

KAUK210016922025



**IN THE COURT OF CIVIL JUDGE AND JMFC., ANKOLA  
AT: UTTARA KANNADA**

Presided Over by **ARPITHA B BELLAD**  
B.Com., LL.B.,  
Civil Judge and J.M.F.C.,  
Ankola.

**ORIGINAL SUIT NO.120/2025**

Dated this the 8<sup>th</sup> day of December, 2025

**Plaintiff :-**

Smt. Sairabanu Davul Sab,  
Age: 50 years, Occ: Household,  
R/o 223/A Sunksal, Tq. Ankola

**[By: Sri. R.N.H., Advocate]**

V/s

**Defendants:-**

1. Bebi C.R  
Age : 48, Occ: Household,  
R/o Kanakapura main road,  
Udipalya, Dakshina Bengaluru,  
Udayapura, Bengaluru -560082.
2. Rajasab Hadisab Sayad,  
Age: 60, Occ: Business,  
R/o Sunkasal, Tq. Ankola.
3. Vinaya Manjunath Bhat,  
Age: 40, Occ: Business,  
R/o Sunkasal, Tq. Ankola.

4. Veena Vinaya Bhat,  
Age: 38, Occ: Household,  
R/o Sunkasal, Tq. Ankola.
5. Nasiruddin Rajasab Sayad,  
Age: 30, Occ: Business,  
R/o Sunkasal, Tq. Ankola.

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### **ORDERS ON IA No. I AND IV**

This is an application filed by the plaintiff under Order XXXIX Rules 1 & 2 r/w section 151 of CPC praying to pass temporary injunction against the defendant No.2 and 5 restraining them from constructing a new house in suit property bearing SY.No.100B/2 measuring 0-5-0 situated at Sunkasal village of Ankola taluk till the disposal of the suit.

**2.** The said application is accompanied with an affidavit of the plaintiff where in it is stated that the suit schedule A properties originally belonged to his great grandfather Sayyed Nasiruddin Chapa Saheb having been granted as per Kabulayat No.153 on 12/12/1936 and his grandfather died on 13/04/1960 and after his demise, the name of grandmother of the plaintiff and defendant No.1 Papaji who is the daughter of said Sayyed Nasiruddin Chapa Saheb came to be mutated as per varas entry No.595 on 19/05/1962. The husband of the said Papaji predeceased her and Papaji had only one daughter by name

Bebijaan who is also died and except her, no other child was born to Papaji and said Bebjiaan had two daughters plaintiff and defendant No.1 and two sons by name Chandsaab and Anwarsab who died unmarried and issueless. It is further contended that defendant No.2 is not the biological son of deceased Papaji. The name of the plaintiff and defendant No.1 came to be mutated in respect of Sl.No.4 of the suit schedule A properties as per Mutation Entry No.1304 dated 25/07/1989 and the defendant No.2 by misrepresening the revenue authorities by claiming to be the son of deceased Papaji got entered his name in revenue records in respect of Sl.No.5 to 7 of the suit properties and the name of the mother of the plaintiff and defendant No.1 was entered in respect of Sl.No.3 and 4 of the suit properties and after demise of Bebjiaan, the names of plaintiff and defendant No.1 came to be mutated and Sl.No.1 and 2 are standing in the name of Bebjiaan.

**3.** It is further stated that the suit properties are joint family properties wherein the plaintiff and defendant No.1 have been in joint possession and enjoyment of the suit properties. No partition has taken place by metes ad bounds till today in respect of the suit schedule properties. The said Papaji, grandmother of the plaintiff died on 16/08/2023 due to old age and sickness and she was suffering from physical and mental illness since 2001 and she was not capable of understanding the things as well as she was unable to take any decision of her own, as such

the defendant No.5, son of the defendant No.1 taking undue advantage of old age and illness of Papaji without her knowledge got created Willnama in respect of Sl.No.1 and 2 of the suit properties and when it came to the knowledge of the plaintiff that defendant No.2 is attempting to get mutated his name in respect of said properties in revenue records, the plaintiff had filed an objections in the court of Tahasildar and after due enquiry, the name of the defendant No.5 came to be mutated on the basis of the Willnama. Being aggrieved by the said order, the plaintiff preferred an appeal before A.C, Kumta seeking to cancel an order passed by the Tahsildar which came to be allowed and the defendant No.5 being aggrieved by the order of A.C, Kumta preferred an appeal before D.C, Karwar challenging the order of the A.C, Kumta wherein the order passed by A.C., Kumta was upheld.

