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**IN THE COURT OF THE HONOURABLE CIVIL JUDGE AND
JMFC COURT, AT YADGIRI**

**PRESENT: SMT.ASRINA, BA.LLB
CIVIL JUDGE AND JMFC, YADGIR**

DATED THIS 1ST DAY OF APRIL, 2023

O.S.No. 173/2022

BETWEEN

PLAINTIFF	<p>Shri. Srinivasreddy S/o Mallareddy Shahapur, Aged: 51 Years, R/o: Chandrki village, Tq: Gurmitkal, Dist: Yadgir.</p> <p>(By Shri. S.B.P. Advocate)</p>
DEFENDANT	<p>1. Shri. Nagappa S/o Bheemulu Pamakola, Aged: 45 Years,</p> <p>2. Shri. Tippanna S/o Bheemulu Pamakola, Aged: 42 Years,</p> <p>3. Shri. Jaggesh S/o Bheemulu Pamakola, Aged: 38 Years,</p> <p>4. Shri. Govinda S/o Bheemulu Pamakola, Aged: 35 Years,</p> <p>All are R/o Chandriki village, Tq: Gurumitkal, Dist: Yadgir.</p> <p>(Defendants By: Shri. M.V.K Advocate)</p>

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**ORDERS ON IA.NO.1 FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 OF CPC**

Plaintiff has filed the present suit for the relief of perpetual and mandatory injunction as against the defendants. Along with the suit the plaintiff has also filed IA.No.1 under order 39 rule 1 and 2 of CPC praying to restrain the defendants from taking any sorts of construction over the suit property till the disposal of the above suit.

2. In the affidavit accompanying IA.No.1 the plaintiff has stated that the contents of the plaint to be read as a part of the affidavit. It is the case of the plaintiff that he is the owner in possession and enjoyment of the 09 acres of land situated in Sy.No.585/1 of Chandarki village. The remaining extent of 03 acre 09 guntas of land in Sy. No. 585/1 of Chandraki village belongs to one Mr. Nagamohansingh S/o Seetaramsingh. It is the case of the plaintiff that the defendants are the real brothers in relation. It is the specific case of the plaintiff that the defendants are not at all concerned either to the family of the plaintiff or to the suit property. It is the grievance of the plaintiff that the defendants who are nothing to do with the suit property and without having any rights over the suit property and without obtaining any permission from the concerned authority, the defendants have illegally taken up

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the construction over the South-East corner of the suit property. It is the grievance of the plaintiff that by taking undue advantage of absence of the plaintiff in the Chandarki village, the defendants have illegally and high handedly taken up the construction of their house at South-East corner on the suit property without the knowledge and behind the back of the plaintiff. Upon coming to know the illegal construction under taken by the defendants in the suit property, the plaintiff has immediately rushed to the suit property and to his surprise the defendants had already taken up the construction of the building up to the basement level and the defendants had also installed columns on the said basement area with an intention to construct the building on it. It is the case of the plaintiff that though he has requested the defendants not to take up any further construction in the suit property and though the plaintiff has requested the defendants to remove the construction which is already made by them in the suit property but the defendants did not pay any heed to the request made by the plaintiff. Per contra the defendants have threatened the plaintiff with a dire consequences and warned the plaintiff not to obstruct them in constructing the building in the suit property. It is the grievance of the plaintiff that the defendants have no manner of right over the suit property. Without having any right, title

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and interest over the suit property, the defendants are illegally trying to construct the building in the suit property. Therefore the plaintiff has averred that the acts of the defendants is highly illegal and high handed and the same is against the law. Therefore, the illegal acts of the defendants has to be checked by this court by granting the reliefs as sought for in the instant application. If not the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Therefore, having no other efficacious remedy, the plaintiff was constrained to file the above suit. Apprehending the possibilities of the defendants taking further construction over the suit property, the plaintiff herein has filed the instant application praying to restrain the defendants from taking construction over the suit property until the disposal of this suit. The plaintiff has averred that he has made out a prima facie case and the balance of convenience also lies in favour of the plaintiff. If the order of temporary injunction is not granted as sought for in the instant application, then the plaintiff will be put to irreparable loss and injury. Hence, with the above contentions the plaintiff has prayed to allow the application.

3. In pursuance to the summons issued by this court, the defendants have appeared before this court through their

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counsel. Defendant No.3 has filed his written statement and by filing the memo, the defendants No.1, 2 & 4 have adopted the written statement filed by the defendant No.3 as their written statement. Further, by filing the memo the defendants have also adopted their written statement as a objection to IA.No.1. Along with the written statement, counsel for the defendants has also filed list with documents.

