

KABG040008742019



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 19TH DAY OF DECEMBER-2025
ORIGINAL SUIT NO.392/2019

PLAINTIFFS :

1)	Shri. Arjun S/o. Govind Waddar @ Kagalkar & others.
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Vs.

DEFENDANTS :

1)	The Chairman, Sanmati Shikshan Sahakari Samiti Ltd., Belagavi & another.
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PARTIES TO I.A.NO.III

Applicant/Defendant No.1 :

1)	The Chairman, Sanmati Shikshan Sahakari Samiti Ltd., Belagavi.
	(By Shri. S. S. Mirji, Adv.)

Vs.

Opponents/Plaintiffs :

1)	Shri. Arjun S/o. Govind Waddar @ Kagalkar & others.
	(By Shri. P. K. Bagi, Adv.)

ORDER

The defendant No.1 has filed I.A.No.III U/O.II Rule 2 of C.P.C. praying this Court to dismiss the suit of plaintiffs as it is not maintainable in view of bar under Order II Rule 2 of C.P.C.

2. In the affidavit annexed to the application, the defendant No.1 has stated that the plaintiffs have filed the present suit for the relief of declaration to declare that they are owners of suit property, directing the defendants to demolish compound wall and for possession of portion of suit property. That the present plaintiffs earlier filed suit in O.S.No.902/2009 for permanent injunction against these defendants to restrain them from interfering in plaintiffs' possession over the suit property. In the said suit, the defendant No.1 denied ownership of plaintiffs by filing written statement and contended that the defendants are owners of suit property. It is further stated that the alleged ownership of plaintiffs over suit property was denied, but the plaintiffs did not seek declaration of ownership over the suit property and mandatory injunction for removal of compound wall

though the compound wall exists since many years. During the trial in earlier suit, the plaintiffs led evidence, but on conclusion of trial, the plaintiffs realized that they cannot succeed in the said suit and hence they have filed the present separate suit seeking the relief of declaration, mandatory injunction and for possession without withdrawing the suit in O.S.No.902/2009. The plaintiffs continued with both the suits and the suit in O.S.No.902/2009 came to be dismissed on merits on 13.02.2020. The plaintiffs did not have any difficulty to seek all the reliefs in the suit filed in O.S. No.902/2009 and they did not withdraw the said suit also. That therefore the plaintiffs cannot maintain present suit seeking the reliefs which should have been sought in O.S.No.902/2009. The parties to the present suit and in O.S.No.902/2009 are same and the subject matter i.e., the suit property is also same and therefore the present suit is hit by Order II Rule 2 of C.P.C. which bars the jurisdiction of this Court in entertaining the present second suit. Hence, the present suit is not maintainable and it deserves to be dismissed. On these grounds, the defendant No.1 has prayed to dismiss the suit as not maintainable.

3. On the other hand, the counsel for plaintiffs has filed objection to the said application on the ground that the cause of action for filing the suit in O.S.No.902/2009 for permanent injunction was altogether different from the cause of action for

filing the present suit in O.S.No.392/2019. The earlier suit i.e., O.S.No.902/2009 was filed by the present plaintiffs for permanent injunction against the defendants to restrain them from interfering with the plaintiffs' peaceful possession and enjoyment of suit property. That as such the plaintiffs had been in possession and enjoyment of suit property when the suit in O.S.No.902/2009 was filed. Since the defendants were simply interfering and disturbing the peaceful possession of plaintiffs in the suit property, the suit for permanent injunction simplicitor was filed. It is further stated that after filing the said suit, the defendants started claiming ownership over the suit property, but infact the property of defendants is situated behind the suit property. That the defendants only with an intention to include the suit property in their property, started asserting ownership rights over the suit property. That therefore the plaintiffs filed the present suit in O.S. No.392/2019 against the defendants for the relief of declaration that the plaintiffs are owners of the suit property and for mandatory injunction directing the defendants to demolish the compound wall and half constructed structure constructed by them by encroaching part of the suit property and the plaintiffs have also sought possession of suit property which is encroached by the defendants. It is further stated that the plaintiffs could not have incorporated all the above facts by way of amendment as the very nature of suit in O.S.No.902/2009 was different and it

would change if any amendment was incorporated therein. That the present suit is a comprehensive suit for declaration, mandatory injunction and possession, by which the right of plaintiffs will be decided once for all. It is further stated that the present suit is not hit by Order II Rule 2 of C.P.C. and it is not barred under Order II Rule 2 of C.P.C. That the contention taken by the defendants that the compound wall existed since many years and the plaintiffs could have sought for declaration and mandatory injunction in the earlier suit is not correct and that the plaintiffs submitted their evidence on affidavit on 22.11.2022 and the documents at Ex. P.1 to Ex. P.5 were got marked and the case stood posted for cross-examination. On 01.08.2023, the defendants have filed the present application and as such it is filed at a belated stage in order to cause wrongful loss to the plaintiffs. On these grounds, the plaintiffs have prayed to reject the application.