**4.** It is further submitted that the suit schedule B house properties bearing No.22A and 22B of Sunkasal Gram Panchayat are standing in the name of deceased Papjai and the wife of the defendant No.2 is the president of Sunkasal Gram Panchayat and on the basis of the created Willnama in the name of son of defendant No.2 started constructing wall and 8 pillars by dismantling the house which was in the name of Papaji and defendant No.5 has not sought any declaration based on alleged Willnama by filing a suit and under Mohammedan law, only 1/3rd share can be bequeathed. No partition has been effected in respect of the suit properties and on 31/10/2025, the defendant

No.2 started constructing a new house illegally and when the plaintiff requested the defendant No.2 not to construct the house until the partition is effected, the wife of defendant No.2 and defendant No.5 refused to heed the request of the plaintiff. Hence, the plaintiff is constrained to file for the present application. If the temporary injunction is not granted, great harm will be caused to the plaintiff. Hence, prays to allow the application by granting temporary injunction.

**5.** Per contra, the defendant No.5 has refuted the said application by filing statement of objections wherein it is admitted that house No.22B which was situated in Sy.No.100B/2 measuring 0-5-0 was standing in the name of Papaji. But it is contended that deceased Papaji executed Willnama infavour of defendant No.5 in respect of the said property including the said house No.22B and the said fact is well within the knowledge of the plaintiff since the plaintiff has objected when this defendant filed an application for mutation of his name. Since the said house was in dilapidated condition, this defendant started constructing a new house by dismantling the old house. It is further contended that the plaintiff has filed a suit for partition when he filed an objection during the time of application filed by the defendant No.5 but now with a malafide intention in order to stop the construction of house has filed the frivolous suit and deceased Papaji during her lifetime effected a partition and she had a daughter by name Bebijaan and a son who is defendant No.2, among them, the plaintiff and the defendant No.1 are the

children of deceased Bebijaan and when the Papaji has effected a partition, the property fallen to her share had been given to defendant No.5 by virtue of Willnama.

**6.** It is further contended that the said house is at the level of completion, as such if the injunction is granted at this stage, the defendant No.5 will come to the road since he constructed a house by raising a huge loan. The plaintiff is residing in the house situated in Sl.No.4 of the suit property and defendant No.1 is the own sister of the plaintiff who is residing in Bangalore, as such the plaintiff has filed a suit to trouble the defendant No.5 and his father who is suffering from illness. The plaintiff has filed this false suit with a malafide intention to stop the construction. If the temporary injunction is granted, this defendant will suffer irreparable loss. On all these grounds, prays to dismiss the said application.

**7.** To decide this IA, the following points arise for the consideration of this Court :-

### **POINTS**

**1. Whether the plaintiff has made out a prima facie case?**

**2. Whether the balance of convenience lies in favour of plaintiff?**

**3. Whether the plaintiff suffer from irreparable damage if TI is not granted?**

8. Perused all the available materials on record. Heard both the sides.

9. Having done so, the answers to the aforesaid points are as hereunder:-

**Point No.1 : In the Negative**

**Point No.2 : In the Negative**

**Point No.3 : In the Negative**

10. **Point No.1:-** While considering an application for injunction, it is well-settled that the courts would pass an order thereupon having regard to: (i) Prima facie (ii)Balance of convenience (iii) Irreparable injury. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. Prima facie case means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. "Prima facie case" is a substantial question raised bonafide which needs investigation and a decision on merits. If a fair question is raised for determination, it should be

taken that a prima facie case is established. The real thing to be seen is that the Plaintiff's claim is not frivolous or vexatious.

