

KAMS610024232015



**IN THE COURT OF THE I ADDITIONAL CIVIL
JUDGE AND JMFC., AT PERIYAPATNA**

Present: **Smt. Shwetha.J. B.Com, LL.B.,**
I Addl. Civil Judge & JMFC.,

Dated this 27th Day of September 2025

OS.No.283/2015

PLAINTIFF : SRI.MEER MASARATH ALI

V/s.,

DEFENDANTS : SRI.MEER THANİYATH ALI AND
OTHERS

IA. No.10

APPLICANT/
PLAINTIFF : SRI.MEER MASARATH ALI
[By Sri.N.K,Adv.,]

V/s.,

OPPONENT/
DEFENDANTS : SRI.MEER THANİYATH ALI AND
OTHERS

[By Sri.H.A., Adv., for D-1]
[Deft.No.2 to 8 - Exparte]
[By Sri.M.P.B., Adv., for D-9]

Provision under which IA is filed	Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC
Reliefs sought	Restraining the defendant No.9 from putting any construction in

	the suit schedule item No.1 property till the disposal of the suit.
Date of filing of application	04.09.2025
Application number	10
Date of filing objections	16.09.2025
Date of order	27.09.2025

ORDERS ON IA. No. 10

I.A.No.10 is filed under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC., by the plaintiff seeking temporary injunction restraining the defendant No.9 from putting up any construction in the suit item No.1 property till disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of the application stating that the suit properties are the joint family properties of himself and the defendants and cultivating the same jointly as tenant in common without making partition. The defendants wasting the earnings of the suit property without giving any profits or income derived from the suit properties. On obtaining RTC, he came to know

change of katha into the names of defendants and they were trying to alienate the suit property. At the earlier stage, this Court has granted temporary injunction to not to alienate the suit properties. Even after the said stay, the defendant No.9 purchased the item No.1 property from the hands of defendant No.1. Prior to the said purchase, the plaintiff issued legal notice to the defendant No.9 to not to purchase the same. The defendant No.9 knowing the pendency of the suit, got changed the katha colluding with the Revenue Officials. The plaintiff has filed the application for dis-obedience, which is pending for consideration. Now the defendant No.9 going to put up construction and transformer in the suit property. If the said construction is put up, it leads to multiplicity of proceedings and the plaintiff suffers irreparable loss and injury rather than the defendants. Hence, prayed to allow the application.

3. On the contrary, the defendant No.9 has filed objections by denying the application averments in toto and prayed to treat the written statement as objections to the present application. It further contended to the effect that the application is not maintainable under law and liable to be dismissed. The plaintiff is not the son of Shaukath Ali, on the other hand, he is the son of Meer Abbas Ali. That the Sy.No.159, measuring 3 acres 28 guntas of Belthur Village originally belong to Shaukath Ali. During his lifetime, he has bequeathed the portion of the Sy.No.159 through Will dated 30.01.1992 and it is registered on 13.03.1992 in favour of his two children namely defendant No.1 and Meer Nasruth Ali to an extent of 1 acre and 32.08 guntas each. On the death of Shaukath Ali, the defendant No.1 became the absolute owner of the portion of Sy.No.159 and he was

in possession and enjoyment by entering his name in the revenue records in MR and RTC and the said survey number reflects as 159/2. The said Meer Nasruth Ali got 1 acre 32.08 guntas on the basis of the above said Will. Then the question as alleged by the plaintiff regarding the concept of tenant in common does not arise at all. The plaintiff has not questioned the said Will at any point of time as such he has no right to file a suit for partition and separate possession in respect of suit schedule property. After the demise of Meer Nasruth Ali, his legal heirs have sold the Sy.No.159/1 to the 1st defendant. Then the 1st defendant became the absolute owner of the property bearing Sy.No.159/1 and 159/2. The plaintiff has not questioned the Sale deed executed by the L.Rs of Meer Nasruth Ali before any competent Court. This clearly shows that the plaintiff has admitted the registered Sale deed.

4. The defendant No.9 further contended that the plaintiff has sworn to false affidavit stating that inspite of the injunction order to not to alienate the schedule properties, the defendant No.9 has purchased Sy.No.159/2. It is pertinent to note that as per the order sheet of this Court, on 02.01.2016, this Court was pleased to extend the temporary injunction order until further orders. At that juncture, this 9th defendant was not impleaded as defendant to this suit. On 02.07.2016 this Court was pleased to order that plaintiff and their Counsel are absent and hence, the I.A.No.1 is kept in abeyance to consider it on merits of the case and posted the case for framing Issues. So, from 02.07.2016, there was no order of temporary injunction in respect of the suit schedule properties. More particularly, the suit schedule item No.1 is land bearing Sy.No.159 measuring 1 acre 32.08 guntas, item No.2 is Sy.No.158 measuring 2 acre 28 guntas

and common boundaries have been mentioned to the said item No.1 and 2 of the schedule properties, but the defendant No.9 has purchased the property land bearing Sy.No.159/2 measuring 1 acre 32.08 guntas. So, as on the date of the suit and subsequently, there is no order of injunction as against the property of this defendant No.9.

