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W.P. No.5542/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 31ST DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.5542/2023 (GM-CPC)

BETWEEN:

1. SMT. LAKSHMAMMA
W/O LATE CHIKKAPILLAPPA
AGED 59 YEARS.
2. SRI. BHARATH H.C.
S/O LATE CHIKKAPILLAPPA
AGED 27 YEARS.

BOTH ARE R/AT HIREBALLA VILLAGE
JANGAMAKOTE HOBLI
SIDDLAGHATTA TALUK
CHIKKABALLAPURA DISTRICT - 562102.

...PETITIONERS

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

(BY SRI. C. PRAKASH, ADV.,)

AND:

1. SMT. ASHWATHAMMA
W/O LATE CHIKKAHANUMAPPA
ALIAS CHIKKANNA
AGED 70 YEARS.
2. SRI. CHANNEGOWDA
S/O LATE CHIKKAHANUMAPPA
ALIAS CHIKKANNA
AGED 48 YEARS
MOBILE NO. 9448266605.



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BOTH ARE RESIDENTS OF MUNEKOLALA
AMRUTHA TENT HOUSE, 5TH MAIN
SRI. LAKSHMINARAYANASWAMY TEMPLE ROAD
THUBARAHALLI,
BENGALURU – 560037.

...RESPONDENTS

(BY SMT. SARITHA A.L. ADV., FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE JUDGEMENT/ORDER DTD 10.11.2022 PASSED IN MA. NO.15/2021 FILED BY THEM ON THE FILE OF THE HON'BLE COURT OF THE II ADDL. DIST. JUDGE CHIKKABALLAPURA, SITTING AT CHINTAMANI AS PER ANNEX-A. QUASHING THE ORDER DTD 23.04.2021 PASSED ON IA. NO.1 UNDER ORDER XXXIX RULE 1 AND 2 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE FILED BY THE R-1 AND 2 IN OS. NO. 41/2021 PENDING ON THE FILE OF THE HON'BLE SENIOR CIVIL JUDGE AND JMFC AT SIDDLAGHATTA, AS PER ANNEX-B & ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 10.11.2022 passed in M.A.No.15/2021 by the II Additional District and Sessions Judge, Chikkaballapura, sitting at Chintamani (for short, '**the Appellate Court**') and the order dated 23.04.2021 passed on I.A.Nos.1 and 2 in O.S.No.41/2021 by the Senior Civil Judge and JMFC, Sidlaghatta (for short, '**the trial Court**').

2. Heard C.Prakash, learned counsel appearing for the petitioners and Smt.Saritha A.L., learned counsel appearing for the respondent Nos.1 and 2 and perused the material available on record.

3. Respondent Nos.1 and 2 filed the suit in O.S.No.41/2021 seeking the relief of partition and separate possession of 18 items of immovable properties. In the said suit, the respondent Nos.1 and 2 filed two applications under Order XXXIX Rule 1 and 2 read with



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Section 151 of the Code of Civil Procedure, 1908, (for short, '**the CPC**') seeking temporary injunction during the pendency of suit restraining the defendant No.11 from putting up further construction and alienating or creating third party interest on the plaint schedule Item No.5 property. The trial Court on considering the rival submissions vide order dated 23.04.2021 allowed the application I.A.Nos.1 and 2 by restraining the defendant No.11 from putting up further construction in Item No.5 of the suit schedule property and alienating the suit schedule properties in any manner till disposal of the suit. The petitioner/defendant Nos.11 and 12 assailed the said order before the appellate Court and the appellate Court in M.A.No.15/2021 vide order dated 10.11.2022 dismissed the appeal by confirming the order of the trial Court granting temporary injunction.

4. It is to be noticed that the prayer insofar as not to alienate is concerned, the learned counsel for the



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petitioners fairly submits that he concedes the said prayer and the petitioners/defendant Nos.11 and 12 would not alienate the suit schedule Item No.5 property.

5. The contention of learned counsel for the petitioners is that Item No.5 of the suit property is self-acquired property. However, the said assertion has been categorically denied by the plaintiffs in the suit by contending that all the 18 items of the suit schedule properties are the ancestral and joint family properties of the parties and sought the relief of partition. The relief in the application for temporary injunction is not to put up further construction over the Item No.5 of the suit schedule property. The said prayer was granted by the trial Court and the same was affirmed by the appellate Court.

6. It is to be noticed that the petitioners filed two affidavits one on 18.08.2026 and another on 24.08.2026 in the present petition. The respondent Nos.1 and 2 have



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filed a detailed objections to the said affidavits by contending that the alleged construction put up by the petitioners is in violation of the temporary injunction order; at the time when the application for temporary injunction was filed the construction had just begun and now the petitioners are contending that the construction is almost complete and seeks permission to carry out the plastering work and use the premises, such a permission cannot be granted as the petitioners would claim the equity as well as right over Item No.5 of the suit schedule property.