**11.** By keeping the above principles in mind, before going to discuss the facts and circumstances of the case, the relevant provision in respect of granting temporary injunction is extracted hereunder for better understanding -

Order XXXIX Rule 1 of CPC provides that where in any suit it is proved by affidavit or otherwise - (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 3[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court

thinks fit, until the disposal of the suit or until further Orders.

**12.** Admittedly, the instant suit is filed by the plaintiff against the defendants seeking the relief of partition of her  $\frac{1}{2}$  share and permanent and mandatory injunction. The plaintiff has also moved the instant application seeking temporary injunction against the defendant No.2 and defendant No.5 restraining them from constructing a house in Sl.No.2 of the suit schedule A property on the ground that suit schedule properties are joint family properties and the plaintiff is in joint possession and enjoyment of the suit properties in which she is having  $\frac{1}{2}$  share over the suit properties. It is also contended that defendant No.2 is not the son of Papaji and she had only a daughter who is the plaintiff.

**13.** Per contra, it is the defence of defendant No.5 that plaintiff and the defendant No.2 are the children of deceased Papaji and the said Papaji during the lifetime effected a partition and she bequeathed a property which was fallen to her share by executing registered Willnama infavour of defendant No.5 who is the son of defendant No. 2 and he is constructing a house which is already at the level of completion and now if the injunction is granted, he will suffer loss.

**14.** The plaintiff has sought for injunction only in respect of the Sl.No.2 of the suit property bearing Sy.No.100B/2 measuring 0-5-0. Both the parties have produced the documents in support of their claims. On going through the pleadings of both the parties and on hearing submissions made at Bar, it appears that there is no dispute in respect of the existence of the suit schedule property. It is also not in dispute that defendant No.5 is constructing the house by dismantling the house situated in Sl.No.2 of the suit property. The acquisition of the property is also not under dispute but however, the plaintiff claims to be the only daughter of deceased Bebijaan but the defendant No.5 contends that defendant No.2 is also a son of deceased Bebijaan. However, whether the defendant No.2 is the son of deceased Bebijaan or not is the matter of the trial which cannot be decided at this stage. It is also not under dispute that the suit property originally belonged to great grandfather of the plaintiff and after his demise, the said property devolved upon his daughter Papaji. The plaintiff claims the suit properties to be the joint family properties of plaintiff and defendants.

**15.** Under Mohammedan Law, there is no spes succession and the succession opens only after the death of the last owner of the property and there is no concept of family manager and joint family property as contended by the plaintiff in her pleadings. Under Muslim Law, heirs are considered tenants-in-common, meaning each co-owner has a distinct, separate and fixed share

of the property that can be freely transferred or bequeathed independently of the others and this differs from joint tenancy, as it ensures that one heir's share is not affected by another debts or actions and each heir is individually accountable for the liabilities of their specific share and each heir inherits a definite and predetermined fraction of the property.

**16.** Be that as it may, the plaintiff has moved the present application seeking to stay the construction of a new house in Sl.No.2 of the suit schedule A property. As observed above, it is an admitted fact that the defendant No.5 is constructing a house in Sl.No.2 of the suit schedule property. According to the defendant No.5, deceased Papaji during her lifetime effected a partition and she bequeathed the Sl.No.2 of the suit property including house No.22B infavour of defendant No.5. But however, so far the issue of Willnama is concerned, a heavy burden lies on the party who sets up the Willnama. The defendant No.5 has to prove the Willanama in accordance with Law according to the provisions of Indian Evidence Act and Indian Succession Act and the question of Willnama requires full pledge trial and this Court cannot hold a mini trial at this stage while deciding the application for temporary injunction. So far as partition as contended by the defendant No.5 is concerned, he has not produced any document to prima facie show that deceased Papaji effected a partition during her lifetime.

