

IN THE COURT OF THE IST ADDL. CIVIL JUDGE & JMFC., ATHANI

PRESENT

**Sri. Prashanth Nagalapur,
B.B.A., LL.B.,
Ist Addl. Civil Judge & JMFC., Athani**

**Dated this the 19th day of July, 2022
O.S. No. 623 / 2021**

1. Sri. Annappa Basagouda Patil, Age: 38 years, Occ: Agri., R/o. Gundewadi, Tal: Athani, Dist Belagavi & Anr.

...Plaintiffs

(By Sri. C.P. Hachibatti, Advocate)

V/s.

1. Smt. Vidyashri Kakasab Jatti, Age: 40 years, Occ: H.H. work, R/o. Gundewadi, Tal: Athani, Dist Belagavi.
2. Sri. Kakassab Mallappa Jatti, Age: 45 years, Occ: Agri., R/o. Gundewadi, Tal: Athani, Dist Belagavi & Ors.

...Defendants

**(Deft.No.1 and 2 by Sri. S.G. Pujari, Advocate
Deft.No.3 to 5 and 7 by Sri. P.S. Nandagaon, Advocate
Deft.No.6 by Sri. S.R. Patil, Advocate)**

I.A. No.I

1. Sri. Annappa Basagouda Patil, R/o. Gundewadi, Tal: Athani, Dist Belagavi & Anr.

...Applicants/Plaintiffs.

V/s.

1. Smt. Vidyashri Kakasab Jatti, R/o. Gundewadi, Tal: Athani, Dist Belagavi.
2. Sri. Kakassab Mallappa Jatti, R/o. Gundewadi, Tal: Athani, Dist Belagavi & Ors.

..Opponents/Defendant No.1 & 2.

ORDER ON I.A. NO.I

The plaintiffs have filed this application, seeking temporary injunction against the defendants No.1 and 2 from causing destruction of the bund which is shown as ABJI and cutting the Neem and Tamarind tree which are shown as T1 to T3 in the hand sketch annexed to the plaint and situated in the suit property which is shown as "ABCD".

2. In the affidavit accompanying affidavit, the plaintiff No.1 has stated that the present suit is for permanent injunction against the defendants and he is aware of the facts of the case. He has further stated that they are in possession and enjoyment of the land Sy.No.40/1 of Gundewadi Village. They have contended that there exists a bund towards western edge of the said land over which two Neem trees and one tamarind tree are grown. The plaintiffs have

shown the said bund as ABJI and trees as T1 to T3 in the hand sketch map annexed to the plaint. They have further contended that there is a house and water tanks belonging to them abutting to the said bund. They have further contended that their family has been residing in the said house for a long time. They have further contended that there is an XY road which runs from West to East passing through the land of the defendants No.1 and 2 in Sy.No. 35/5, which is abutting to the ABJI bund on western side. The plaintiffs have shown the land of the defendants as EFDAG in the hand sketch map annexed to the plaint. They have contended that the defendants No.1 and 2 have purchased the land Sy.No.35/5 from its previous owner in the name of defendant No.1 on 24.9.2019. They have further contended that they have been possession and enjoyment of the ABCD land for a long time. They have also contended that they have planted Banana crops in the South - West corner of the land about 3 years ago spending huge amount of money. They have further contended that the defendants have got no manner of right over the existing bund and the trees shown in the hand sketch. They have alleged that the defendant No.1 at the instigation of ill-wishers, have been threatening and attempting to

create new rights over the bund and cut the trees which are grown on the bund. They have alleged that the defendants have refused to stop their illegal acts. They have alleged that the defendants are trying to destroy the bund and cut the trees with the help of politically influenced persons. They have contended that having no other options, they have come before the court filing this suit for permanent injunction. Therefore, the plaintiffs have sought an order of temporary injunction against the defendants No.1 and 2 with respect to the existing bund and trees till disposal of the suit.