7. It is submitted that the petitioners have a house and they are residing in the said house which is Item No.17 of the suit schedule properties. Hence, this construction is only with an intention to defeat the rights of the plaintiffs over the Item No.5 of the suit schedule property. It is further submitted that Item No.5 of the suit schedule property is very near to the village and if the



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petitioners/defendant Nos.11 and 12 are allowed to complete the construction, injustice and prejudice would be caused to the plaintiffs in the suit. Hence, sought for dismissal of the petition by rejecting the affidavits filed by the petitioners.

8. The material on record indicates that during the pendency of these proceedings, the construction in Item No.5, by the defendant Nos.11 and 12, is completed, which can be noticed from the photographs produced along with the memo, and only the work of plastering, fixing of the doors and windows is pending. The photographs also indicate that the petitioners have obtained electricity connection. Keeping these facts in mind and also taking note of the affidavits filed by the petitioner No.2 in the present petition, I am of the view that the ends of justice would be met if the petitioners are allowed to carry out the plastering work to the constructed house, fix the doors and windows and permit them to



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reside in the said premises during the pendency of the suit.

9. It would be useful to refer para Nos.2 to 4 of the affidavit dated 18.08.2026 as well as para 3 of the affidavit dated 24.08.2026, which are extracted as under:

(i) Paragraph Nos.2 to 4 of the affidavit dated 18.08.2026:

"2. After passing of the impugned orders as per Annexure -'A' and 'B', I am not able to complete the construction work which is substantially carried out in the land in question i.e.. Item, No.5 of the suit schedule properties, which is a self-acquisition of my father under Sale deed dated 21.08.1991. At that juncture, the construction was almost complete and as such living in the house has become virtually unbearable and under these circumstances, I have sought an interim prayer before this Hon'ble Court to permit me to complete the construction made on item No. 5 of the suit schedule properties.

3. I submit that there is already an interim order dated 23.04.2021 passed by the Hon'ble Trial Court restraining me from alienating item No. 5 of the suit schedule properties till the disposal of the suit, which I would respectfully abide.

4. I submit that under the above said circumstances, I am requesting this Hon'ble Court to permit me to complete the construction made in item No.5 of the suit schedule and in the event of the respondents



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succeeding in their claim for partition in respect of item No. 5 amongst other suit schedule properties, I would undertake that neither I would claim equities nor seek compensation in respect of the construction made on item No. 5 suit schedule properties."

(ii) Paragraph No.3 of the affidavit dated 24.08.2026:

"3. I submit the construction made by me which is near completion and which is stalled in pursuance of impugned orders as per Annexure A and B measures 25 feet X 33 feet, which is demarcated partially by stone slabs towards the south abutting the construction made and partially by wooden polls in an area 61 feet X 45 feet in item No.5 of the suit schedule property. I further undertake that I would confine the completion of construction work with in the above-mentioned area."

10. The aforesaid undertaking of the petitioners makes it clear that the construction put up by the petitioners is at their risk and they would not claim any equity nor seek compensation in respect of the construction made in Item No.5 of the suit schedule properties. Paragraph No.3 of the affidavit dated 24.08.2026 specifies the actual dimension of the structure.



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11. It is to be noticed that the petitioners can neither put up any further construction other than what is referred in the aforesaid affidavit nor claim any equity or damages in the suit. It is also to be observed that if the suit is decreed, the petitioners cannot claim any equity stating that the said property should be exclusively allotted to the petitioners only in view of the construction put up by the petitioners during the pendency of the said suit.

12. With the aforesaid observations, I proceed to pass the following:

ORDER

- i. The writ petition is ***disposed of***.
- ii. The order impugned order dated 10.11.2022 passed in M.A.No.15/2021 by the II Additional District and Sessions Judge, Chikkaballapura, sitting at Chintamani and the order dated 23.04.2021 passed on



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I.A.Nos.1 and 2 in O.S.No.41/2021 by the Senior Civil Judge and JMFC, Sidlaghatta, renders infructuous as the construction as per the affidavits and photographs is complete insofar as Item No.5 is concerned.

- iii. The petitioners are permitted to complete the plastering work, fix the doors and windows shutters and reside in the said premises.
- iv. The petitioners shall not occupy more than the aforesaid premises during the pendency of the suit and they should adhere to the aforesaid undertakings filed.
- v. Pending applications, if any, stand disposed.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE