



IN THE COURT OF THE ADDL CIVIL JUDGE AND JMFC.,
AT HONNAVAR.

:-PRESENT:-

SRI. ANIL JOHN SEQUEIRA
B.B.A., LL.B.,
Addl. Civil Judge & JMFC.,
Honnavar.

Dated this 11th day of June, 2025

O.S. No.18/2025.

Plaintiff/s : Mathura W/o Ramachandra Naik and another.

V/s

Defendant/s : Kuppa Narayan Naik and others.

IA No - III

Plaintiff/s : Mathura W/o Ramachandra Naik and another.
Appellant/s : (By Sri V.R.N., Advocate)

V/s

Defendant/s : Kuppa Narayan Naik and others.
Respondent/s : (D-1 to 5 By Sri H.U.N., Advocate)

ORDERS ON I.A. NO.III

This is an application filed by the plaintiffs U/o 39 Rule 1 and 2 C.P.C. seeking temporary injunction against the defendants from retraining the defendants from constructing the building in the suit land till the final disposal of the suit.

02. In the affidavit accompanying the application, the plaintiff No.1 has stated that he has filed the suit for permanent injunction. The plaintiff further contends that the suit schedule property is the ancestral and joint family property of the plaintiffs and the defendants. The defendants family and plaintiffs family have $\frac{1}{2}$ share in the suit schedule property. The plaintiff and the defendants were in joint possession of the property and they were cultivating on that land, and the plaintiffs had filed a suit in O.S. No. 60/2014 before this court for the relief of partition. This court has decreed the suit. Now, the defendants, on 08/01/2025, started to construct a building on the land. The plaintiffs requested the defendants not to construct the building, but the defendants told that they will not stop the work. The trial of the suit may require a long time to conclude. In the meantime, the defendant No.4 may construct the building in the suit property. Hence, he prayed to allow the application. He has stated that he is having a prima facie case and the balance of convenience lies in his favour. If an order of injunction is not granted to the plaintiff, he will be put to irreparable loss. Hence, he has prayed to allow the application as prayed.

03. The defendant No.1 have filed their written statement denying all the affidavit averments and have setup their defence as hereunder; The prayer of the plaint and the prayer of the I.A. No.III are the same. If this court grants the prayer of I.A. No.III, then the whole suit will be decreed. The defendant No.3 further contends that the suit schedule properties are enjoyed by the plaintiffs and the defendants. The Block Number 4 properties are in the possession of the defendant No.4. The Manki Pattana Panchayat has granted a

house in favour of the wife of defendant No.4 and the defendant No. 4 is planning to construct a house in that property. The defendant No. 4 further contends that the whole family has 8 acres 37 guntas property, out of which defendants have a right in 03-28-08 property. Out of this big property, the defendant No.4 is constructing his house only in 01 gunta property. Since he is constructing house only in 01 gunta property, there will be no harm caused to the plaintiff. Even the plaintiffs have more property than the defendants that is nearby the road. There will be no harm caused to the plaintiffs if the defendant No.4 constructs the house. Hence, the defendants have sought to dismiss the application.

04. Heard Both the counsel appearing for both the parties and perused the material on the record.

05. The points that arise for my consideration are as under:

-.POINTS:-

01. Whether the plaintiff has got prima facie case for the grant of temporary injunction?

02. Whether the balance of convenience lies in favour of the plaintiff?

03. Whether the plaintiff will be put to irreparable loss or injury, if an order of Temporary Injunction is not granted?

04. What order?

06. My answer to the above points is as under:

Point No.1 : In the Negative

Point No.2 : Does not survive for consideration.

Point No.3 : Does not survive for consideration.

Point No.4 : As per final order for the following.

REASONS

07. POINT NO.1:- Now the question before the court is whether there exists a prima facie case in this matter. The court has to look into the matter and ascertain whether there exists a prima facie case. The intention of granting temporary injunction is to protect the legal rights and interests in respect of the property till the disposal of the suit. The Court has to look into the consequences of granting the injunction and also of not granting the injunction. The granting of injunction under Order 39 Rule 1 and 2 is the discretionary power of the Court. The Court cannot grant such relief arbitrarily. While granting the injunction, the Court has to look into the following three things:-

No.1: Whether there is a prima facie case?

