

KABI200009772018



IN THE COURT OF THE CIVIL JUDGE & JMFC
AT: H.B.HALLI

DATED THIS THE 28th DAY OF APRIL 2025

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)
CIVIL JUDGE & JMFC., H.B.HALLI.

O.S.No.147/2018

PLAINTIFF/s : **Sri.Honnappa S/o H.Doddagoneppa,**
Aged about: 28 years, Occ: Agriculturist,
R/o Nelkudri, H.B.Halli Taluk, Vijayanagara
District.

Vs

DEFENDANT/s : **1) Sri.Doddagoneppa S/o Honnappa,**
Aged about: 70 years, Occ: Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.
(Defendant No.1 died. The plaintiff and
defendant No.2 to 11 are the legal heirs)

2) Smt.Basamma W/o Doddagoneppa,
Aged about: 66 years, Occ: Coolie,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

3) Sri.Doddabasappa S/o H.Doddagoneppa,
Aged about: 48 years, Occ: Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

4) Sri.Hanumanthappa S/o H.Doddagoneppa,
Aged about: 45 years, Occ: Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

5) Sri.Malleshappa S/o H.Doddagoneppa,

Aged about: 43 years, Occ: Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District dead by his L.Rs.,

5(a) Smt.Subadramma W/o Late**H.Malleshappa,**

Aged about: 45 years,

5(b) Kirana Kumar S/o Late**H.Malleshappa,**

Aged about: 27 years,

5(c) Smt.Prema D/o Late H.Malleshappa,

Aged about: 25 years,

5(d) Muttu S/o Late H.Malleshappa,

Aged about: 23 years,

All are agriculturists, R/o Nellakudri
Village, Hagaribommanahalli Taluk,
Vijayanagara District.

**6) Smt.Kotramma W/o Late Prakash
S/o H.Doddagoneppa,**

Aged about: 35 years, Occ: Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District dead by his L.Rs.,

6(a) Yallamma D/o Prakash S/o**H.Doddagoneppa,**

Aged about: 21 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

6(b) Kavitha D/o Late Prakash S/o**H.Doddagoneppa,**

Aged about: 19 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

6(c) Nagarathana D/o Late Prakash**S/o H.Doddagoneppa,**

Aged about: 18 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

7) Sri.Basavaraja S/o H.Doddagoneppa,

Aged about: 40 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

**8) Smt.Manjula D/o H.Doddagoneppa
W/o Manjunatha,**

Aged about: 48 years, Occ:Agriculturist,
R/o Hosapete Town, Hosapete Taluk,
Bellary District.

9) Smt.Renuka @ Neelamma H.**H.Doddagoneppa W/o Anjinaya,**

Aged about: 38 years, Occ:Agriculturist,
R/o Hosapete Town, Hosapete Taluk,
Bellary District.

**10) Smt.Mamatha D/o H.Doddagoneppa
W/o Mallappa,**

Aged about: 36 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

11) Smt.Geeta D/o H.Doddagoneppa,

Aged about: 34 years, Occ:Agriculturist,
R/o Nellukudri Village, H.B.Halli Taluk,
Bellary District.

**12) Clean Max Power Projects Pvt.Ltd.,
Mumbai-25 Maharashtra State**

represented by authorized signatory
Shri. Ravindra S/o Dattatraya Vipra,
Aged about: 52 years, Occ:Agriculturist
and Partner, marital status: Married,
R/o 203 spring fileds co.op Society new DP road,
Kothrud Pune city, Maharashtra State.

I.A.No.VI

**APPLICANT/PLAINTIFFS : Sri.Honnappa S/o
H.Doddagoneppa,**

(Rep. by Sri.S.G.N., Advocate)

V/s

**RESPONDENTS/DEFENDANTS :Sri.Doddagoneppa S/o
Honnappa dead by his
LRs.,and Ors.**

(Def.No.1 Rep.by Sri.**Y.M.M.**, Advocate)
(Def.No.2, 4,6(a), (b), D7, 10, 11- Placed ex parte)
(Def.No.3 Rep. by Sri.**B.B.R.**, Advocate)
(Def.No.5(a) to (d), 8, 9 Rep. by Sri.**S.P.G.**, Advocate)