4. Heard arguments of both sides.

5. The following point arises for my consideration.

i) Whether the defendant No.1 has made out sufficient grounds to allow I.A. No.III filed U/O.II Rule 2 of C.P.C ?

ii) What order ?

6. My findings to the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per final order for the following :

REASONS

7. **Point No.1 :** The present suit has been filed by the plaintiffs seeking the relief of declaration that the plaintiffs are the owners of suit property i.e., open land measuring North-South 330 feet on western side and 300 feet on eastern side and East-West 20 feet on northern side and 270 feet on southern side out of R.S.No.1393/A/2A measuring 19 Guntas 1 Anna at Ramnagar, Belagavi and also mandatory injunction directing the defendants to demolish the compound wall and half constructed structure in the portion shown by letters BCDE in hand sketch and to direct the defendants to hand over the possession of the portion measuring 130 feet North-South on western side, 110 feet North-South on eastern side, 125 feet East-West on northern side and 270 feet East-West on southern side as shown in the hand sketch and consequential relief of permanent injunction against the defendants. When the case stood posted for defendant evidence, the defendant No.1 has filed the present application under Order II Rule 2 of C.P.C. on the ground that the suit is not maintainable and it is hit by the provisions of Order II Rule 2 of C.P.C.

8. According to defendant No.1, the plaintiffs had opportunity to seek all the reliefs sought in the present suit, in the earlier suit filed by the plaintiffs against the defendants herein in O.S. No.902/2009 which was a suit for mere permanent injunction. The defendant No.1 has contended that the defendants herein had denied the ownership of plaintiffs in earlier suit bearing O.S. No.902/2009 by filing written statement in that suit and the defendants had taken contention in the said suit that they are owners of suit property. That as such, the alleged ownership of plaintiffs over the suit property was denied and also the compound wall in relation to which mandatory injunction is sought in the present suit, is existing since many years. It is further contended by the defendant No.1 that though the aforesaid contentions were taken by the defendants in the earlier suit itself and the ownership of plaintiffs over suit property was also disputed in the earlier suit, the plaintiffs did not seek the relief of declaration, mandatory injunction and possession in the said suit and hence the present suit which is filed in the year 2019 in respect of same suit property and between the same parties, is barred by the provisions of Order II Rule 2 of C.P.C.

9. In light of aforesaid contentions taken by the defendant No.1, it is pertinent to note that Order II Rule 2 of C.P.C. states that every suit shall include the whole of the claim which the

plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. It further provides that where a plaintiff omits to sue in respect of, or relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It further states that a person entitled to more than one relief in respect of same cause of action may sue for all or any of the reliefs but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Therefore, the reading of the said provision makes it clear that the plaintiff must seek all the reliefs to which he is entitled to in respect of same cause of action and once he omits any relief to which he would be entitled to in respect of same cause of action, he shall not seek such relief afterwards. It also provides that if the plaintiff would have sought the leave of the Court to seek the omitted relief at a later stage, then only the plaintiff can seek such relief afterwards.

10. The defendant No.1 herein has filed the copy of plaint in O.S.No.902/2009 which was filed by the present plaintiffs against the defendants herein seeking the relief of permanent injunction to restrain the defendants from interfering with plaintiffs peaceful possession and enjoyment over suit property. The suit property therein was NA land bearing 1393/A/2A measuring 19 Guntas 1

Anna at Ramnagar, Belagavi. Whereas, the suit property in the present suit is portion of said 19 Guntas 1 Anna and it is described as open land measuring North-South 330 feet on western side, North-South 300 feet on eastern side, East-West 20 feet on northern side and East-West 270 feet on southern side. The reading of the provisions of Order II Rule 2 C.P.C. makes it crystal clear that at the time of filing the suit the plaintiff should be entitled to make such claim in respect of cause of action and only then he can seek all the reliefs at the same time in one suit. The cause of action for filing the earlier suit in O.S.No.902/2009 as can be seen from the plaint in that suit had arisen in July 2009 when the defendants restrained the plaintiffs from storing the stones and from parking their trucks in the suit property and thereby interfered with plaintiffs' peaceful possession and enjoyment of suit property. It is pertinent to note here that in O.S. No.902/2009 it was not the case of plaintiffs that the defendants had made any encroachment in any portion of suit property i.e., entire 19 Guntas 1 Anna of R.S.No.393/A/2A of Ramnagar, Belagavi and it was also not the claim of plaintiffs that the defendant No.1 was asserting their title over the suit property. Instead, it was only the case of plaintiffs then that the defendants with an oblique motive to grab some portion of suit property from the plaintiffs abutting north-south tar road, were trying to interfere with the peaceful possession and enjoyment of suit property by

