

KABG210003342024



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC., ATHANI

PRESENT

SRI. ONKARAMURTHY H.,

B.Com., L.L.B.,

Prl. Civil Judge & JMFC., Athani

Dated this the 4th day of July, 2025

OS No. 133/2024

1. Smt.Sujata D/o Madhukar Badigear.

..... Plaintiff

V/S

1. Sri. Hanmanat Ramu Badigear.

.....Defendant

I.A. No.I

1. Smt.Sujata D/o Madhukar Badigear.

Applicant/ Plaintiff

(Represented by Sri. M.L.Pujari. Advocate)

V/S

1. Sri. Hanmanat Ramu Badigear.

Opponent/Defendant

(Defendant Represented by Sri. K.H.Awati , Advocate)

**ORDER ON I. A. I FILED U/ORDER XXXIX RULE 1
AND 2 OF C. P. C BY THE PLAINTIFF.**

1. This is an application filed by the plaintiff Under Order 39 Rule 1 and 2 of CPC seeking for grant of temporary injunction to restrain the defendant from unlawful destroy the compound wall which existed at Southern side of the suit property and illegally interference by the defendants till pending disposal of the case. The application is supported with the affidavit of the plaintiff.

2. In the annexed affidavit to the application it is stating that, the vacant site property bearing GPC No.24 measuring to an extent of 20x20 feet is granted in favour of plaintiff and Kokatnur Panchayat has been issued grant certificate dated: 30-03-1991 in favour of the plaintiff and she having peaceful possession and enjoyment of the said property from the date of grant as its

absolute owner. And she forming 4 feet compound wall around the suit property. Even the defendant is not having any right, interest and possession of the suit property he colluded with Panchayat officials and creating RTC as GPC.No.1210/C/2. But there is no any land as stated in the RTC. But the defendant was filed a suit before 3rd Addl.Civil Judge Court as O.S.No.992/2023 and got compromise decree and the said decree is not binding on the plaintiff. But the defendant taken undue advantage of said decree, they try to encroach and destroy the compound wall which existing at Southern side of suit land. Thereby defendants are try to interfere with peaceful possession of the plaintiff over the suit schedule property. Therefore, plaintiff has been lodged complaint before the Aigali police station and she submit an application before Panchyat Development officer and the Executive Engineer of Taluk Panchayat. Even though said officers are not taken any action against the defendant and the defendant is not ready to stop his unlawful interference. Further the

Plaintiff submitting that she having prima-facie case and balance of convenience if the temporary injunction is not granted in his favour he put irreparable loss. Hence the plaintiff pray for grant temporary injunction against the defendant till the disposal of the suit.

3. Per contra, on the other hand the defendant appeared through his counsel and filed written statement along with memo as pray for treat his written statement as objection to the above said application. where in he denied the entire averment of the plaint or affidavit. And contending that, the property No.1210/C/2 a house property along with vacant space situated at Desairatti village of Athani Taluk is belongs to the defendant. And same is originally belongs to his sister by name Smt.Bagavva Nagappa Badigear. And the khata of the said property is transferred into the name of defendant with the consent of his sister and as per resolution order No.3/32 dated: 29-03-2003. and the defendant has

constructed a house and he residing with his family members in the said house and he paying up to date tax to the government. Further contending that, the plaintiff has filed this vexatious suit against the defendant only with an intention to give harassment to the defendant. Hence he pray for rejection of the application.

4. On the basis of above said rival contention of the parties material on record the following points would be arises for my consideration:-

1. Whether the plaintiff has made out a prima facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable loss or injury, if the application is not allowed?
4. What order ?

5. Heard, both the counsels, perused the materials on record.

6. My answer to the above said points are;

Point No.1 to 3 : In the Affirmative.

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

REASONS

7. Point No. 1 to 3: These points are inter linked with each other hence they are taken together for avoiding the repetition of the facts and circumstances of the case. On perusal of material placed on record, it is clearly comes to know that, the present suit filed for the relief of declaration and permanent injunction. The Plaintiff is seeking for restrain the Defendant from not to encroach and interfere the peaceful possession of the plaintiff in the suit schedule property.

8. It is well settled principals of law held that for grant of temporary injunction three factors have to be satisfied which are prima-facie case, balance of convenience and

irreparable loss. Having regard the facts of the case The Plaintiff submitting that plaintiff is owner and having possession and enjoyment of property bearing GPC.No.24 measuring to an extent of 20x20 feet and same is granted in favour of plaintiff and Kokatnur Panchayat has been issued grant certificate dated: 30-03-1991 in favour of the plaintiff and she having peaceful possession and enjoyment of the said property from the date of grant as its absolute owner. And she forming 4 feet compound wall around the suit property. Even the defendant is not having any right, interest and possession of the suit property unnecessarily he try to encroach at southern side of said site property.

9. On the other hand the defendant contending that, the property No.1210/C/2 a house property along with vacant space situated at Desairatti village of Athani Taluk is belongs to the defendant. And same is originally belongs to his sister by name Smt.Bagavva Nagappa Badigear.

And the khata of the said property is transferred into the name of defendant with the consent of his sister and as per resolution order No.3/32 dated: 29-03-2003. and the defendant has constructed a house and he residing with his family members in the said house and he paying up to date tax to the government

10. In view of the above discussion and on perusal of material it is clearly comes to know that, the Khata of suit property is stands in the name of plaintiff. The other material which submitted by the plaintiff I.e, the application submit before the Panchayat and Executive Engineer Taluk Panchayat and endorsement issued by said officers are discloses that, there is dispute between the plaintiff and defendant in respect of suit schedule property and same are shows that, the alleged interference by the defendant. Further it is comes to know that the property belongs to the plaintiff and defendant are entirely different and there is no material submitted by the defendant to show that, he having any right, interest title

and possession of the suit property. Further the contention of defendant can be consider after trial. Now court should see that whether there is prima facie case and balance of convenience lies on whom. In view of above discussion, it is comes to know that, the plaintiff having having prima-facie case and balance of convenience, if TI is not granted in her favour it is caused irreparable loss to her. Hence the plaintiff is absolutely made out grounds to allowing this application. **Accordingly I answered Point No.1 to 3 in the Affirmative.**

11. Point No.4: In lights of forgoing discussions, I proceed to pass the following;

ORDER

The application filed by the plaintiff U/o XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendant is restrained from encroachment of suit schedule property in any manner and also restrain from interfering with the peaceful possession of

the suit schedule property of the plaintiff
till disposal of the suit.

Under the circumstances no order as to
the costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me
and then pronounced in the open Court on **4th day of July 2025**)

(Sri. Onkaramurthy.H)
Prl. Civil Judge & JMFC.,
Athani.

(Order pronounced in the open court, vide separate order)

ORDER

The application filed by the plaintiff U/o XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendant is restrained from encroachment of suit schedule property in any manner and also restrain from interfering with the peaceful possession of the suit schedule property of the plaintiff till disposal of the suit.

Under the circumstances no order as to the costs.

(Sri. Onkaramurthy.H)
Prl. Civil Judge & JMFC.,
Athani.