



IN THE COURT OF THE CIVIL JUDGE
AT SIDDAPURA

Present: Sri.UMESHA, M.P., B.A.L., LL.B.
CIVIL JUDGE & JMFC,
SIDDAPURA

DATED: ON THIS THE 08th DAY OF JULY – 2025

ORIGINAL SUIT No. 58 / 2023

PLAINTIFF : SMT. NAYANA W/o H.P. Srinivas Rao
Aged about 51 years, Occ:Homemaker,
R/o # 1-83, Pragathi Nagar Padapu,
Alevuru, Udyavara, Udupi District,
(BY PLEADER SRI.GSH/MNH)

-V/s-

DEFENDANTS :

- 1. SMT. NAGAVENI** W/o Prabhakar Pai
Aged about 61 years, Occ: Homemaker,
R/o Bilagi, Bilagi village,
Tq: Siddapura, Dist: Uttara Kannada
- 2. SMT. JAYASHRI** W/o Manjunath Patagar
Aged about 58 years, Occ: Homemaker,
R/o Hare Hulekal, Tq: Siddapura
Dist: Uttara Kannada,
- 3. LAXMINARAYANA** S/o Sheshagiri Gowda,
Aged about 45 years, Occ: Agriculturist,
R/o Bilagi, Bilagi village, Tq: Siddapura
Dist: Uttara Kannada
- 4. UDAYA** S/o Sheshagiri Gowda,
Aged about 40 years, Occ: Agriculturist,
R/o Bilagi, Bilagi village, Tq: Siddapura
Dist: Uttara Kannada
- 5. MANJUNATH** S/o Basavaraj Gowdar
Aged about 28 years, Occ: Agriculturist,
R/o Bilagi, Bilagi village, Tq: Siddapura
Dist: Uttara Kannada
(BY PLEADER Sri.MGH, FOR DEFENDANT No.1 & 2)
(DEFENDANT NO.3 & 5 PLACED EXPARTE)
(BY PLEADER Sri.SKG, FOR DEFENDANT No.4)

**PARTIES TO IA No. I**

APPLICANT/PLAINTIFF : **SMT. NAYANA** W/o H.P. Srinivas Rao
Aged about 51 years, Occ:Homemaker,
R/o # 1-83, Pragathi Nagar Padapu,
Alevuru, Udyavara, Udupi District,
(BY PLEADER SRL.GSH/MNH)
-V/s-

OPPONENT/DEFENDANT NO.4: **UDAYA** S/o Sheshagiri Gowda,
Aged about 40 years, Occ: Agriculturist,
R/o Bilagi, Bilagi village, Tq: Siddapura
Dist: Uttara Kannada
(BY PLEADER Sri.SKG, FOR DEFENDANT No.4)

ORDERS ON IA NO. I

The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiff and against the defendant No.4, restraining the defendant No.4 from putting up any construction over the suit item No.3 of Suit "A" schedule properties, in any manner, till disposal of the suit in the ends of justice.

2. In the accompanying affidavit the plaintiff has sworn to the fact that, she has filed the above suit for partition and separate possession of suit schedule properties. It is further stated that, the item No.3 of "A" schedule property is house site facing Siddapur-Kumta Road. It is further stated that, the said property is kept vacant after the dismantling of old family house. It is further stated that, the said property was kept vacant enabling the sharers to put up residential house in the event of partition of the joint family properties. It is further stated that, the defendant No.4 now has collected building materials for the purpose of construction of a house without the permission of panchayath and without our knowledge. It is further stated



that, if the defendant No.4 proceeds with construction of the purpose for which it was kept vacant will be defeated and even he may claim equity. It is further stated that, the defendant No.4 has no exclusive right, interest whatsoever over the suit schedule properties. It is further stated that, she has got prima facie case, balance of convenience lies in her favour. If the instant application is not allowed she will be put to great hardship and irreparable loss and injury will be caused. It is further stated that if the present interim application is not allowed, the plaintiff will be put to heavy loss. On the other hand, if the application is not allowed, no harm or inconvenience will be caused to the other side. Therefore, she prayed to allow the present interim application and grant temporary injunction as prayed.

