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**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC, AT
MAGADI**

**PRESENT: SMT.DHANALAKSHMI.M. B.A.L., LL.B.,
Addl.Civil Judge & JMFC,
Magadi, Ramangara District.**

Dated: This 30th day of June, 2023

O.S.NO.177/2023

I.A.No.I

PLAINTIFF/APPLICANTS : Smt.Hanumakka
W/o Late C.K.Tahmmannaiah,
Aged about 72 years,
Residing at Channenahalli
Village, Tavarekere Hobli,
Bengaluru South Taluk.

**(Represented by Sri.K.R.C.
Advocate)**

-Vs-

DEFENDANTS/OPPONENTS : **1.**Sri.C.R.Rangaswamaiah
S/o Rangaiah,
Aged about 72 years,

2. Sri.Chikkamuniyappa
S/o Rangaiah,
Aged about 69 years,

3. Sri.Ganganna
S/o Ranagaiah,

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Aged about 65,
4. Sri.C.R.Rajanna
S/o Rangaiah,
Aged about 62 years,

5. Sri.Erakempaiah
S/o Rangaiah,
Aged about 60 years,

6. Sri.Anjinappa
S/o Rangaiah,
Aged about 57 years,

Defendants No.1 to 6 are residing
at Channenahalli Village,
Tavarekere Hobli, Bengaluru
South Taluk,

7. Smt.Mallamma
W/o Sri.Mahadevaiah,
Aged about 52 years,
Residing at No.413, 4th Floor, 'D'
Block, K.H.B. Quarters, Opposite
Vijayanagar Club, Bengaluru-
560040.

**(Defendants are
Represented by
Sri.D.H.M. Advocate)**

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ORDER ON I.A No. I UNDER ORDER XXXIX RULE 1 and 2 R/w
Sec.151 CODE OF CIVIL PROCEDURE

This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass an Order of temporary injunction to restrain the Defendants, their agent, servants, anybody claiming under them from in any interfering with peaceful possession and enjoyment of the Plaintiffs in respect of the suit schedule property, pending disposal of the suit and at present the case is at the stage of Plaintiff Evidence.

2. The plaintiff has filed an application along with an affidavit stating that they have filed a suit for a Permanent Injunction. Plaintiff submitted that, the Plaintiff is lawful owner having interest in the suit schedule property and in peaceful possession and enjoyment of the suit schedule property and the Defendants now in order to cause wrongful loss on her trying to interfere upon the suit schedule property and the act of the Defendants not only illegal but also unlawful. The Defendants collectively making attempt to cause unlawful attempt of interfering on her suit schedule properties on 30.05.2023 and

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without the knowledge of the Plaintiff on 04.06.2023 digged the portion of the suit schedule property by inserting the pillar and in this regard. Further, Plaintiff have approached Jurisdictional Police Station and the Police officials intimated that, the dispute is of civil Nature as such Plaintiff before this Hon'ble Court and the Defendants are the powerful influential persons in the locality having the support of men and material. Hence, this application.

3. In response, the defendants, through their counsel, appeared and filed a written statement denying the plaintiff's claims. The Defendants submit that, upon Rangaiah's demise, Defendants No.1 to 6 partitioned the land along with their other properties through a panchayath parikath on 16/2/1992. The mutation process recognized the partition and transferred ownership to Defendants No.1 to 6. They have been in possession and enjoyment of their respective shares as per the partition. Additionally, Defendant No.1 sold a portion of the land to Defendant No.7 through a registered sale deed dated 7/5/2015. Defendant No.7 has since been the absolute owner

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of that portion, with the property registered under their name in Channenahalli Grama Panchayathi.

The Defendants submit that, it is acknowledged by the Plaintiff that they are the owners of the adjacent land. Defendants No.4, 5, and 6 have constructed houses on their respective shares, and the sister Defendants No.1 to 6, Sharadamma, have also built a house on the share of Defendant No.1. Defendant No.5 has also sold a portion of the land as a site to Nagaraju, who has constructed a house on the purchased site. Defendant No.2 has prepared the foundation bedding on the land allotted to their share but has not constructed a house on it.