the plaintiffs. Further, the perusal of written statement filed by the defendants in that suit also makes it clear that the defendants had not mentioned anything regarding the presence of compound wall or regarding the construction of compound wall by the defendants in the suit property. No doubt, the defendants have stated in Para-10 of their written statement in O.S.No.902/2009 that the suit was not maintainable without seeking the relief of declaration. But however, since it was not the case of plaintiffs that their title was denied at the time of filing the earlier suit, they have filed a bare injunction suit without seeking any further relief.

11. It is also pertinent to note that in the plaint of this suit (O.S. No.392/2019) at Para-5, the plaintiffs have stated that the suit property which is in semi triangular shape is owned by the plaintiffs, but the defendants with an intention to grab some portion of suit property, have constructed compound wall in the suit property in the area measuring 130 feet North-South on western side, 110 feet North-South on eastern side, 125 feet East-West on northern side and 270 feet East-West on southern side in the month of November 2018. As such, it is clear that it is the case of plaintiffs that the defendants started constructing or that they have constructed the compound wall in the suit property only in the month of November 2018. Even at Para-5 of the plaint the plaintiffs have clearly stated that the cause of action to file the

present suit arose in the month of November 2018 when defendants constructed compound wall and also started constructing some structure within the compound wall and asserted their ownership right over the same. Such being the case, and also since the defendants had not pleaded anything regarding existence of compound wall in their written statement in O.S.No.902/2009, the plaintiffs could not have sought the relief of declaration to declare their title over suit property and also the relief of mandatory injunction to direct defendants to demolish the compound wall and to hand over the suit property to plaintiffs, in the year 2009 when they filed the earlier suit since the cause of action had not arise at that point of time to seek the said reliefs in that suit. When according to plaintiffs, the defendants have constructed compound wall in the year 2018, they could not have sought the aforesaid reliefs in the earlier suit which was filed in the year 2009 and decided in the year 2020. In this regard, the learned counsel for plaintiffs has relied on the decision of the Hon'ble Apex Court in **Union of India Vs. H. K. Dhruv reported in (2005) 10 SCC 218**, wherein it is held that *the cause of action on which the subsequent claim is founded should have arisen to the claimant when he sought enforcement of his first claim before any Court if it has to attract the bar under Order II Rule 2 of C.P.C.* The aforesaid discussion also makes it clear that, in the present case also, the cause of action on which the subsequent

claim of plaintiffs for the relief of declaration, mandatory injunction and possession is founded, had not arisen to the plaintiffs when they sought enforcement of their first claim in O.S.No.902/2009 which was filed for permanent injunction.

12. The aforesaid decision is aptly applicable to the case on hand and it comes to the aid of plaintiffs since the cause of action to file earlier suit for permanent injunction and the present suit for declaration, mandatory injunction and possession are independent and one cannot include the other and vice versa. When the reliefs claimed in both suits are not identical, when causes of action to sue are separate, when factual ingredients necessary to constitute respective causes of action for both reliefs are different, then it is not possible to claim both reliefs together on one cause of action. In this regard, the learned counsel for plaintiffs has also relied on the decision of the Hon'ble Apex Court in **Sucha Singh Sodhi (D) their LRs Vs. Baldev Raj Walia and another** reported in **AIR 2018 SC 2241** wherein it is held that *when both suits are founded on different cause of action and reliefs claimed are different, the bar under Order II rule 2 CPC is not applicable*. The said decision also comes to the aid of plaintiffs and it makes it clear that the present suit is also not barred by the provisions of Order II Rule 2 C.P.C. As such, the defendant No.1 has not made out any grounds to allow the

present application. Accordingly, this Court answers point No.1 in the Negative.

13. Point No.2 : For the forgoing reasons, this Court proceeds to pass the following:

ORDER

***The application i.e., I.A.No.III filed by
the defendant No.1 U/O.II Rule 2 of C.P.C is
hereby dismissed.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 19th day of December-2025.)

**Prl. Civil Judge & J.M.F.C,
Belagavi.**