



**IN THE COURT OF III ADDL. CIVIL JUDGE AND
JMFC AT BELAGAVI.**

**Presided Over by GURUPRASAD C. B.A.L., LLB.,
C/c. III Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 20th day of February 2025

ORIGINAL SUIT No.122/2025

Between:

Shri. Yallappa S/o. Shetyappa Iddhalhond,
Age: 55 years, Occ: Agriculture,
R/o: Yaramal Village, Post: Yallur,
Tal: Belagavi.

... PLAINTIFF

-AND-

Smt. Gangavva W/o. Yallappa Bangi,
Age: 70 years, Occ: Household work,
R/o: Yaramal village, Post yellur,
Tal: Belagavi and another

...DEFENDANTS

ORDERS ON I.A.No.I

Between:

Shri. Yallappa S/o. Shetyappa Iddhalhond,

... Plaintiff

(By Shri. M. N. Kulkarni, Advocate)

-AND-

Smt. Gangavva W/o. Yallappa Bangi and another

... Defendants

(By Smt. A. L. Heggannavar, Advocate)

ORDER ON I.A.No.I UNDER ORDER XXXIX RULE 1 AND 2
R/W SECTION 151 OF CPC

Plaintiff has filed this I.A. seeking an order of temporary injunction restraining the defendant from putting up construction over the suit till the disposal of the suit.

2. In the affidavit annexed to the application, it is averred that the plaintiff has filed the suit for declaration of title, possession, and injunction. The plaintiff is the owner in possession of 8 guntas of land in Sy.No.1/8. The defendant no. 1 was a widow. She requested a residence. As an old house was situated in the suit property, on a humanitarian consideration, the plaintiff has let defendant no. 1 reside in the suit house property without consideration on the condition that she should maintain the house in a tenantable condition. The defendant No. 1 is a permissive occupant of the suit property.

3. It is averred that the defendant no. 2, being the son of defendant no. 1, has manipulated the documents colluding with the Gram Panchayat officials, demolished the old house, and started to construct a new house without any authority. Therefore, the plaintiff was constrained to file the suit as well as IA.

4. The plaintiff has pleaded that he has a prima facie case, the balance of convenience lies in his favour, and

irreparable loss will be caused to him if the I.A. is rejected. Accordingly, he prayed to allow the application.

5. The defendant no. 1 had filed a caveat. Counsel for the caveator was served. Defendants had filed objections to I.A.No.I. In the objections, defendants have denied that the plaintiff is the owner in possession of the house property. They have denied that they are the permissive occupants of the house property. They have denied that they have illegally manipulated the documents and started construction on the property.

6. It is the case of the defendants that the father of the defendant no. 1 had purchased the property from its previous owner. The father of the defendant no. 1 had transferred the property in the name of the husband of defendant no. 1. After the death of the husband of defendant no. 1, the property was inherited by defendant no. 1. The gram panchayat records are standing in the name of defendant no. 1. She has constructed the house. Thereafter, she has transferred the property in favour of defendant no. 2.

7. It is further averred that the recent records of the property are standing in the name of defendant no. 2. He has taken a loan from various banks and authorities and started construction on the suit schedule property as the old house was in a dilapidated condition. The construction is completed

to a substantial level. The plaintiff, having no authority over the property of the defendants, has filed a false suit. If the injunction is granted, defendants will be put to great hardship. Accordingly, they prayed to dismiss the application.

8. Heard the counsel for plaintiff and defendants. Perused all materials available on record.

9. Now the points that arise for consideration are as follows;

1. Whether the plaintiff has made out a *prima facie* case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss will be caused to the plaintiff if the injunction is refused?
4. What order?

10. My answer to the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

REASONS

11. **POINT No.1:-** In order to show a semblance of right over the suit schedule property, the plaintiff relies upon the registered sale deed, wherein it is stated that the plaintiff has purchased from his family members, the property in Sy.No.1/8 measuring 8 guntas of land. RTC to the extent of 8 guntas of land is also mutated in the names of the plaintiff.

12. It is the plea of the plaintiff that defendant no.1 is a permissive occupant of a house situated in the property within 8 guntas of Sy.No.1/8. As the description of the property is specifically denied by the defendants, the plaintiff has to show the description of the property is prima facie correct.

13. As per the sale deed, on the east of the suit schedule property, the property of Rama Gireppa Patil is situated. The claim of the defendants is that their ancestors had purchased the property from Rama Gireppa Patil. They have also produced an unregistered sale deed to that extent. Though the title cannot be passed on an unregistered sale deed, as the said document is duly stamped, it can be made use of for a collateral transaction to know the boundaries or possession of the property.

14. The sale deed of the defendants would say that to the west of their property, the property of the plaintiff's family

is situated. The conjunctive reading of the sale deed of the plaintiff and defendants demonstrates that the property of the plaintiff and the property of the defendant are two distinct properties, and they are adjacent to each other. Therefore, prima facie, the plea that the defendants are constructing in the property of the plaintiff is hard to believe.

15. The suit property does not appear to be suitable for agriculture. It appears to be a developed property. The photographs would show that there are several houses adjacent to each other. There is a road on the southern side of the house of the plaintiff and defendants. Thus, the description of the suit property prima facie appears to be incorrect, doubtful, and inconclusive.

