

ORDER

The plaintiff has filed I.A. No. 1 under Order XXXIX Rule 1 and Rule 2 of the CPC, seeking an order of temporary injunction restraining the defendant from carrying on construction over the suit schedule property till the disposal of the suit.

Further, the learned counsel appearing for the plaintiff submitted on the ad-interim ex-parte relief of temporary injunction.

From the perusal of the affidavit accompanying the above application, as well as the plaint, it appears that the plaintiff has filed the present suit for the relief of partition of his share in the suit schedule property. It is asserted by the plaintiff that the suit schedule property is the ancestral property of the plaintiffs and defendants. That being the case, the suit schedule property is standing jointly in the names of the plaintiffs and defendants. Despite this, the defendant, without there being any partition and demarcation of their respective shares in relation to the suit schedule property, has started putting up construction over the same. If the defendant succeeds in completing such construction over the suit schedule property, the same would defeat the plaintiff's right to get a half share in the suit property, as there has been no partition yet. Hence, the plaintiff has sought an ad-interim temporary injunction restraining the defendant from putting up construction over the suit property.

It is to be noted that, admittedly, the defendant is one of the co-sharers in the suit schedule property. The

construction put up by the defendant is subject to the outcome of the suit. If he constructs beyond his entitlement in the suit schedule property, he is bound to hand over the same to the plaintiff. Since the defendant is also entitled to a share in the suit schedule property as indicated by the plaintiff, at this stage of the matter, it is not proper to restrain the defendant from putting up construction over the suit schedule property without hearing the defendant. The purpose of filing I.A. No. 1 will not get frustrated if notice is ordered on I.A. No. 1 and the defendant is heard before passing an order on I.A. No. 1. As the construction is halfway completed, it results in extreme hardship on the defendants if the construction is stopped without hearing him. In view of the aforesaid observations, this Court proceeds to pass the following:

ORDER

Issue suit summons and emergent notice
on I.A. No. 1, returnable by 24.03.2026.

I Addl. Civil Judge and JMFC.,
Shikaripura.