ORDER ON I.A.No.VI

The plaintiff has filed the IA No.VI under Order 39 Rule 1 and 2 of CPC for temporary injunction to restrain the defendant No.3 from making further construction over the Land bearing Sy.No.412/B measuring 4.37 acres of Nellukudri Village, H.B.Halli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA it is stated by the plaintiff that, the plaintiff and defendant No.1 to 11 are the members of Hindu Undivided Joint Family. The defendant No.1 was the Kartha of the joint family, he acquired the landed properties bearing Sy.No.34/B measuring 5.34 acres, Sy.No.390/B measuring 5.52 acres, Sy.No.374/A measuring 0.84 acres, Sy.No.412/B measuring 4.37 acres, Sy.No.376/A measuring 2.99 acres, Sy.No.109 measuring 5.50 acres, Sy.No.63/B/1 measuring 8.00 acres, Sy.No.61/2 measuring 2.00 acres from his paternal and maternal side. The plaintiff

and defendant No.1 to 11 are in joint possession and enjoyment of the suit schedule properties. The mutation of the said properties are jointly standing in the name of plaintiff, defendant No.3 and other brothers of the plaintiff. Till today the plaintiff and defendant No.1 to 11 are in joint possession and enjoyment of the suit schedule properties. The suit schedule properties are ancestral and joint family properties of plaintiff and defendant No.1 to 11. No partition has been effected between the plaintiff and defendant No.1 to 11 with respect of suit schedule properties. The plaintiff and defendants are having equal right and interest over the suit schedule properties. Sy.No.412/B measuring 4.37 acres of land stands in the name of defendant No.7. During the pendency of the present suit defendant No.3 was started to construct the house in the above said property. When the said fact was came to the knowledge of the plaintiff he objected for the same. Thereafter, the defendant No.3 has stopped the construction work for more than 1 ½ years. Now he again started the construction work, if he succeeded in his act the plaintiff will be put to hardship. Hence, he prays to allow the IA.

3. To the said application, the defendant No.3 has filed the objection and denied the case of the plaintiff. He further contended that, the petition schedule property is not included in the plaint schedule. The mother of the defendant No.2 Kadli Gangavva bequeathed the petition schedule property along with suit schedule Item No.4 to 7 properties in favour of plaintiff, defendant No.3, 4, 5, 7 and one Prakash under registered WILL dtd.18-06-1991. As per the said WILL mutation was effected in the name of above said persons. They are in joint possession and enjoyment of the above said properties. Therefore, injunction cannot be granted against the co-owners. The above said petition schedule property stands in the name of defendant No.7, but the plaintiff, defendant No.3 to 7 are in joint possession and enjoyment of the same. With the oral consent of the plaintiff and other defendants, the defendant No.3 has started to construct a house in the said property and he invested huge amount for the said construction. The defendant No.3 having 5 children and he and his wife are doing agricultural and coolie work and constructing the house. If temporary injunction is granted

injustice will be caused to the defendant No.3. Hence, he prays to dismiss the IA.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

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

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

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

4. What order?

6. My answers to the above points are as under:

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**:- As the facts involved in point Nos.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendants for the relief of Partition and Separate Possession with respect of suit schedule properties.

According to the plaintiff, the plaintiff and defendant No.1 to 11 are the members of Hindu Undivided Joint Family. The suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 11. As per the plaintiff, the plaintiff and defendant No.1 to 11 are in joint possession and enjoyment of the suit schedule properties and they are having 1/12th share each in the suit schedule properties. Now the plaintiff has filed the above said IA No.VI seeking the relief of temporary injunction to restrain the defendant No.3 for making further construction in the Land bearing Sy.No.412/B measuring 4.37 acres. I have perused the plaint schedule, the said property is not mentioned in the plaint schedule. The defendant No.3 in his objection he contended that, the plaintiff and defendant No.3 to 7 are in joint possession and enjoyment of the above said Sy.No.412/B. He further contended that, on the basis of agricultural coolie work he started to construct a house in the above said property. The plaintiff has not produced any RTC

extract of the above said Sy.No.412/B before the Court. As per the case of the plaintiff, the plaintiff and defendant No.1 to 11 are the co-owners of the suit schedule properties. As per the plaintiff, the plaintiff and defendant No.1 to 11 are having 1/11th share each in the suit schedule property. If plaintiff succeeded in the suit, he is entitle to only 1/11th share in the suit schedule property not the entire suit schedule properties.