16. Apart from it, the plaintiff pleads that the defendant no. 1 is a permissive occupant. The sale deed of the plaintiff is of the year 2013, whereas the defendant No. 1 has documents to show that prior to 2013, she was in possession of her house property.

17. Defendant has produced Mandal Panchayat Imarat for the years 1989 to 1993, wherein the name of the father of defendant no. 1 is depicted. Gram Panchayat Imarat for the year 2002-03 up to 2017-18 depicts the name of defendant no. 1 in respect of house property. Further, it appears that the defendant no. 1 had applied for construction

of the house on her property under the Indira Awas Grameen Vasati Yojana, wherein the government has sanctioned the money for the construction of the house in the year 2009.

18. The learned counsel for the plaintiff would point out there is no mention of house number in the allotment order under Indira Awas Grameen Vasati Yojana. Though the house number is not stated in the sanction order, as the theory of the plaintiff itself is that the plaintiff has permitted defendant No. 1 to reside in the property as she had no other place to live, it cannot be believed that defendant No. 1 had another place and she had applied for a sanction of the amount to build the house in another property. Therefore, it is probable that defendant No. 1 was sanctioned the amount to build the house on the property in the year 2009.

19. The documents produced by the defendants would show that since 1988, their ancestors and defendants have been in possession of their house property, and in the year 2009, they built the house. Thus, the theory of the plaintiff after purchasing the property in Sy.No.1/8 in the year 2012, he has allowed defendant no. 1 to reside in the house property, is prima facie not believable.

20. There are certain points to be considered in this case after trial, such as the relationship of the plaintiff and defendants, permissive occupancy, legality of possession of

the parties, and entitlement of the plaintiff to have the reliefs. Therefore, there is a case for trial.

21. The prima facie case also depends upon the reliefs sought in the applications. The plaintiff has sought to restrain defendants from putting up the construction over the property. The plaintiff has admitted that the defendants are in possession of the property. The defendants have satisfactory documents to show that they are in possession of the property from 1988 and that they had built a house on the property. Therefore, I am of the opinion that for the purpose of this application, the plaintiff has no prima facie case. ***Accordingly, point No.1 is answered in the Negative.***

22. POINT NO.2 AND 3:- Since these points are interlinked with each other and they form part of same transaction, they are taken up together for common discussion to avoid the repetition of facts.

23. It is a sensible argument of the learned counsel for the plaintiff that if the construction is continued, it will lead to a multiplicity of proceedings, and if the plaintiff is able to succeed, the defendant will also be put into hardship and loss as the defendant has to hand over the possession of the property. Accordingly, he has submitted that it is appropriate to issue a temporary injunction restraining the defendants from putting up the construction.

24. The court has to weigh the inconvenience caused to the plaintiff and the defendants. The defendant has already started the construction; the photographs would show that the roofing of the building has been completed. The defendants appear to have no alternative accommodation. They have already demolished the old building and started construction of a new building. Under such circumstances, if the construction is stopped, the defendants will be thrown into the streets. It will be difficult for them to have an alternative accommodation till the completion of the suit. Therefore, stopping the construction will put the defendants into greater hardship and inconvenience.

25. The defendants have produced invoices for having purchased the materials for the construction of the building. The photographs would depict the constructions materials are laying in the site. It appears that the defendants have invested the huge amount of money for the construction of the building. Under such circumstances, if the defendants are restrained from putting up further construction, they will be put to heavy loss.

26. On the other hand, the plaintiffs have filed the suit for possession of the property. If the plaintiff succeeds, he will be getting the possession along with the building. It will be advantageous to the plaintiff if the construction is continued and completed. Furthermore, the defendants are

taking a risk by continuing the construction during the pendency of the suit. They cannot claim any equity at the end of the suit. Therefore, no hardship or prejudice will be caused to the defendants if the construction is continued.

27. It is the argument of the learned counsel for the defendants that the plaintiff is guilty of delay and laches; he has approached the court belatedly. Hence, he is not entitled to a temporary injunction. The above argument cannot be accepted in toto. There is no inordinate delay by the plaintiff. He has not approached the court at the eleventh hour. The construction, however, has reached the roof level. As the construction has been completed for a certain level, it is not appropriate to issue an order of temporary injunction restraining the defendants from further construction.

28. The decision relied upon by the learned counsel for the defendant of the Hon'ble Apex Court in the case of ***ECE Industries Limited Vs. S. P. Real Estate Developers*** reported in **AIR 2009 SC 2093** would come in handy to the defendants. It says that if a substantive construction has come up, defendants shall not be restrained from completing the construction. In view of the aforesaid ratio, I am of the opinion that construction shall not be stopped. Resultantly, the balance of convenience does not lie in favour of the plaintiff, and irreparable loss will be caused to the defendants

if an injunction is granted. ***Accordingly, Point no.2 and 3 are answered in the Negative.***

29. POINT No.4:- In view of the above discussion, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff
under order 39 rule 1 and 2 R/w.
Section 151 of CPC is hereby
dismissed.

For written statement.

Call on 25.03.2025.

(Dictated to the Stenographer, typed by her and the transcript revised and corrected by me and pronounced in the open Court, on this 20th day of February 2025).

(GURUPRASAD C.)
C/c. III Addl. Civil Judge & JMFC,
Belagavi.