.G., Advocate)
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PARTIES TO I.A. NO.IV

APPLICANTS	:	Smt. Vanajakshi plaintiff
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V/s

OPPONENTS	:	Sri. Doddegowda and othersdefendants
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i	Provision under which the application is filed	U/o 39 Rule 1 and 2 of CPC
ii	Relief Sought for	Temporary Injunction
iii	The date on which the application is filed	24.06.2025
iv	Number of the application	IV
v	The date on which the objection is filed by opponent	15.09.2025
vi	The date on which the order was passed on the said application	16.04.2026

ORDERS ON I.A. NO.IV

The plaintiff has instituted the present suit seeking partition and separate possession of the suit schedule properties. The plaintiff has filed an Interlocutory Application, numbered as I.A. No.IV, 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 to maintain Status-quo order against defendant No.3, his agents, servants, or any person acting on his behalf, from carrying out any construction, alteration,

renovation over the item No.3 of 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 joint family properties of herself and defendant No.1 and 2. It is asserted that, the plaintiff and defendant No.1 and 2 are joint owners and in joint possession of the suit properties. The plaintiff further alleges that, defendant No.3 has hatched a plan to usurp the item No.3 of the suit schedule property, has intendingly colluded with other defendants and his illegally renovating building over the item No.3 of the suit schedule property.

3. The plaintiff has asserted that, she has a lawful share in the said property and that the construction is being carried out illegally. The plaintiff submits that, the prima-facie case and balance of convenience lie in her 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 three suit schedule properties. However, in the present interlocutory application, the plaintiff has sought relief only in respect of Item No.3 of the suit schedule property.

5. **The description of suit schedule property is as follows;**

SCHEDULE

The Vacant site along with Mangalore Tiled House bearing Khata No.149, property No.232, measuring 54 X 16 feet, situated at Sheerenahalli Village, Gavadagere Hobli, Hunsur Taluk, Mysuru District, bounded on;

East by : Vacant site of Chikkanegowda
West by : Road
North by : Vacant site
South by : House of Annegowda

6. The defendant No.3 has filed objections, to IA No.IV. It is asserted that, the present application is not maintainable and it has to be dismissed in limine. It is alleged that, the plaintiff had filed similar application which came to be dismissed on 07.02.2024 and the said order was appeal before MA No. 5/2025, which was also dismissed. Hence, prays to dismiss the application.

7. Heard and perused the materials on record.

8. The following points arise for my consideration:-

**1) Whether plaintiff has made out a
prima-facie case in her 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?**

9. 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

10. **POINT NO.1**:- The plaintiff has filed the present I.A. No.IV under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking an order of Status-quo to restrain defendant No.3 from proceeding with the construction of a building over Item No.3 of the suit schedule property until the final disposal of the suit. It is the case of the plaintiff that, the suit properties are joint family properties belonging to the joint family of the plaintiff and defendant No.1 and 2. According to the plaintiff, the plaintiff and defendant No.1 and 2 are in joint possession of the suit properties.

11. The plaintiff claims to have undivided rights and an equal share in the suit schedule properties. It is further contended that, defendant No.3 is carrying out construction over Item No.3 of the suit schedule property without the plaintiff's knowledge or consent. The plaintiff apprehend that if defendant No.3 is permitted to proceed with the construction, the plaintiff's rights over the property may be prejudiced.

12. Upon careful perusal of the plaint, I.A. No.IV, the accompanying affidavit, the objection, and the documents produced by both parties, it appears that the question as to whether the suit schedule properties are joint family 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. Furthermore, the defendant No.3 has stated that, the construction by her has progressed significantly. The construction has reached first-floor, this can be seen in the photos produced by the defendant No.3. At this stage of construction, granting an order of temporary injunction would not serve any effective purpose and would instead prejudice the defendant No.3, who has already made substantial financial investment in the construction.

14. 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.**

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

16. 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'bl 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.

17. However, in order to safeguard the rights of the plaintiff, if she succeeds in the suit, the defendant No.3 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.**

18. **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.IV filed by the plaintiff under Order 39 Rule 1 and 2 of CPC, is hereby dismissed with cost.

(Dictated to the Stenographer Grade-III, directly on computer, typed by her, corrected, signed and then pronounced by me in the open Court on this the 16th day of April, 2026)

(NAMRATA S HOSMATH)

I Addl. Civil Judge & JMFC.,
Hunsur.