9. In the judgment of Hon'ble High Court of Karnataka Bengaluru in W.P.No.19653/2021 (GM-CPC) dated.08.12.2021 between (Smt. Mahalakshmma D/o Muddanna and Ors. v. Sri. Eranna S/o Late. Ranganna and Ors.) held as under.

The petitioners have filed this suit in O.S.No.404/2019 for partition, and they contended that after the demise of late Ranganna (their father), the first and second respondents (their brothers) and they have succeeded to the properties left behind by him and they are also entitled for a share. The petitioners' application is for injunction against the first respondent from putting up the construction in one of the suit schedule properties.

If the first respondent is one of the co-owners of the subject property even according to the petitioners, and if he is developing the subject property, the construction cannot be stopped at the instance of the petitioners in view of the settled law that a co-owner cannot be injuncted from use of the co-ownership property at the instance of other co-owners. Further, any development by a co-owner would be subject to outcome in the suit for partition. The Civil and appellate Courts have disposed of the petitioner's application accordingly. Therefore there is no reason for interference, and the petition stands rejected accordingly.

10. In the reported decision **2022 SCC Online J & K 1045 (Mst. Zaiba v. Gulam Ahmad Zargar and Ors.)** in Para **No.10 and 11** of the said judgment the **Hon'ble High Court of Jammu and Kashmir** held as under.

10. There is no dispute to the fact that the plaintiff and the contesting defendants are co-sharers of the suit property as they have inherited the same from a common ancestor. The question that arises for consideration is whether a co-sharer can stop another co-sharer from raising construction on a

portion of the joint property which is in exclusive possession of the said co-sharer.

11. The law on this aspect of the matter is no longer res integra. The Punjab & Haryana High Court in the case of Sardari Lal Gupta v. Siri Krishan Aggarwal., AIR 1984 P & H 439, has held that only because the plaintiff is co-sharer, he cannot restrain the other co-sharer from making construction on the joint property, unless he can specify that he would suffer damage if the injunction is refused. This Court in the case of Khatoon Magray v. Subhan Magray, (2005) 2 JKJ 210, has, while relying upon the aforesaid judgment of Punjab & Haryana High Court, held that a decree of permanent injunction in favour of a co-sharer cannot be granted against another co-sharer preventing him from enjoying the joint property.

11. In the reported decision **2012 SCC Online Kar 4768 (D.M.Adarsh V/s D.M.Amrutesh)** in **Para No.5** of the said judgment the **Hon'ble High Court of Karnataka** held as under.

5. Admittedly, the suit is for partition and separate possession. Defendant No.1 is also one of the joint family members. Whether

the plaintiffs are entitled for the respective share or not, is a matter to be adjudicated. The photographs produced by the plaintiffs themselves show that the defendant No.1 has already commenced the construction work. Even if the plaintiffs succeed in the suit, they are entitled for necessary relief. Further, if there is any wastage or mismanagement of the property as submitted by the learned Counsel for the plaintiffs, it is open to the plaintiffs to seek proper relief for proper management of the suit property. Just because the defendant No.1 is putting up the construction, it is not a ground to injunct him from construction, even if the construction is made, if it is a joint family property, ultimately it is subject to final decree that would be passed. Hence, I find no ground to interfere with the order of both the courts below.

Accordingly, the petition fails and same is dismissed.

12. According to the plaintiff, the plaintiff and defendant No.1 to 11 are the co-owners of the suit schedule properties. As per the above said decisions a co-owner cannot be injuncted from use of the co-ownership property at the instance of other co-owners. As per the photographs

produced by the plaintiff it appears that construction work almost completed. Under such circumstances, if the defendant No.3 is restrained from making further construction it cause injustice to the defendant No.3. The construction work made by the defendant No.3 is subject to final decree that would be passed. If the Temporary Injunction is not granted no injustice will be caused to the plaintiff.

The advocate for plaintiff relied the decision AIR 1961 P & H528, Sant Ram Nagina Ram V/s Daya Ram Nagina Ram and others.

I have gone through the above said decision, the facts and circumstances of the above said decision and facts and circumstances of the present case on hand are totally different. Therefore the said decision is not applicable to the case on hand. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

13. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

**The IA No.VI filed by the plaintiff
under Order 39 Rule 1 and 2 of CPC is
hereby rejected.**

*(Directly dictated to the Stenographer on computer, corrected by me and then pronounced
in the open court on this the **28th day of MARCH 2025.**)*

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., H.B.HALLI.