No.2: Balance of convenience lies in whose favour?

No.3: By dismissing the I.A. under Order 39 Rule 1 and 2, will irreparable loss or injury be caused?

08. It is the contention of the plaintiff that the suit schedule property is the ancestral and joint family property of the plaintiffs and the defendants. The defendant's family and plaintiff's family have ½ share in the suit schedule property. The plaintiffs and the defendants were in joint possession of the property and they were cultivating on that land, and the plaintiffs had filed a suit in O.S. No.60/2014 before this court for the relief of partition. This court has decreed the suit. Now the defendants, on 8/01/2025, started to construct a building

on the land. The plaintiffs requested the defendants not to construct the building. But the defendants told that they will not stop the work. Hence the plaintiffs filed this IA. On the other hand, the defendants contended that the plaintiffs and the defendants are in possession of total 8 acres 37 guntas property, out of which the defendant No.4 is constructing the house only in 1 gunta property. Further, defendants contend that even the defendant No.4 has the share in that property. Hence, no loss will be caused if he constructs the house in that property.

09. It can be seen from the document on record that the plaintiffs and the defendants are the members of the joint family. Admittedly, the suit schedule properties are the joint family properties of the plaintiffs and the defendants. Admittedly, the suit schedule properties are not yet partitioned between the plaintiffs and the defendants. Thus, it can be held that till today the properties are the joint family properties of the plaintiffs and the defendants. At this juncture, it's pertinent to note the decision of the High Court and the Supreme Court.

10. Hon'ble Apex Court in the case of Sri Ram Pasricha V/s Jagannath and others reported in AIR 1976 SC 2335 as well as in the case of Pal Singh V/s Sundar Singh (dead) by Lrs and others reported in AIR 1989 SC 758, wherein it is held that, "A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in

the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds”.

11. Hon'ble High Court of Karnataka which is reported in ILR 1999 KAR 3037 between Eswaraiah V/s B S Siddalingappa and others, wherein the Hon'ble High Court of Karnataka held that, “when once property is shown to be in joint and possession is shown to be in joint, injunction cannot be issued, against a co-owner”

12. 2012 (2) CCC 159 (P&H) in the case of Pahalwan Chand V/s Hans Raj and Others and ILR 2012 KAR 4129 in the case of S. K. Lakshminarasappa, since deceased by his L.Rs. V/s Sri. B. Rudraiah and Others that, possession of the joint family property by one member of the family is possession on behalf all the members of the family and a co-owner cannot seek injunction against another co-owner.

13.The learned counsel for the defendants relied on the following citations .

*KCCR 2017(5) Page 225

*KCCR 2017 (5) Page 922

* KCCR 2018(4) Page 3269

*KCCR 2013(5) Page 3978

This court has gone through these citations.

14. As per the dictum of the High Court and the Supreme Court, no injunction can be granted against the co-owners. It is to be noted that plaintiffs wanted to restrain the construction of the property on the schedule property. Admittedly, the defendants also have their respective share in it. Under such circumstances, if this court restrains the construction of the building, certainly the defendants will be put to greater hardship than the plaintiffs. On the other hand, if this court dismisses the application, at most the defendants can construct the building, and while making the final decree, whatever the construction portion is there can be allotted to the defendants or be subject to the final decree of the suit. Thus, not much injustice will be caused to the plaintiffs than to the defendants. Considering all the above, this court holds that the plaintiffs have failed to prove that they have a prima facie case in his favour. Accordingly, Point No. 1 is answered in the Negative.

15. POINTS NO.2 & 3:- Both these points are taken up together for common discussion as both are inter-linked and in order to avoid repetition of facts.

16. As the plaintiffs have failed to prove prima-facie case, deciding the balance of convenience and irreparable loss does not arise. Accordingly, Points No.2 and 3 don't survive for consideration.

17. POINT NO.4 :- In view of my above discussion, I proceed to pass the following:-

ORDER

I.A. No.III filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C. is hereby dismissed.

In the circumstances of the case, no order as to costs.

(Dictated to the stenographer directly on computer, typed by him, corrected and then pronounced by me in the open court on this 11th day of June 2025).

**Sd/-
Anil John Sequeira
Addl. Civil Judge & J.M.F.C.
Honnavar.**