5. The defendant No.9 has further contended that the case was posted to 13.08.2025 for further cross examination of PW.1, that day the plaintiff was absent and the matter was posted to 04.09.2025 for further cross examination of PW.1. On that day, this frivolous application came to be filed by the plaintiff just to drag on the proceedings without concluding the trial.

6. The defendant No.9 has further contended that the defendant No.9 has purchased the Sy.No.159/2 of Belathuru Village, Periyapatna Taluk for the purpose of establishing 2X20MVA, 66/11KV Sub-Station at

Belthuru in Periyapatna Taluk, Mysuru District along with construction of 3.986 km of 66 kv LILO Line from one circuit of existing 66 kV Kushalanagara Periyapatna DC line using Coyote conductor to proposed 66/11kV Belthuru sub-station on partial Turnkey basis including supply of all matching materials/equipment (excluding 11kV switchgear) and erection (including civil works) of all materials/equipments, testing and commissioning for betterment of the local area in respect of voltage regulation. The defendant No.9 has undertaken the said work for the purpose of the betterment of general public but the plaintiff without any valid reason and without having any documentary evidence is unnecessarily filed the above suit. The plaintiff has not made out any prima facie case to get the order of temporary injunction from the hands of this Court in his favour. The balance of convenience is not in favour

of the plaintiff. If the temporary injunction is granted the defendant No.9 will suffer hardship and injury wherein the Government has granted funds for installation of 66 KV Sub-Station for betterment of the local area in respect of voltage regulation. Hence prayed to dismiss the application.

7. Heard arguments of learned Counsel for the plaintiff as well as the defendants. The Counsel for the defendant No.9 has produced the memo with citations reported in 2024(4) KCCR 3519 between Muniveerappa and others Vs. Muthappa and others and 2024(2) KCCR 1525 between R.Ramesh and others Vs. R.Srinivas.

8. The Points that arises for my consideration are as under:-

Point No.1: *Whether the plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?*

Point No.2: *Whether balance of convenience lies in favour of the plaintiff?*

Point No.3: *Whether the plaintiff will be put to irreparable loss and hardship, if I.A.I is not allowed?*

Point No.4: *What order?*

9. My findings to the above points are as under:

Point No.1 to 3: In the Negative

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

REASONS

10. **POINT No.1:** When the case posted for further cross of PW.1, the plaintiff has filed this I.A seeking to restrain the defendant No.9 from putting up any construction in the suit item No.1 property. In support of his case, he produced the copy of the objection in RRT No.31/22-23 on the file of Tahsildar, Periyapatna, copy of objection in respect of transfer of katha in RRT No.31/2022-23, copy of applications, Encumbrance Certificates and two photos.

11. On the other hand, the defendant No.9 has produced the Pasalu pahani of Sy.No.159, copy of Will dated 30.01.1992, Death Certificate of Shaukath Ali of Sy.No.159 and 159/2, copy of Sale Deed dated 26.04.2006, copy of Order passed by the Tahsildar in RT(P)/31/2022-23 dated 3.11.2022 of Tahsildar, RTC Extract and 11E Sketch.

12. The learned Counsel for the plaintiff has argued that after filing this suit, an interim order to not to alienate the suit property was passed. Thereafter, T.I was extended until further orders. During the subsistence of the said order, the plaintiff has made an application before the Tahsildar to not to change katha and also to Executive Engineer, K.E.B. Periyapatna to not to purchase Sy.No.158 and 159 as there is pendency of this suit. Even though they have got the knowledge of the said pendency of suit, the defendant No.9 has purchased the suit property colluding with

Revenue officials. It is pertinent to mention herein that when the ad-interim was passed, the defendant No.9 was not a party to the suit. Whether the defendant No.9 has got knowledge about the proceedings of this case or intentionally the defendant No.9 purchased the suit property is a matter of trial.

