

**IN THE COURT OF THE IV ADDL. CIVIL JUDGE & JMFC,
BELAGAVI**

**Present: SHRI. BASAVARAJA THULASAPPA NAYAKA,
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.**

Dated : This the day of 29th November- 2022.

O.S. NO.353/2022

Plaintiff/s : Shri. Jayawant S/o. Vasudev Nevageri.

(By Shri. P.S. Agasagi, Advocate)

-Vs.-

Defendant/s: Shri. Anand S/o. Mallappa Kolakar and another.

(By Shri. B.J. Gangai, Advocate)

I.A. No.I

Applicant/Plaintiff : Shri. Jayawant S/o. Vasudev Nevageri.

-Vs.-

Opponents/Defendants: Shri. Anand S/o. Mallappa Kolakar and another.

ORDERS ON IA. No.I U/O. 39 RULE 1 AND 2 R/W SECTION 151 OF CPC :

This is an application filed by the plaintiff with a prayer to grant an ad-interim temporary injunction to restrain the defendant No.1 and 2, their agents, servants or anybody acting on their behalf from encroaching over the suit property till the disposal of the suit.

2. Said application is accompanied with an affidavit sworn by the plaintiff, wherein it is stated that Gavatana property bearing parade No.10 was belonging to Hulaji family situated within the limits of Ganeshpur village. The parade No.10 was totally measuring 06 guntas and same was divided among three family members of the Hulaji in the family partition and the present suit property was allotted to Nago @ Nagoji Hulaji who sold the property in his favour through registered sale deed dated 30.12.2002 and his vendor had handed over the possession of the same. After purchase, he had constructed the RCC building measuring 1440 Sq.fts in the suit property and left the remaining property as open. The defendants without having any right, title and interest over the suit property tried to encroach upon the southern side of the suit property in the first week of March-2022. He requested the defendants not to encroach upon his property, but the defendants threatened him that they will take the possession of the suit property by hook and crook. Further the defendant No.1 without having any right over the suit property executed sale deed in favour of defendant No.2 and on the basis of the fake document, the defendants are trying to encroach upon the said property. The defendant No.1 being a influential person had managed the Gram Panchayat and created bogus entry in respect of the gavatana property and claiming the property on the basis of bogus entry and trying to disturb their peaceful possession over the

suit property. Further the defendants without obtaining the necessary permission from the competent authority trying to put lay out over the gavatana property by encroaching public road and other properties of the public at large. The residents of Ganeshpur have approached the Deputy Commissioner, Belagavi and requested the authority to stop the illegal activity of the defendants, but the authority failed to take any action. Hence, he along with his family members approached the police, but the police have informed that the matter is of civil in nature. The defendants have visited the suit property along with their henchmen and warned him that they will take the possession of the suit property high-handedly and dispossess them from the suit property. He has got a prima-facie case and balance of convenience leans in his favour. If the application is not allowed, he will be put to untold hardship and great loss. On the contrary, the defendants will not be put to any loss or hardship, if the application is allowed. Hence, prayed to allow the application.

3. The defendants have resisted said application by filing objection, wherein they have denied the contents of the application as false and frivolous. It is contended that the plaintiff has not come to the Court with clean hands and suppressed the material facts. Further the description of the subject matter of the suit are incorrect. The plaintiff has not specifically pleaded what was the extent of alleged

encroachment over the suit property. Further contended that they have not made any attempt to encroach over the suit property at any time and even they have not undertaken any construction and also not stored any building materials for construction. They are the absolute owners and in peaceful possession and enjoyment of the property bearing parade No.54 measuring 21 guntas and the same is situated abutting to the southern side of the suit property. The name of defendant No.1 is authorizedly mutated in the revenue records and said parade comes within the gavatan area and it is reserved for residential purpose. The defendant applied to the panchayat authorities for mutating his name in respect of parade No.54 in the records of Gram Panchayat, Benkenhalli. The Panchayat authorities have visited the spot and prepared the computerized extract in respect of parade No.54 of Benkenhali village and authorizedly mutated the names of the defendant No.1. Further it is contended that the parade No.5 was originally owned by one Yallayya @ Yallappa S/o. Shattaiyya @ Shattyappa Kolkar who bequeathed the said parade No.54 under a Will in favour of Mallappa Durgappa Kolkar in a sound disposing state of mind and the said Will was scribe by registered bond writer and attested by two witnesses and after the death of Yallappa Kolkar, the name of the beneficiary i.e Mallappa Durgappa Kolkar was mutated on 30.11.2016. Thereafter, said Mallappa Durgappa Kolkar has

relinquished his all right, title and interest in parade No.54 in favour of his son Anand Mallappa Kolkar i.e the defendant No.1 under a registered relinquishment deed dated 10.05.2019. The plaintiff in collusion with other neighbours have filed many false suits against them in respect of parade No.54 just to harass and grab the said property. The plaintiff has not made out any prima-facie case and balance of convenience does not lean in his favour. Hence, prayed to reject the application.

4. Heard arguments and perused the records.

5. On perusal of the pleadings, documents and application, the points that arise for my determination are;

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction ?

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

3. Whether the plaintiff proves irreparable loss will be caused more to her, if temporary injunction is not granted ?

4. What order ?

6. My answer on above points is as follows;

Point Nos.1 to 3 : In the Negative.