4. The defendants have seriously opposed the IA.No.1 by filing their objection. The defendants have denied the ownership and possession of the plaintiff over the suit property. The defendants have denied the boundaries of the suit property. The allegation made by the plaintiff that the defendants have illegally constructed the house in the South-East corner of the suit property was specifically denied by the defendants. By denying the rest of the case of the plaintiff, the defendants have categorically contended that the plaintiff is not the absolute owner of 09 acres of land situated in Sy.No.585/1 of Chandarki village. The said property is a joint family property of Shahapuram family and the suit property is nominally standing in the name of the plaintiff. The defendants have contended that initially the suit property was standing in the name of the mother of the plaintiff and she died long back leaving behind her husband and five children. The defendants

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have contended that the present plaintiff herein has filed a suit in O.S No.10/2020 before the Hon'ble Senior Civil Judge Court, Yadgir seeking partition in all his family properties and the present suit property is also the subject matter of the said suit. The defendants have contended that the boundaries of the present suit property shown in the present suit as well as the boundaries of the present suit property shown in O.S No.10/2020 are totally different. Therefore the defendants have contended that the plaintiff is not aware about the boundaries and location of the suit property. It is the specific case of the defendants that one Mr.Kanakappa S/o Tippanna Pamkola and Mr. Bheemappa S/o Tippanna Pamkola are the real brothers and they had jointly purchased open space measuring 50'x79 from one Mr.Kambar Narasanna of Chadariki village. In a family settlement the said open space fallen to the share of father of the defendants namely Mr. Bheemappa S/o Tippanna Pamkola. It is the case of the defendants that Bheemappa S/o Tippanna Pamkola has died leaving behind his wife namely Padmamma and his children namely the defendants herein as his legal heirs. Now said Mr.Kanakappa and Padmamma are constructing the house in two portions and the records are also standing in their name. It is the specific case of the defendants that the construction of their house was already completed even before to the filing

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of this suit. But the plaintiff has intentionally produced the old photos showing the construction of the building at the basement level. So also it is the specific case of the defendants that their house is situated far away from the suit property and their house is situated in the Govthana. Therefore the defendants have contended that their house is not situated in the suit property. The defendants have contended that at the instigation of one Mr.Shivareddy and his sister Manimala the plaintiff has filed the present false suit. The defendants have contended that the plaintiff has filed the present suit by suppressing the true facts and obtained ex-parte temporary injunction order as against the defendants. The defendants have contended that if at all the order of ex-parte temporary injunction granted earlier is not vacated, then the defendants will suffer irreparable loss which cannot be compensated in terms of money. Therefore, with the above contentions the defendants have sought for dismissal of the application.

5. Heard arguments from both the side. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

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- Point No.1:** Whether the plaintiff has made out a prima facie case against the defendants?
- Point No.2:** Whether the balance of convenience lies in favour of the plaintiff?
- Point No.3:** If the order of temporary Injunction is not granted in favour of the plaintiff, whether the plaintiff will suffer irreparable injury or hardship which cannot be compensated?
- Point No.4:** What order?

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

- Point No.1** : In the Affirmative.
- Point No.2** : In the Negative.
- Point No.3** : In the Negative.
- Point No.4** : As per the final orders for the following:

REASONS

7. POINT NO.1: The plaintiff has filed the present suit for the relief of perpetual and mandatory injunction as against the defendants. Along with the suit the plaintiff has filed the instant application praying to restrain the defendants from taking any sorts of construction over the suit property till the disposal of the above suit. It is the case of the plaintiff that he is the owner and possessor of the suit property. The defendants who are nothing to do with the suit property and without having any rights over the suit property and without obtaining any permission from the concerned authority, the

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defendants have illegally taken up the construction of the house over the suit property at its South-East corner up to the basement level. If at all the defendants succeeds in taking further construction over the suit property then the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Hence the plaintiff has filed the present suit and by filing the instant application the plaintiff has prayed to restrain the defendants from taking any sorts of construction over the suit property until the disposal of the above suit.

8. In an application filed under Order 39 Rule 1 and 2 of CPC the plaintiff must show that he has a prima facie case. “Prima facie case” means that the plaintiff must prove to the satisfaction of the court that there is a probability of the plaintiff obtaining the reliefs at the conclusion of the trial on the basis of the material placed before the Court. In a decision of the Hon’ble Apex Court in the case of **M.Gurudas and Others V. Rasaranjan and Others reported in (2006) 8 SCC 367** it is held as under:

“19. A finding on “prima facie case” would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.”

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9. As per the above preposition of law the plaintiff is required to prove to the satisfaction of the court that there is a probability of the plaintiff obtaining the reliefs at the conclusion of the trial on the basis of the material placed before the Court. So also the plaintiff is also required to satisfy the court that the other requisite factors for grant of injunction such as balance of convenience and irreparable injury also exist in his favour.