13. Contrarily, the learned Counsel for the defendant No.9 has argued that the plaintiff is not the son of Shaukath Ali, but he is the son of Meer Abbas Ali and all his documents depict the father's name as Meer Abbas Ali. More over the said Shaukath Ali had executed Will in favour of Meer Thaniyath Ali and Nusruth Ali and accordingly, they have changed the katha. After the death of Nusruth Ali, his wife and children have sold their share to Meer Thaniyath Ali. After going through the documents in the name of Meer Thaniyath Ali, they have purchased the suit item No.2 property. It is worth to note that the plaintiff has filed

this application to not to put up any construction in the suit item No.1 property. In the suit, the suit item No.1 is mentioned as Sy.No.159 and suit item No.2 is mentioned as Sy.No.158 consisting common boundary. The learned Counsel for the plaintiff has argued that the defendant No.9 in RRT No.31/2022-23 has filed objections that “the property sold to it is different from the property mentioned in the said proceedings”. The said argument of the plaintiff requires full-fledged trial whether the properties are different or same.

14. On scrutiny of the documents of both the parties produced while arguing on this I.A and also documents marked at the time of evidence of PW.1 and the confronted documents would show that the name of the father of plaintiff at School document at Ex.D.2, Aadhar Card at Ex.D.3 and copy of Voter ID card at Ex.D.4 is shown as Meer Abbas Ali. The plaintiff argues that since there was poverty in the house of Shaukath

Ali, the plaintiff was left out in the house of his uncle. But there is no pleading to that effect in the plaint.

15. It is the further contention of the defendant No.9 that the suit item No.2 property bearing Sy.No.159/2 of Belathuru Village, Periyapatna Taluk was purchased for the purpose of establishing 2X20MVA, 66/11KV Sub-Station at Belthuru in Periyapatna Taluk, Mysuru District along with construction of 3.986 km of 66 kv LIL Line from one circuit of existing 66 kV Kushalanagara Periyapatna DC line using Coyote conductor to proposed 66/11kV Belthuru sub-station on partial Turnkey basis including supply of all matching materials/equipment (excluding 11kV switchgear) and erection (including civil works) of all materials/equipments, testing and commissioning for betterment of the local area in respect of voltage regulation. The defendant No.9 has undertaken the said work for the purpose of the

betterment of general public. The said installation comes under the “Category of Projects and Infrastructure Sub-Sectors as mentioned in Schedule Sl.No.2-Energy of Specific Relief Act”, and as per Section 20-A ***Special provisions for contract relating to infrastructure project.***—(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project. As per Section 41(ha) of the Specific Relief Act, the injunction when refused:- if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project. As such, though the suit item No.2 property is purchased during the pendency of suit, the work

carried out by the defendant No.9 is relating to Energy which comes under Infrastructural Project and injunction cannot be granted to the plaintiff.

16. The Counsel for the defendant No.9 during his arguments has filed memo stating that “since the plaintiff filed the suit for partition and separate possession and in view of decision reported in **2024 (2) KCCR 1525**, the defendant No.9 will not claim any equity in the suit property if the plaintiff has succeeded in the suit”. As the plaintiff has sought for partition, at the outset the plaintiff has to establish that he is the son of Shaukath Ali and the said Shaukath Ali is also called as Meer Abbas Ali. In the event if the plaintiff has proved his case that he is the son of Soukath Ali, he would be entitle for partition in the suit property. That as per the undertaking by the defendant No.9 in the above memo, he will get his share and the

defendant No.9 would demolish the construction put up by it at its costs.

17. It is also the argument of the defendant No.9, that if the said construction has been put up, it will cause harm to the health of the plaintiff. The plaintiff has not averred so in his application. Moreover, it is not the case of the plaintiff that the neighbouring land owners are also objecting to the said project. Hence, the plaintiff has not made out any prima facie case. The citations relied on by the defendant No.9 is squarely applicable to the case on hand. **Hence, Points No.1 is answered in the Negative.**

18. Point Nos.2 and 3: In respect of balance of convenience and irreparable loss is concerned, this Court is relying upon the decision passed by the Hon'ble High Court of Karnataka in **Gowrishankar Swamigalu Vs., Siddaganga mutta and others.**

Reported in ILR 1989 Karnataka 1701, the relevant portion of the decision is extracts below for reference

“...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...”.

19. Thus, when the prima-facie case itself is not proved by the plaintiff, then it is clear that balance of convenience is not in favour of the plaintiff and no loss or injury will be caused to her. ***Hence Points No.2 and 3 are answered in the Negative.***

20. Point No.4: In view of the discussions made above, this Court proceeds to pass the following:

ORDER

I.A.No.10 filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w Section 151 of CPC is hereby dismissed subject to the condition that the defendant No.9 shall not claim any equity in the suit property to the share of the plaintiff if he has succeeded in the suit

No order as to costs.

(Dictated to the Stenographer on Computer, revised, corrected and then pronounced by me in the open Court on this the 27th Day of September 2025)

(Shwetha.J)

I Addl. Civil Judge and JMFC,
Periyapatna