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

REASONS

7. **Point No.1 to 3**:-These points are taken up together for discussion to avoid the repetition as they require same set of pleadings and documents.

The plaintiff has filed the present suit against the defendants seeking permanent injunction in respect of the suit schedule property. The present application is filed by the plaintiff seeking to restrain the defendants from interfering with his possession over the suit schedule property. The plaintiff contend that the suit property open plot out of the property bearing parade No.10 VPC No.350/A measuring 16' X 136'. It is the case of the plaintiff that the suit property bearing No.10 VPC No.350/A measuring 16' X 136' purchased by him through the sale deed on 30.12.2012. the property bearing parade No.10 originally belonging to Hulaji family which is situated within the limits of Ganeshpur village and rest of the gavatana property was owned and possessed by other villagers. The Parade No.10 was totally measuring 6 guntas and suit property was divided among three family members of the Hulaji and the suit property was allotted to one Nago @ Nagoji Hulaji. The said person sold the suit property to the plaintiff vide sale deed dated 30.12.2002. After purchase, the plaintiff constructed RCC building measuring 1440 Sq.fts and left remaining property as open. Further contend that the defendant who are not having any right, title

and interest over the suit property trying to encroach upon southern side of the suit property. The defendant No.1 without having any right, title and interest over the suit property has executed sale deed in favour of defendant No.2 and on the basis of sale deed, the defendants are trying to encroach upon the suit property. Further contend that the defendants in order to grab the property of the plaintiff trying to fix boundaries by encroaching upon the suit property. Further contend that the defendants are trying to put lay out over the gavatana property by encroaching the public road and other properties of the public at large. Further contend that the defendant colluding with the panchayat created documents. On the other hand, the defendants filed objections and denied the averments of the plaint. Further denied the description of the suit property,. Further denied that they are trying to encroach the suit property. The defendants contend that property bearing Parade No.54 measuring 21 guntas is situated abutting to the southern side of the suit property. The name of the defendant No.1 is authorisedly mutated in the revenue records by the revenue authorities. Further coantend that the Parade No.54 was originaly owned by one Yallaiyya @ Durgappa Kolkar who bequeathed said Parade No.54 under Will in favour of Mallappa Durgappa Kolkar. The name of Mallapa Durgappa Kolkar was mutated as per MR. No H23/2016-2017 dated 30.11.2016.

further, said Mallappa has executed relinquishment deed in respect of parade No.54 in favour of his son Anand Mallappa Kolkar.

8. The plaintiff in support of his case relied on copy of the sale deed, photos, panchayat extract issued by the Gram Panchayat and RTC. On the other hand, the defendants relied on the RTC, Panchayat extract, relinquishment deed and photos.

9. The plaintiff has produced the copy of the sale deed and VPC and RTC extract to show that the parade No.10 measuring 6 guntas was originally in the name of Hulaji family . Further relied on the sale deed to show that he has purchased the property measuring 16' X 136' from Nagoji and further relied on VPC extract. On the other hand, the defendant placed before the Court RTC of Parade No.54 and panchayat extract to show that parade No.54 was earlier in the name of Yallaiyya @ Yallappa S/o. Shatetaiyya @ Shattyappa Kolkar. Thereafter, the parade No.54 mutated in the name of Kolkar Mallappa Durgappa. In this regard placed before the court Panchayat extract and RTC. Further placed before the Court the relinquishment deed executed by Mallappa Durgappa Kolkar in favor of the defendant no.1. It is pertinent to note that the defendant contend parade 54 is situated next to the southern side of the suit property. On perusal of document of the defendant, it appears that the parade No.54 is standing in the name of defendant No.1. Whereas the suit property is standing in the

name of the plaintiff. It is pertinent to note that the defendant placed before the Court photos to show that he has put up fence with respect to his property. It is pertinent to note that the defendant has placed before the Court the document pertaining to parade No.54 to show that the said property in the name of the defendant no.1. The plaintiff claims that he has put up building measuring 1440Sq feet to show the same no material is placed before the court. The The plaintiff on the one hand contend that the defendant trying to encroach the suit property and on the other hand contend that the defendant is trying to encroach the public road and other properties of public at large. But to show the same no material is placed before the court. Further the photo produced by plaintiff does not prima facie show that the defendant is trying to encroach the suit property. On the contrary the defendant placed before the court the photos to show that, he has put fence in his property . Hence, I am of the opinion that at this stage plaintiff has not made out prima-facie case to grant temporary injunction as sought in the application. Further the balance of convenience does not lie in favour of the plaintiff and the plaintiff failed to show that he would be put to irreparable hardship and injury. Hence, I answer, Point No.1 to 3 are in the ***Negative.***

10. **Point No.4:-** In view of above discussion, I proceed to pass the following;

ORDER

***IA No. 1 filed by the plaintiff U/O. 39 Rule 1 and
2 R/w sec. 151 of CPC is hereby rejected.***

No order as to cost.

***(Dictated to the Judgment Writer directly on computer, corrected and then
pronounced by me in the open Court on 29th day of November, 2022)***

**(BASAVARAJA THULASAPPA NAYAKA)
IV Addl. Civil Judge & JMFC,
BELAGAVI.**