3. The defendant No.4 has filed objections to IA No.1 contended that, the present suit file by the plaintiff is not tenable, misconceived and not maintainable and is liable to be dismissed with costs. It is further contended that, the plaintiff has sought for decree for partition and separate possession with respect to the suit properties. It is further contended that, the present application filed by the plaintiff is not maintainable on facts and circumstances of the case. It is further contended that, the plaintiff and the defendant No.1 to 3 & 5 are the legal heirs of the deceased Sheshagiri Gouda. It is further contended that, the plaintiff and the defendant No.1 to 3 were residing in their husbands' house. It is further contended that, the defendant No.4 had no house or residence and hence, he had started construction of a house in the suit item No.3 of "A" schedule properties in the year of 2023 by availing loan. It is further contended that, the defendant No.5 had constructed a house in the item No.1 of "A" schedule property. It is further contended that, the plaintiff has sworn false facts in her affidavit. It is further contended that, the defendant



has categorically denied all the averments made in the plaint. It is further contended that, the plaintiff has not made out prima-facie case and the balance of convenience not lies in her favour. It is further contended that, the plaintiff has not come to the court with clean hands. Hence, if the present application is allowed great loss and injustice will be caused to the defendant No.4. Hence, he prayed to dismiss the IA No.I with costs.

4. I have heard the arguments of learned counsel for the plaintiff and defendants on IA No.1. Perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1. *Whether the plaintiff has established prima-facie case to allow the IA No.I?*
2. *Whether the balance of convenience lies in favour of plaintiff to allow the IA No.I?*
3. *Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?*
4. *What order?*

6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the AFFIRMATIVE

Point No.2 - In the AFFIRMATIVE

Point No.3 - In the AFFIRMATIVE

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



REASONS

POINT NO.1:

7. The plaintiff has filed the suit against the defendants seeking relief of partition and separate possession with respect to the suit properties. The plaintiff has filed this present application seeking temporary injunction as against the defendant No.4.

8. The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiff and against the defendant No.4, restraining the defendant No.4 from putting up any construction over the suit item No.3 of Suit "A" schedule properties, in any manner, till disposal of the suit in the ends of justice.

9. As per the provisions of Order 39 Rule 1 of CPC, 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 a 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 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.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following proposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in her favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiff that, she has filed the above suit for partition and separate possession of suit schedule properties. It is further stated that,



the item No.3 of “A” schedule property is house site facing Siddapur-Kumta Road. It is further stated that, the said property is kept vacant after the dismantling of old family house. It is further stated that, the said property was kept vacant enabling the sharers to put up residential house in the event of partition of the joint family properties. It is further stated that, the defendant No.4 now has collected building materials for the purpose of construction of a house without the permission of panchayath and without our knowledge. It is further stated that, if the defendant No.4 proceeds with construction of the purpose for which it was kept vacant will be defeated and even he may claim equity. It is further stated that, the defendant No.4 has no exclusive right, interest whatsoever over the suit schedule properties. It is further stated that, she has got prima facie case, balance of convenience lies in her favour. If the instant application is not allowed she will be put to great hardship and irreparable loss and injury will be caused. It is further stated that if the present interim application is not allowed, the plaintiff will be put to heavy loss. On the other hand, if the application is not allowed, no harm or inconvenience will be caused to the other side. It is further stated that, she has got prima-facie case and balance of convenience lies in her favour. Hence, prayed to allow this application.