Furthermore, Defendant No.7 recently dug a borewell and laid the foundation for a house on their purchased site. The Plaintiff is allegedly obstructing Defendant No.7's construction efforts, despite Defendant No.7 having made significant investments in the borewell, foundation, and construction materials.

The Defendants submit that, the Plaintiff has placed stone pillars around the suit schedule property to mark its boundary. There is no dispute between the Plaintiff and Defendants

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regarding the boundary of the suit schedule property. The Plaintiff has also constructed a factory shed on the property, which is currently being rented out for a granite factory. Additionally, the Plaintiff has leased out space for the installation of a mobile tower on the suit schedule property. In 2020, the Plaintiff removed the stone pillars that marked the boundary towards the Defendants' property, seemingly with the intention of creating a boundary dispute. Hence pray for dismissal of I.A. No.I.

4. Heard the Arguments of both the sides.
5. The points that arise for consideration are as follows:
 - 1. Whether the Plaintiff have made out a prima facie case?**
 - 2. Whether the balance of convenience lies in their favour?**
 - 3. Whether the Plaintiff will be put to hardship and injury if the Order of temporary injunction is not granted?**
 - 4. What order?**

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6. The findings of this court on the above said points are as under:-

- Point No.1** : In the **Affirmative.**
Point No.2 : In the **Affirmative.**
Point No.3 : In the **Affirmative.**
Point No.4 : As per the final order
or the following:-

REASONS

7. **POINT NO.1** :- This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass an Order of temporary injunction to restrain the Defendants, their agent, servants, anybody claiming under them from in any interfering with peaceful possession and enjoyment of the Plaintiffs in respect of the suit schedule property, pending disposal of the suit.

SCHEDULE

All the piece and parcel of the land bearing Sy.No.1/6, measuring 1 acre 29 guntas, situated at Channenahalli Village, Tavarakere Hobli, Bengaluru South Taluk and bounded on:

- East by : Land in Sy.No.1/12.
West by : Gramatana Village.

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North by : Land in Sy.No.1/3.

South by : Bandidari.

8. The learned counsel for the Plaintiff argued before the Court that the Plaintiff is absolute lawful owner in the possession and enjoyment of suit schedule property. She has acquired the ssp by her husband Sri.C.K.Thimaiah by was partition Deed dated 28.05.1987. The Defendant unlawfully started threatening Plaintiff and interfere suit schedule property and digged the portion of ssp by inserting the pillar. It further argued that, the Plaintiff has made out prima facie case, hence the equitable relief of temporary injunction may be granted in favour of the Plaintiff. With these submission, the learned counsel for the plaintiff sought for allowing I.A.No.I.

9. Per contra the learned counsel for the Defendant vehemently argued before the court that the suit was purchased by the Defendant No.7 from Defendant No.1 to 6. It is further argued that Defendant Mo.7 has dug up borewell about two months back and put up foundation in the site and Plaintiff causing obstruction for the construction to Defendant No.7. It is further argued that there is no dispute between the Plaintiff and defendant with respect to boundaries. The Plaintiff already

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constructed factory shed in the suit schedule property and also let for installing a mobile tower and Plaintiff has suppressed material fact and thereby submitted that hence the present application is not maintainable. It is submitted the Plaintiff has not made out prima facie case to grant the equitable relief of temporary injunction, hence, the I.A.No.1 rejected.

10. In the light of the arguments canvassed by the learned counsels for the parties, this court has carefully perused the list of documents produced by the parties. The list of documents of plaintiff consists of the copy of the partition deed dated 28-05-1987 and the certified copy of the mutation register vide M.R.No. 23/1998-99. & 2019-20 and produced the RTC's for the year 1975-76 to 2001-02 pertaining to Sy.no. 1/6 of Channenahalli Village, Tavarekere Hobli, Bengaluru south taluk and also produced the certified copy of the Karnataka revision settlement Akarband and produced the death certificate of C.K. Thammannaiah and the Mutation register vide M.R. No. H16/2019-20 and produced the present RTC pertaining to Sy.no 1/6 of Channenahalli Village, Tavarekere Hobli, Bengaluru south taluk standing in the name of plaintiff and produced the certified copy of the encumbrance certificate from

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01-04-2020 to 20-04-2023 and also produced the RTC for the year 2022-23 pertaining to Sy.no. 1/3 of Channenahalli Village, Tavarekere Hobli, Bengaluru south taluk and produced the certified copy of the Hissa Survey Tippani and produced the copy of the Sale Deed dated 07.05.2015, bearing Doc.No. 654/2015-16, registered in the office of the sub-registrar, BTM layout Bengaluru and produced the photos and compact disk and Tax paid receipt.

