

IN THE COURT OF
ADDITIONAL CIVIL JUDGE AND J.M.F.C.,
AT KARKALA, UDUPI

(Presided Over by SMT. GEETHA D., B.Sc., LL.B.,)

Dated this the 05th day of August, 2025

ORIGINAL SUIT NO. 180/2016

Between:

Plaintiff : Jayasheela S. Shetty.

-And -

Defendants : Amba Shedthi and others.

Parties to I.A. No. XXIV

Applicant/Plaintiff ... Jayasheela S. Shetty.

-V/s-

Opponent/Defendant No.11 ... Geetha Shetty

Order on IA No. XXIV

The plaintiff has filed the IA No.XXIV under Order XXXIX rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (Hereinafter refer to as the 'C.P.C', for brevity) praying to issue an ex-parte ad-interim order of injunction restraining the opponent/11th defendant, her men, agents, contractors and servants or anybody claiming under her or through her from constructing any buildings, structures, house in the schedule property pending disposal of the suit.

2. It is averred in the affidavit annexed to the application that, she has filed this suit for the relief of specific performance of the agreement of sale dated:27.2.2008, entered into between herself and the defendants No. 1 to 10. During the pendency of this suit the defendants illegally entered into a deed of partition on 20.2.2017 and registered the same in the Office of the Sub-registrar Karkala in Book No:1-KKL-1-04273-2016-2017 and CD NO:KKLD.143. The said deed of partition is illegal, fraudulent, entered into with a view to Steve off her legitimate claim in respect of the plaint schedule property comprised in S.No:109/12P3 0.19 acres of Nitte Village. The present S.No: of the said plot is S.No:109/20 of Nitte Village.

3. The opponent Geetha Shetty has no manner of right, title or interest over the said property. She or her mother Duggu Shedthi has never been the co-owners of the said property. The said deed of partition has been intentionally and deliberately entered into by the defendants No. 1 to 10 with a view to harass her and defeat her legitimate claim if possible. The said deed of partition has been entered into without the permission of the court and the same is lispence. The defendants No. 1 to 10, who are already on record of the above suit, ought not to have entered into any partition. The alleged deed of partition is not valid and binding on her and the same is liable to be ignored. The opponent did not and could not get any right in the aforesaid plot by virtue of the said deed of partition.

4. The 11th defendant since a week has been making attempts to construct structures, house and buildings in the application schedule property and has been making attempts to make irreversible changes in the said property. She is not entitled to construct any structures, house and buildings in the application schedule property. The application schedule property has to be preserved in the final disposal of the suit and there is eminent danger to the said property by the act of the 11th defendant.

5. She submits that she has made out a prima facie case for the grant of temporary injunction and the balance of convenience is also in her favour. She will be put to great loss and hardship unless an order of temporary injunction as prayed for in the annexed application is not granted. Hence, prayed for allowing the application.

6. Per contra, the defendant No.11 filed objection to IA No.XXIV and also filed list of documents. The defendant No.11 specifically contented that in present suit absolutely there is no material to show that this Defendant is constructing or making any sort of preparation to construct any structure, house and building as falsely stated in the application. Further, to grant order of Temporary Injunction there shall be some proof with regard to the said apprehension. In the present suit Plaintiff herein has not produced any iota of proof regarding the alleged averments as stated in the

application. The order of Temporary Injunction cannot be granted on mere asking by the Plaintiff. If the order of Temporary Injunction is granted without any sort of apprehension then the same will lead to hardship and injury to this Defendant. On the other hand if the order of Temporary Injunction is granted without single sort of proof then the Plaintiff will misuse the same against this Defendant. Hence balance of convenience lies in favour of this Defendant. no prejudice nothing will be caused to the other side if the application is rejected. Therefore the defendant No.11 prayed to dismissal of the application.

7. On perusal of the IA and objection, following points arises for consideration of this court:-

1. Whether prima-facie case and balance of convenience lies in favour of the plaintiff?
2. Whether the plaintiff will be put to irreparable loss and injury if order of Temporary Injunction is not granted?
3. What Order?

8. Heard the learned counsel for parties and perused the entire material placed on record.

9. My answer to the above said points are as follows:-

Point No.1: In the Negative;

Point No.2: In the Negative;

Point No.3: As per final order for the following:

REASONS

10. **Points No.1 and 2:** The plaintiff has filed the present suit for specific performance of agreement dated 27.02.2008 entered between plaintiff and defendants. The instant application is filed by plaintiff in order to seek injunction restraining the 11th defendant, her men, agents, contractors and servants or anybody claiming under her or through her from constructing any buildings, structures, house in the schedule property pending disposal of the suit.

11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a prima facie case in support of the right claimed by her. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction. Further the applicant has to show cause that balance of convenience lies in her favour and she would suffer irreparable injury if injunction is not granted.

12. To show cause the same the plaintiff has sworn in her affidavit that defendant No.1 has no manner of right, title or interest over the said property. Defendant No.11 or her mother Duggu Shedthi has never been the co-owners of the said property. She is making attempts to construct structures, house and buildings in the application schedule property and has been making attempts to make irreversible changes in the said property. To preserve the application schedule property till the final disposal of the suit, injunction is sought. In support of her IA she has sworn the affidavit but not produced any materials to show that defendant No.11 caused interference as contemplated in the IA.

13. Per contra the counsel for defendant No.11 to substantiate defence has produced materials, on perusal of judgment order in TRL No. 1497/1977-78 statement to show that in the application 'A' schedule property there exist a house in the year 1979. Even in the statement of Bhoja Shetty it is clear that there exist a house. In form No.7 it is mentioned that there is a tiled farm house, hatti, kottige, 12 coconut trees, well, tank, right of way and water, kumki right, hadi growth, fruit bearing trees, right of mamul thodu, right of muli lachilu with everything attached thereto. Further on perusal of form 9 and 11A of 'A' schedule property it shows that there exist a house in the property photo. RTC of the application A schedule property stands in the name of defendant No.11. On perusal of photographs

it shows that the house situated in the plaint A schedule property is in dilapidated condition and it requires necessary action to correct the same. The counsel for defendant No.11 also submitted that in application A schedule property there is a house for Balipaguttu, it has daivadevarugalu and village deity, it has sentiment of the family.

14. By considering all these aspects and materials placed on record, this court comes to the conclusion that the plaintiff has not made out prima facie case. When the plaintiffs have failed to establish prima facie case, the question of considering the balance of inconvenience and irreparable loss does not arise at all. If, at this stage the injunction as prayed for is not granted no hardship would be caused to the plaintiff, on the other hand if the injunction order is granted, the defendant No.11 will be put great hardship or irreparable loss. Accordingly, this court has answered Point No.1 and 2 in negative.

15. **Point No.3:** In view of discussion and the findings arrived at point No.1 and 2, this court proceed to pass the following:

ORDER

IA No.XXIV filed by the plaintiff under
Order XXXIX Rule 1 and 2 read with Section
151 CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed and typed by her and then pronounced in open court on this the 05th day of August, 2025)

(Smt. Geetha D.)
Addl. Civil Judge & J.M.F.C.,
Karkala.