3. The defendants No.1 and 2 have filed written statement and adopted the contents of written statement as their objection to I.A. The defendant No.1 and 2 have admitted the fact that the plaintiffs and the defendants No.3 to 7 have inherited the land Sy.No.40/1 after the death of their father. They have also admitted that the plaintiffs are in possession and enjoyment of the land Sy.No.40/1 of Gundewadi Village. They have also admitted that they are in possession and enjoyment of the land Sy.No.35/5 of Gundewadi Village, which has been purchased by them from its previous owner in the name of

defendant No.1. The defendants have denied all the other material averments made in the plaint and affidavit filed by the plaintiff No.1 as false and incorrect. They have contended that the hand sketch map drawn and annexed to the plaint is not correct. They have specifically contended that the said hand sketch map is not in accordance with the revenue records. The defendants No.1 and 2 have given their own hand sketch map annexed to the written statement and claimed it to be true and correct. They have further contended that there is a bund existing in their land and the trees on the said bund have grown naturally. They have specifically contended that the bunds and trees do not belong to the plaintiffs. They have contended that they have got exclusive rights over the bund and trees. They have contended that the plaintiffs have got no rights over the said bund and trees. They have further contended that they have not caused any interference or obstruction as alleged by the plaintiffs. They have alleged that the plaintiffs have filed false suit against them in order to harass them. The defendants sought an order to dismiss the application.

4. I have heard the counsel for plaintiffs and defendant No.1 and 2 on I.A.No.1 and perused the material available on record.

5. The following points arise for determination:-

- 1) Whether the plaintiffs have made out *prima-facie* case for the purpose of application?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) Whether the plaintiffs would suffer irreparable loss or injury, if the application is not allowed?
- 4) What Order?

6. My answer to the above points are as under:

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

7. **Point No.1:** The plaintiffs have contended that they are in possession and enjoyment of the land Sy.No.40/1 of Gundewadi Village of Athani taluk. They have also contended that the defendants No.1

and 2 are in possession and enjoyment of the land Sy.No.35/5 of Gundewadi Village of Athani taluk. The plaintiffs and defendants No.1 and 2 have produced the RTC's pertaining to the said properties. As per the RTC's and mutation registers, the plaintiffs are in possession of the land Sy.No.40/1 of Gundewadi Village and the defendants No.1 and 2 are in possession of the land Sy.No.35/5 of Gundewadi Village. There is no dispute with respect to the possession of the parties over the said properties.

8. The plaintiffs have contended that the land of the defendants is situated towards West of their land. They have specifically contended that there exists a bund between the land of the defendants No.1 and 2 and their land. The defendants No.1 and 2 have admitted the fact that their land is situated towards West of the land of the plaintiffs. They have also admitted the existence of bund between the land of the plaintiffs and their land. However, the defendants have specifically contended that the said bund is created by their vendor and the same is situated in their land. The defendants have specifically contended that the plaintiffs have got no right over the bund, which is allegedly

existing in their land. The plaintiffs have contended all the way that the bund is existing in between the land of the defendants and their land. The moot question that remains for determination is whether the bund is situated between the lands of the parties or situated in the land of the defendants as claimed by them. The said question cannot be answered and no opinion can be given touching the said question while dealing with the present application. The said question shall be determined only after the full fledged trial. With this clarity of facts, I proceed to discuss the merits of the present application taking the *prima facie* material into consideration.

9. The plaintiffs have pleaded that they have got rights over the bund which is described as ABJI in the hand sketch map. They have also pleaded that the trees T1 to T3 which are existing over the said bund belong to them. On the other hand, the defendants contend that they have got rights over the bund as it exists in their land. Going through the pleadings of the parties, it is clear that there is boundary dispute between the parties. The plaintiffs have specifically claim that they have got house and two water tanks abutting to the bund in their

land. The plaintiffs allege that the defendants are trying to destroy the bund and cut the trees which are grown on the bund. The defendants have admitted the existence of the bund and trees. They have also admitted fact that their land is situated towards West of the land of the plaintiffs. It is necessary to look into the documents to find out why the dispute has arisen between the parties.