**17.** Therefore, at this stage, on going through the documents produced by the plaintiff, it prima facie shows that the plaintiff is a tenant-in-common in suit schedule properties. No doubt, one co-owner cannot change the nature of the property without consent of other co-owner and in the present case on hand, it is an admitted fact that the defendant No.5 is constructing a new house in Sl.No.2 of the suit property by dismantling the house No.22B which was standing in the name of Papaji. Though the plaintiff is able to show prima facie case that she is a tenant-in-common in the said property but At the prime outset it is to be noted that the pleadings and the prayer of the plaintiff itself clearly goes to show that the defendant No.5 has also dismantled the house which was in the name of Papaji and constructing a new house and even sought for the relief of mandatory injunction directing the defendant No.5 to remove the wall and 8 pillars which have already been constructed in Sl.No.2 of the suit property. Even the photos produced by the plaintiff shows that the construction has already been raised upto the plinth level. As already observed that it is an undisputed fact that the defendant No.5 is constructing a new house by dismantling the old house. If so then what prevented the plaintiff to approach the Court at the earliest point of time. Prime importantly, it is pertinent to note here that the plaintiff has approached this Court after dismantling the house which was in existence in the said property and construction has already been started. A person seeking an equitable relief of injunction must approach the court

at an earliest period of time while making preparations or when the construction materials are seen to be stored by the opponent party but in the present case, the plaintiff has kept quiet till raising of the structure by dismantling the house existed and thereafter approached the Court seeking for injunction to restrain the defendant No.5 from constructing a house. When the defendant No.5 has made preparations to construct the structure, then what prevented the plaintiff to approach the Court immediately seeking for injunction. The said aspect has not been explained by the plaintiff. If at this stage, injunction is granted, then it is the defendant No.5 who will suffer rather than the plaintiff because, the defendant No.5 has already started construction which is clearly evident from the photos and if at this stage, stay is granted restraining the defendant No.5 from constructing the house, then it will certainly affect the defendant No.5 who has hired labours for construction work.

**18.** While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time watching the raising of construction and thereafter approaching the court at the stage of completion of the construction or when the construction work is half done, these all circumstances go

against the plaintiff which would disentitle her from getting a temporary injunction. According to my opinion, no ground has been made out by the plaintiff to grant an injunction. So far as balance of convenience is concerned, it lies in favour of the defendant No.5 and if the injunction is granted, it is the defendant No.5 who suffers the loss who has already started construction work by hiring labours by investing amount and if the said application is allowed, then the defendant No.5 will be put into hardship.

**19.** In **Sri Gowrishankara Swamigalu vs Sri Siddhaganga Mutt** reported in **ILR 1989 KAR 1701**, the Karnataka High Court dealt with the co-existence of all the three pillars for grant of temporary injunction.

The Court held thus:

“ I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all 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. But if there was a prima facie case then other considerations

governing the grant of injunction would come in to play and will also have to be evaluate before granting or refusing the injunction.

In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between

It is no more Res Integra that when all the above three conditions/factors/tests/pillars exist simultaneously, the Court would be under a bounden duty to grant temporary injunction to meet the ends of justice. When even one of the aforesaid tests are not met out, the Court would not be legally justified in granting temporary injunction.”

**20.** In the present case on hand, though the plaintiff has showed the primafacie case, but as observed above she failed to show the other two elements are in her favour i.e., balance of convenience and the irreparable loss. . **With these observations, Point No.1 to 3 are answered in the Negative.**

**21. Point No.4 :** For the above discussed reasons, **this court proceeds to pass the following -**

**::ORDER::**

**I.A.No. I and IV filed by the Plaintiff under Order XXXIX Rule 1 and 2 R/W section 151 of CPC is hereby dismissed.**

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations. of this order during the course of trial or for any other purposes.

(Prepared and typed by myself, then corrected by me and printed through stenographer, then pronounced in the open court on this the 8<sup>th</sup> day of December 2025)

**(Arpitha B Bellad)  
Civil Judge & JMFC.,  
Ankola.**

**(Order Pronounced by in the open court  
vide separate order)**

**ORDER**

**I.A.No. I and IV filed by the Plaintiff  
under Order XXXIX Rule 1 and 2 R/W  
section 151 of CPC is hereby dismissed.**

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations. of this order during the course of trial or for any other purposes.

For W/S of defendant No.5 and Issue suit summons to defendants No.1 to 4.

Call on: 16-01-2026.

**Civil Judge, Ankola.**