

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC., GUBBI**

**Present: Smt. RADHA.S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 15th day of July 2019

O.S.No. 191/2019

Plaintiff : Murthy @ Narasimhamurthy
S/o Late Ramaiah, 45 years,
R/o M.N. Kote, Nittur Hobli,
Gubbi Taluk.

(By Sri. S.B., Advocate)

V/s

Defendants: 1. Jayamma W/o Late
Ramaiah, 65 years,
R/o M.N. Kote, Nittur Hobli,
Gubbi Taluk. and others.

(By Sri. T.G.M., Advocate)

Applicant : Murthy @ Narasimhamurthy

V/s

Opponent : Jayamma and others

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

**ORDERS ON I.A. No.II FILED UNDER ORDER 39
RULE 1 AND 2 OF CPC FILED BY PLAINTIFF**

1. This I.A No. 2 has filed by the plaintiff U/o XXXIX Rule 1 & 2 of C.P.C. praying the court to grant temporary injunction against the defendant No. 3, to restrain him from put up construction of building over the suit schedule property in any manner during the pendency of the suit.
2. The Defendant No. 3 has appeared in the present case through his counsel and filed objection to present application.
3. Heard the arguments of both parties and perused material available on record.
4. The points that arise for my consideration are
 1. Whether plaintiff has made out prima-facie case?
 2. Whether plaintiff has shown that balance of convenience lies in his favour?

3. Whether irreparable loss and injury would be caused to plaintiff if order of temporary injunction is not granted?

4. What order ?

5. My answer to above points are as under;

Point No.1 to 3- In Affirmative

Point No.4- As per final order for the following;

::REASONS::

6. Point No.1 : Admittedly the plaintiff has filed this suit against defendants for the relief of partition and separate possession in respect of the suit schedule property. It is the case of the plaintiff that, the suit schedule property is the ancestral and joint family property of plaintiff and defendant No. 1 and 2 as such he is having share in the suit schedule property, when the defendants refused to allot his share, the plaintiff filed the present suit. When the suit summons issued to the defendant No. 1 and 2, the plaintiff has filed this application by advancing the case as the 3rd defendant after filing this suit making

efforts to put up construction over the suit schedule property to deprive the rights of the plaintiff. In the affidavit which is annexed to present application, the plaintiff averred that, after appearing in the present case, the 3rd defendant has destroyed the hut which was constructed by the plaintiff over the suit schedule property and collected material to construct a building over the suit schedule property. If the 3rd defendant succeeded in constructing the building over the suit schedule property, the rights of the plaintiff over the suit schedule property will be curtailed, on these grounds the plaintiff prayed to allow the present application.

7. The defendant No.3 appeared in the present suit and filed written statement and objection to present application. In the objection, the 3rd defendant denied the contents of affidavit which is annexed to the present application and prayed to dismiss the I.A as the same is not maintainable

under law. Further the 3rd defendant in his objection contended that, the plaintiff has not included all the family members in the present suit. The 3rd defendant is none other than the relative of the plaintiff. The plaintiff by suppressing some real facts has filed this false suit, hence he is not entitled to any relief as prayed for. On these grounds the 3rd defendant prayed to dismiss the present application.

8. In support of plaintiff's contention he has produced photographs, G-tree, xerox copy of hakku pathra, certified copy of demand register extract, Notice and objection filed by the plaintiff before the PDO. I have meticulously gone through the entire documents produced by the plaintiff, while perusing these documents it is disclosed that, the suit schedule property was allotted in favour of plaintiff's father and while perusing these documents, it is prima facie discloses case of the plaintiff at this stage. Per contra to disprove

the case of the plaintiff, the 3rd defendant has also produced xerox copy of hakku pathra, xerox copy of sale deed, xerox copy of tax paid receipt, xerox copy of demand register extract and xerox copy of E-Khata. It is pertinent to note that, the plaintiff has filed the present suit against the defendants for partition and separate possession by claiming his share over the suit schedule property as such, whether he is having share or not that can be decided after full pledged trial but at this stage the plaintiff is proved prima-facie in his favour by producing documents to grant interim temporary injunction against the defendant No. 3 as prayed in the application. Hence I answer Point No.1 in the Affirmative.

9. Point Nos. 2 and 3 : Since these points are interconnected, hence taken them together for common consideration to avoid the repetition of facts.

In the present case trial has to be conducted to prove the case of plaintiff but at this stage it seems to the court that, till the disposal of the suit the defendant No. 3 must restrain from constructing any building over the suit schedule property as prayed in I.A, If the defendant No. 3 is not restrained the very purpose of filing of the suit shall be defeated, as such no harm or injustice will be caused to the defendant No. 3 if this application is allowed. Validity and genuineness of the documents can be seen at the time of deciding the case on merits. Therefore I am of the considered opinion that defendant No. 3 is to be restrained from put up any construction work into the suit schedule property till disposal of suit. Hence this court of the considered opinion that plaintiff has made out prima facie case and balance of convenience is also lies in favour of plaintiff. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiff rather than the defendant

No. 3. Hence I answer Points No. 2 and 3 in the Affirmative.

10. Point No.4 : In view of discussion made on point No.1 to 3 above, I proceed to pass the following;

O R D E R

I.A.No.II filed Under Order XXXIX Rule 1 and 2 of CPC by plaintiff is hereby allowed.

The defendant No. 3 is hereby restrained from put up any construction work over the suit schedule property till the disposal of the present suit.

Cost of this I.A. will follow the final result of the suit.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 15th day of July 2019.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.