

ORDERS

This is a suit filed by the plaintiffs seeking the relief of Partition and separation possession of their 1/4th share over the suit schedule properties.

2. The plaintiffs have also maintained an application u/o XXXIX Rule 1 and 2 of CPC seeking for grant of an exparte order of temporary injunction against the defendant No.1 or her family members or her agents or anybody claiming through her restraining them from constructing any building or in the suit properties until the disposal of the suit.

3. The case of the plaintiffs in brief is that the one by name Mahabaleshwar Gouda was the main propositus who died leaving behind four children by name Venkta, Shanta, Ishwar and Ramesh. Plaintiffs are the legal heirs of deceased Ishwar, defendant No.1 is the wife of deceased Venkta, defendant No.2 is the wife of deceased Shanta who are representing their respective branches and Ramesh is arrayed as defendant No.4. It is further stated that the suit schedule properties are the joint family properties of the plaintiffs and defendants and they are in actual possession and cultivation of the suit schedule lands and no partition has taken place by metes and

bounds as on today. But the defendant No.1 and her family members are making preparations to construct the house building in Sl.No.2 of the suit property and they have also stored laterite stones, sand and iron rods for the purpose of construction and though the plaintiffs asked them not to construct the building but of no avail and if the defendant No.1 is not restrained from constructing the building, she and her family members will continue to construct the building occupying prime portion of the suit land. Hence, prays to grant an exparte injunction against the defendant No.1.

4. In support of the said application, the plaintiffs have produced Record of Rights for the year 2024-2025 and the Mutation Register pertaining to the suit schedule properties.

5. Heard the Counsel for the plaintiffs and perused the plaint averments, affidavit accompanied with the said application and its enclosed documents. The Record of Rights and Mutation Register are standing in joint names of plaintiffs and defendants which prima facie shows that the suit schedule properties are joint family properties of plaintiffs and defendants and plaintiffs are the joint owners and in possession of the suit schedule properties. The grievance of the plaintiffs is that the defendant No.1 and her family

members are making preparation to construct the building. On perusal of the aforesaid documents, it is apparent on face of record that suit properties are the joint family properties which corroborates the averments of the plaint as well as contents of affidavit. Though it is well settled law that injunction cannot be granted against co-owner but when an act of one co-owner is detrimental to the interest of other co-owners, then a co-owner can sue for an injunction to prevent such act which is detrimental to his interest. One co-owner cannot be permitted to construct the building in the joint property without the consent of other co-owners.

6. Until the partition takes effect by metes and bounds, one can not say on which portion he acquires right as exclusive possession, it becomes final only after the demarcation of the shares. A co-sharer in possession of the suit land can not be permitted to raise construction unless it is regularly partitioned by metes and bounds. If the defendant No.1 is not restrained from raising the construction, then the same may lead to multiplicity of proceedings. The plaintiffs have made out a case to go for trial.

7. The main object of granting *ex parte* TI is to preserve the property pending adjudication of the case. On perusal of the plaint averments, I.A.No.1 and

documents in support of the averments made in the affidavit annexed to I.A.NO.1, this Court is satisfied with the reasons made out by taking into consideration the pleadings of the plaintiffs as well as the supporting documents produced, it makes out a prima facie ground against defendant No.1 to pass exparte injunction order. Plaintiffs have also made out the grounds for urgency to dispense with issuance of notice under Order 39 Rule 3 on I.A.NO.1. Hence, issue of prior notice on I.A.No.1 to the defendant No.1 is hereby dispensed as the very object of granting injunction would be defeated by delay. The Court can not hold a mini trial at this stage. Therefore, this Court proceeds to pass the following -

ORDER

Issue exparte ad-interim injunction against the defendant No.1, her family members, agents or anybody claiming under her restraining them from constructing any building in the suit schedule properties until the disposal of this I.A. on merits.

Since exparte injunction is granted, the plaintiffs shall comply the following conditions as per Order XXXIX Rule 3 (a) of CPC, they are

- 1) The plaintiffs shall send
 - a) The copy of the interlocutory application along with affidavit.
 - b) The copy of the plaint.
 - c) The copies of the documents on which the plaintiff had relied to get this injunction to the concerned defendants by way of registered post.
- 2) The plaintiffs shall file an affidavit to the office regarding the compliance of the same on this very same day or on the day immediately following this day.

Needless to say, non compliance of any of the aforesaid conditions, the exparte injunction granted will be vacated.

Issue notice on I.A. No.1 to defendant No.1 and suit summons to all the defendants if the PF and necessary copies of the plaints are furnished.

R/by 10/06//2025.

Sd/-

C/c Civil Judge, Ankola.