

KAUK510000042025



Presented on : 04-01-2025

Registered on : 04-01-2025

Decided on : 15-10-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 15th day of October, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.1/2025

BETWEEN:

1. Prakash S/o Apparao Patil,
Age: 65 years, Occ : Agriculture,
R/o : Murkwad, Taluk: Haliyal.

.....Plaintiff

(By Sri. B.N.Mulimani., Advocate)

AND:

1. Shantarao S/o Apparao Patil,
Age: 63 years, Occ: Agriculture,
R/o : Murkwad, Taluk: Haliyal.
2. Parashuram S/o Apparao Patil,
Age: 61 years, Occ: Agriculture,
R/o : Murkwad, Taluk: Haliyal.

3. Meenakshi W/o Parashuram Agasimani,
Age: 59 years, Occ: Household,
R/o. Guttigeri Village, Taluk: Haliyal.
4. Reshmabai W/o Babu Nimbalkar,
Age: Major, Occ: Household,
R/o. Hiremunavalli,
Taluk: Khanapur, Dist: Belagavi.

.....Defendants

(D-1 to 4 By Smt. R.M.Chougule, Advocate)

I.A.No.I

Applicant/Pliff : Prakash S/o Apparao Patil

-Vs.-

**Opponents/Defts : Shantarao S/o Apparao Patil
and others.**

ORDERS ON I.A.No.I

The plaintiff filed I.A No.I under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C., praying to grant temporary injunction restraining the defendants from changing the structure of the suit property (Schedule B) till disposal of the suit in the interest of justice and equity.

2. In the affidavit, the plaintiff stated that, he has filed this suit for the relief of partition and separate possession and there is apprehension of the plaintiff that, the defendants are trying to erect a building by destroying the present structure of the suit property within very short time to cheat the plaintiff. The documents attached to the plaint shows that, applicant i.e.,

plaintiff has prima-facie case and there is likelihood of success. The balance of convenience lies in favour of plaintiff and if the defendants changed the structure of suit property, he will put to hardship. If the defendants are not restrained, he will be put to hardship. With these contentions, the plaintiff prayed to allow the application.

3. In spite of sufficient opportunity, the defendants have not filed written statement and objections to I.A.No.I, therefore, objections to I.A No.I is taken as not filed.

4. Heard counsel for plaintiff. Perused records.

5. Now the points that arise for consideration are as under;

1. Whether the plaintiff has made out prima facie case to grant of temporary injunction?

2. Whether the plaintiff proves balance of convenience lies more in his favor?

3. Whether the plaintiff proves irreparable loss will be caused more to his, if temporary injunction is not granted?

4. What order?

6. Answers on above points are as follows;

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per final order

for the following;

REASONS

7. **POINT NO.1 TO 3:-** In order to avoid the repetition of facts and for the sake of convenience these points are taken together for discussion.

It is the case of the plaintiff that, suit properties originally owned by their father Apparao Patil, after his death, the plaintiff and defendants being legal heirs of Apparao are in joint possession and vahivat of the suit properties. There is no partition between them. Such being the case, in the month of November, 2025, dispute arose between the plaintiff and defendants and the defendants denied the share of plaintiff and also defendant no.1 and 2 have demolishing existing structure to erect new building. Therefore, the plaintiff sought for temporary injunction.

8. In support of his contentions, the plaintiff produced RTC extract with respect to R.S No.258/A, MR No.T29/2022-23, Certificates issued by the Secretary, Gram Panchayat, Murkwad, an Objection given to the President, Gram

Panchayat, Notice issued by PDO, Gram Panchayat, Murkwad to plaintiff on 19.12.2024, Death Certificate, Photos and C.D.

9. On perusal of plaint averments, plaintiff himself admitted that, he and defendants have inherited the suit properties from their father and they are in joint possession and enjoyment of the same. He also stated that, there is no partition between him and defendants with respect to suit properties. Under these circumstances, the plaintiff and defendants are joint owners of suit properties and till the partition of said properties, it is presumed that, each one of them are in possession of each extent of properties. Therefore, one person cannot restrain the other, to enjoy the suit properties. Further, it is the contention of the plaintiff that, the defendant no.1 and 2 are trying to demolish old structure and constructing new structure. To prove the same, the plaintiff has not produced documents. If the defendant no.1 and 2 are constructing a new house it shows that, they are making improvements in the suit properties, which cannot be stopped. Therefore, the defendants cannot be restrained from enjoying the suit properties as joint owners. Under these circumstances, the plaintiff has not made out grounds to grant temporary injunction against the defendants as sought in I.A No.I. Hence, **I answer Point No.1 to 3 in the Negative.**

10. **POINT NO.4:-** In view of the discussion on Point No.1 to 3 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C., is hereby rejected.

No order as to costs.

For plaintiff's evidence, call on 07.11.2025.

(Dictated to the Stenographer directly on system, typed by her, then corrected, signed and pronounced by me in the Open Court on this the **15th day October, 2025**)

**Sd/-
(GEETA)
Civil Judge and JMFC.,
Haliyal**