10. The RTC pertaining to the land Sy.No.40/1 and Sy.No.35/5 of Gundewadi Village are of the year 2020-21. The plaintiffs are the sons of Basagouda Ramagouda Patil. The said Basagouda Ramagouda Patil is no more. The defendants are the purchasers of the land Sy.No.35/5 of Gundewadi Village under the sale deed dated 21.9.2019. There is no dispute between the parties with respect to their title over their respective lands. As per the RTC and mutation registers, the land Sy.No.40/1 is measuring 7 acres 19 guntas and the land Sy.No.35/5 is measuring 4 acres 30 guntas. However, it cannot be presumed that the properties actually measure as shown in the RTC and mutation registers extract. In order to know the measurement of the properties,

it is necessary to look into the preliminary revenue records such as Akar-band Utar and original survey sketch with Tippani etc.

11. The plaintiffs have produced the Akar-band Utar pertaining to the land of the defendants, which has been issued by the ADLR, Athani on 3.7.2021. As per the Akar-band Utar, the land Sy.No.35 is divided into 5 hissass and is totally measuring 19 acres 39 guntas. The Sy.No.35 hissa 5 is the property of the defendants. The Hissa 5 measures 4 acres 7 guntas as per the Akar-band Utar. The measurement of the land Sy.No.35 Hissa 5 in the RTC and mutation register extract is shown to be 4 acres 30 guntas. The defendants have not produced any document before the court to show that the change in measurement of the property is done pursuant to an order passed by the concerned authority. In the absence of the such a document, the defendants cannot claim that they are in possession of 4 acres 30 guntas of land.

12. The plaintiffs have produced the certified copy of the statement given by the plaintiffs and defendants No.2 before the surveyor Athani

on 13.1.2021. The portion of the contents of the statement which is relevant, is as under:

“ ಆ ಸಮಯದಲ್ಲಿ ನಾವು ಖುದ್ದಾಗಿ ಹಾಜರಿದ್ದು, ಭೂ
ಮಾಪಕರು ನಮ್ಮಗಳ ಸಮಕ್ಷಮ ಸದರಿ ನಂಬರಿನ ಆಕಾರ ಬಂದ
ಮಾಹಿತಿ ನಿಡಿದ್ದು, ನಂತರ ದುರಸ್ತಿಯಾಗಿ 3 ಪಟ್ಟಿಗಳಾಗಿ, 3 ನೇ
ಪಟ್ಟಿಯಲ್ಲಿ 20 ಗುಂಟೆ ಅಕ್ಕಾಯರ ಆಗಿದ್ದು, ಅಕ್ಕಾಯರನಂತೆ ಆಕಾರ
- ಬಂದ ದುರಸ್ತಿಯಾಗದೆ ಸರ್ವೆ ನಂ: 35/1 ರ 9 ಎಕರೆ 30 ಗುಂಟೆ
ರಲ್ಲಿ ಪೋಡಿ ಯಾಗಿದ್ದು, ದಾಖಲೆಗಳು ದುರಸ್ತಿಯಾಗಬೇಕೆಂದು
ತಿಳಿಸಿರುತ್ತಾರೆ.”

It is quite clear from the above statement given by the parties herein before the surveyor that there has been phodi proceedings in which there has been an error with respect to entry as to the measurement of the properties. Such being the case, the contention of the defendants that the revenue sketch produced by them before the court is the correct one and the hand sketch map drawn by the plaintiffs is incorrect cannot be taken into consideration. When the parties are aware that the property has not been properly measured and no haddu-bast is done as per the actual possession, they cannot

rely on the revenue sketch, RTC and mutation register extract to argue that they are in possession of the property as shown in the said documents.

13. It is clear from the documents available on record that there is dispute between the parties with respect to measurement and boundaries of their lands. They have also approached the ADLR, Athani in the year 2021 as per the documents available on record. Such being the case, now the court has to see the admitted facts in the present case to pass an appropriate order.