13. In the supporting affidavit, the plaintiff sworn that, she has filed the above suit for partition and separate possession of suit schedule properties. It is further stated that, the item No.3 of “A” schedule property is house site facing Siddapur-Kumta Road. It is further stated that, the said property is kept vacant after the dismantling of old family house. It is further stated that, the said property was kept vacant enabling the sharers to put up residential house in the event of partition



of the joint family properties. It is further stated that, the defendant No.4 now has collected building materials for the purpose of construction of a house without the permission of panchayath and without our knowledge. It is further stated that, if the defendant No.4 proceeds with construction of the purpose for which it was kept vacant will be defeated and even he may claim equity. It is further stated that, the defendant No.4 has no exclusive right, interest whatsoever over the suit schedule properties. It is further stated that, she has got prima facie case, balance of convenience lies in her favour. If the instant application is not allowed she will be put to great hardship and irreparable loss and injury will be caused. It is further stated that if the present interim application is not allowed, the plaintiff will be put to heavy loss. On the other hand, if the application is not allowed, no harm or inconvenience will be caused to the other side. It is further stated that, she has got prima-facie case and balance of convenience lies in her favour. Hence, prayed to allow this application.

14. The plaintiff has placed the RTC extracts of the suit landed properties, certified copy of ME No.1618 with respect to the suit properties, copy of Hissa-sheet with respect to suit landed properties, copy of Aadhaar card of the plaintiff, photographs.

15. It is the specific case of the defendant No.4 that, the present suit file by the plaintiff is not tenable, misconceived and not maintainable and is liable to be dismiss with costs. It is further contended that, the plaintiff has sought for decree for partition and separate possession with respect to the suit properties. It is further contended that, the present application filed by the plaintiff is not maintainable on



facts and circumstances of the case. It is further contended that, the plaintiff and the defendant No.1 to 3 & 5 are the legal heirs of the deceased Sheshagiri Gouda. It is further contended that, the plaintiff and the defendant No.1 to 3 were residing in their husbands' house. It is further contended that, the defendant No.4 had no house or residence and hence, he had started construction of a house in the suit item No.3 of "A" schedule properties in the year of 2023 by availing loan. It is further contended that, the defendant No.5 had constructed a house in the item No.1 of "A" schedule property. It is further contended that, the plaintiff has sworn false facts in her affidavit. It is further contended that, the defendant has categorically denied all the averments made in the plaint. It is further contended that, the plaintiff has not made out prima-facie case and the balance of convenience not lies in her favour. It is further contended that, the plaintiff has not come to the court with clean hands. Hence, if the present application is allowed great loss and injustice will be caused to the defendant No.4. Hence, he prayed to dismiss the IA No.I with costs.

16. According to the plaintiff, the suit properties are the ancestral and joint family properties of the plaintiff and the defendants. It is further contended that, the plaintiff and defendants have got equal right over the suit properties.

17. In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-

“An injunction cannot be granted:-



- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.



18. It is to be noted that, the right of parties in suit properties to be decided after conclusion of trial. If during pendency of suit any kind of construction were made to the subject properties by the defendant No.4 that will leads to un-necessary complications and multiplicity of suit. Hence it is shown that, balance of convenience lies in favour of plaintiff. Taking in consideration of nature of suit and rights of parties to be decided in present suit in respect of suit properties, if ad-interim temporary injunction as prayed for not granted, the plaintiff will be put to hardship and injury. On the other hand no hardship or injury would be caused to defendant No.4 if temporary injunction as prayed for is granted. The plaint averments, affidavit annexed to I.A No.1 is very much consistent and inconformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiff at this stage of litigation. Therefore based on these documents, it can be safely held that, the plaintiff has got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

POINTS NO. 2 & 3:

19. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the



Court has to see that the plaintiff will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiff.

20. Whether the plaintiff has got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiff and not in favour of the defendant No.4. Under these circumstance, there is every likely would of causing injury to the plaintiff in relation to the property in question. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiff. Therefore if the injunction is refused, it is who the plaintiff would be put to irreparable loss and injury and not the defendant No.4. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience also lies in favour of the plaintiff and irreparable loss and injury would be caused to plaintiff if a temporary injunction is refused. Hence I answer points No.2 & 3 in the affirmative.

POINT NO. 4

21. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

ORDER

I.A.No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No.4 is hereby restrained by way of temporary injunction from putting up any construction



over the suit item No.3 of Suit “A” schedule properties,
in any manner till disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 08th day of JULY - 2025)

(UMESHA M.P)
Civil Judge,
Siddapura