11. The list of documents of the Defendants consists of the Bengaluru Electricity test Certificate and produced the Electricity Bill and also produced the BESCO Certificate and Tax Bill and Demand Register.

12. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

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13. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

14. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles.

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Injunction should not be lightly granted as it adversely affects the other side.

15. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

16. In order to grant the equitable relief of Temporary Injunction, the Plaintiff has to establish his prima facie case. In order to ascertain the prima facie case, this court has perused the Partition Deed dated 28.05.1987. The M.R.No.23/1998-99 reveals before the court of suit schedule property standing in the name of Plaintiff husband. The record of rights of suit schedule property for the year 1975-2023 wherein the name of the Plaintiff husband. The M.R.No.23/1998-99. & 2019-20 reveals that suit schedule property standing in the name of the

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Plaintiff. The Encumbrance Certificate from 01.04.2022 to 20.04.2022 standing in the name of the Plaintiff's husband. The said documents are the revenue documents and they have got presumption value under Section 133 of the Karnataka Land Revenue Act.

17. The main contention of the Learned counsel for the Defendants is that the Defendants are in actual possession and enjoyment over the suit schedule property and Defendant No.1 to 6 are the adjacent land owners in Sy.No.1/3 and suit schedule property are the ancestral property of Defendant No.1 to 6. The Defendant No.7 purchased the suit schedule property from Defendant No.1 and his family members. Defendant has produced xerox copy of Sale Deed and he also produced some Bengaluru Electricity test Certificate and produced the Electricity Bill and also produced the BESCOM Certificate the said documents produced by Defendant cannot come to the aid of the Defendants to substantiate their defence.

18. The Learned Counsel for the Defendant relied upon the decision reported in Hon'ble High Court of Karnataka **989**

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SCC Online Kar 116 : ILR 1989 Kar 1701 : (1989) 2 Kant LJ 548 (Sri.Gowrishankar Swamigalu vs. Sri.Siddhaganga Mutt), wherein there is no dispute regarding the ratio laid down by the Hon'ble High Court of Karnataka. The Facts and circumstances of the above case is different from the Facts and circumstances present case.

19. The learned counsel for the Defendants relied upon the photographs to show that Defendants have digged borewell in the suit schedule property. This court has carefully perused the said photographs and after perusal of said photographs, it appears to this court the merely on the basis of the said photographs, this court cannot come to the conclusion that the Defendants are in actual possession and enjoyment over the suit schedule when there is clear document of the Plaintiff toward Sy.No.1/3, the same has acquired by the Plaintiff's husband through Partition Deed dated 28.05.1987.

20. Defendant has not produced the documents to show that he had obtained construction license from Grama Panchayath to put up the said construction. Only on the basis of xerox Sale Deed dated 07.05.2015 and demand registered

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extract, electrical Bill, BECOM, Tax paid receipts Defendants took the defence. By considering the materials on record the court is of opinion that Plaintiff has made out prima facie case for granting the equitable relief of temporary injunction.

Accordingly I answer Point No.1 in the Affirmative.

21. **Point No.2 and 3** : The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

22. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

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23. After considering the materials on record it appears to this Court that the balance of convenience leans in favour of the Plaintiff and if the equitable relief of Temporary Injunction is not granted infavour of the Plaintiff, then the Plaintiff will be put irreparable loss and hardship and the same cannot be compensated in terms of money. **Accordingly I answer Point No.2 and Point No.3 in the Affirmative.**

24. **Point No.4:** For the aforesaid reasons this court proceed to pass the following ,

ORDER

- I.A No.I filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby Allowed.
- To compliance under Section 89 of CPC.

(Dictated to the stenographer, typed directly on computer, script corrected, signed and then pronounced by me in the open court, this the 30th day of June, 2023)

(Smt.Dhanalakshmi.M)
Addl.Civil Judge & JMFC,

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