14. It is an admitted fact that the bund is in existence. It is also an admitted fact that there exist two Neem trees and one tamarind tree over the said bund. It is also an admitted fact that the land of the plaintiffs is towards East of the bund and the land of the defendants is towards West of the bund. The photographs produced by the plaintiffs along with compact disc disclose the existence and situation of the bund. The parties have got no dispute that they are in possession of the lands which are abutting to the said bund. The question whether

the parties have got right over the bund, where exactly the bund is situated and what are the actual measurements of the properties can only be determined after the full fledged trial. At this stage of the matter, the material available on record make it clear that the bund is in existence, the trees are in existence and the parties have been in possession and enjoyment of the properties, which are abutting to the bund. The plaintiffs allege that the defendants are trying to destroy the bund and cut the trees. The contention raised by the defendants that they have got exclusive rights over the bund makes it clear that they are intending to cause the destruction as alleged by the plaintiffs. The plaintiffs have produced documents to show the existence of the bund, trees and other properties abutting to the bund. The plaintiffs have got *prima facie* case for the purpose of application in my opinion. Hence, I answer point No.1 in the Affirmative.

15. **Point No.2**:: The plaintiffs have proved the existence of the bund and trees between the land of the defendants No.1 and 2 and their land by producing the documents. The defendants have also admitted the existence of the same. The rights of the parties over the

bund and trees will be determined after full fledged trial. At this stage of the matter, the balance of convenience lies in favour of the plaintiffs in view of the nature of the relief sought under the application. Hence, I answer point No.2 in the Affirmative.

16. **Point No.3** :: The plaintiffs have contended that they have got rights over the existing ABJI bund and the trees T1 to T3 which are grown over the said bund. The defendants have claimed exclusive rights over the said bund and trees. The plaintiffs have sought an order to restrain the defendants from destroying the ABJI bund and T1 to T3 trees. The temporary relief sought by the plaintiffs in the present application will not cause any hardship to the defendants. If the said relief is not granted in favour of the plaintiffs, the plaintiffs would definitely suffer irreparable loss and injury till the determination of the rights of the parties over the bund and trees, if the defendants destroy the bund and trees. Therefore, I am of the opinion that the application filed by the plaintiffs has to be allowed in the interest of justice. Hence, I answer point No.3 in the Affirmative.

17. **Point No.4:-** In the light of the discussion made above, I proceed to pass the following order:

ORDER

IA.No.I U/o. XXXIX Rule 1 & 2 of CPC filed
by the plaintiffs is allowed.

The defendants are hereby temporarily
restrained from destroying the ABJI bund and
cutting the T1 to T3 trees, which are grown on
the said bund, situated in between the lands of
the plaintiffs and the defendants, till disposal of
the suit.

No order as to cost.

[Dictated to the stenographer directly to the computer, corrected by me and then,
pronounced by me in the open Court this the 19th day of July, 2022].

Place: Athani.

Date: 19/07/2022.

[Sri. Prashanth Nagalapur]
I Addl.Civil Judge & JMFC., Athani.

ORDER ON I.A. II

The defendants No.1 and 2 have filed present application U/o. XVI Rule 10A of CPC, seeking an order to appoint commissioner for the purpose of local inspection.

I have heard both counsel on I.A.II.

The suit of the plaintiffs is for permanent injunction. The parties have produced documents and argued with respect to the application for temporary injunction on earlier occasion. At the time of passing the order on I.A.I, I have made observations that there is certainly dispute regarding the measurement and boundaries of the properties between the parties. However, at this stage of the matter, it is not proper to issue commission for local inspection in my opinion as the parties have not yet commenced their evidence.

It is well settled law that whenever there is dispute of measurement and boundaries between the parties and there is no sufficient evidence to determine the real question in controversy, the court shall issue commission to gather information and clear picture of

the disputed area. The parties have already filed their pleadings. The case is not yet set down for recording of evidence. At this stage of the matter, when there is no evidence at all, the court cannot appoint a commissioner. The parties are expected to lead evidence and if there is any insufficiency or ambiguity in the evidence, the court will certainly consider the application for appointment of court commissioner for local inspection. In the facts and circumstances of this case, with the above observation, I am of the opinion that I.A.II shall be kept in abeyance till conclusion of the evidence on both sides. Hence, I pass the following:

:: ORDER ::

I.A.II filed U/o. XVI Rule 10A of CPC by the defendants No.1 and 2 is kept in abeyance and the same will be considered soon after the conclusion of the evidence on either side.

For issues by : 02.08.2022.

I Addl. Civil Judge & JMFC., Athani