10. In the case on hand, it is the contention of the plaintiff that he is a owner and possessor of the suit property. The short dispute involved in this case is whether the construction of the house under taken by the defendants comes in the suit property or not, the same can be ascertained only by holding the full fledged trial. Therefore I conclude that the plaintiff has made out a prima facie case to go for a trial. Further, along with the plaint the plaintiff has produced the RTC of the suit property for the year 2021-22 and it discloses that the suit property is standing in the name of the plaintiff. It depicts that the plaintiff has a some semblance of right over the suit property. When the plaintiff has a semblance of right over the suit property, the plaintiff is very much entitled to protect the suit property by filing a suit. Therefore I conclude that the plaintiff has made out a prima

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facie case to go for a trial. Since the materials placed on record prima facie shows that the plaintiff has semblance of right over the suit property, after the trial, if at all the plaintiff succeeds in establishing his case, then the plaintiff will surely obtain the reliefs at the conclusion of the trial. Thereby I conclude that the plaintiff has made out a prima facie case as against the defendants. **Accordingly, Point No.1 is answered in the Affirmative.**

11. POINTS NO.2 & 3: Since, the discussion on points No.2 and 3 are interconnected, in order to avoid repetition, points No.2 and 3 are taken up together for common discussions.

12. In an application filed under Order 39 Rule 1 and 2 of CPC, apart from proving the prima facie case, the plaintiff also must invariably prove that the balance of convenience lies in his favour and so also it is incumbent on the part of the plaintiff to prove that if an order of temporary injunction is not granted then the plaintiff will suffer irreparable loss and injury.

13. In the case on hand, the pleadings put forth by the plaintiff discloses that at the time of filing of this suit the defendants have already completed the construction of the

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house up to the basement level and the defendants have also installed column to the said house. Further, on 21.02.2022 the plaintiff has produced 06 photographs and one of those photographs bears the date of its capture. The said photo is marked as C-1 for the purpose of identification. The C-1 photograph discloses that it was captured on 25.06.2022. Ex.C-1 photograph discloses that on 25.06.2022 itself the defendants had completed the construction of the house up to the basement level and they have also installed column to the said house. The records reveals that this suit was filed on 23.09.2022 which came to be registered on 28.09.2022. Hence, on perusal of the materials placed before the court discloses that three months prior to filing of this suit itself the defendants had completed the construction of the house up to the basement level and they had also installed column to the said house. Further, along with their written statement the defendants have produced the photographs and it discloses that the defendants have already completed the major portion of construction of the house. Whether the construction of the house under taken by the defendants comes in the suit property or not, the same can be ascertained only by holding the full fledged trial. Conclusion of the trial may take some time. Restraining the defendants from completing the construction of their house until the conclusion of the trial

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may cause hardship to the defendants. The construction put up by the defendants is subject to the final decision of the suit. Rightly or wrongly the construction of the house is already come up. If at all the further construction of the house is stopped at this stage then the same may cause injury and hardship to the defendants. Therefore I am of the view that the balance of convenience lies more in favour of the defendants and not in favour of the plaintiff. Further, in a decision of the Hon'ble Apex Court in the case of **Mandali Ranganna & Ors. Etc vs T. Ramachandra & Ors reported in (2008) 11 SCC 1** it is held as follows:

“23. Rightly or wrongly constructions have come up. They cannot be directed to be demolished, at least at this stage. Respondent No. 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

24. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit.”

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14. In the above cited decision the Hon'ble Apex Court has observed that since the construction of the building has already come up it would be improper to stop the further construction and further held that the interest of justice will be served in allowing the respondent to carry out the construction of the building subject to the ultimate decision of the suit. Applying the said dictum of the Hon'ble Apex Court to the case on hand, this court is of the humble opinion that since the defendant has already completed the major construction work and the photographs submitted by the defendants disclose that construction materials are also brought by the defendants for further construction, it is improper to restrain the defendants from carrying out further construction. If the further construction is stopped the defendants will suffer hardship and injury. The balance of convenience lies in favour of the defendants. However it is explicitly made clear that the construction of the house made by the defendants is subject to the ultimate decision of the suit.

15. Whether the defendants have constructed their house by encroaching the suit property or not, the same has to be decided after the detailed trial. The construction of the house put up by the defendants is a subject to final order of the

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court. As alleged by the plaintiff, if it is found that the defendants have constructed their house by encroaching the suit property, then the encroachment can be removed by the order of the court and thereby any injury or hardship if at all suffered by the plaintiff, the same can be compensated adequately. Accordingly for what has been discussed above **I answer point No.2 and point No.3 in the Negative.**

16. POINT NO.4: In view of my foregoing discussions on points No.1 to 3, I proceed to pass the following:

ORDER

IA.No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby rejected.

Ex-parte order of temporary injunction granted earlier hereby stands vacated.

Considering the facts and circumstances of the case there is no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, and the transcript revised and corrected by me and then pronounced in the open court on this **1st day of April 2023**)

**CIVIL JUDGE & JMFC,
YADGIR**