

**IN THE COURT OF CIVIL JUDGE AND JMFC,  
HUKKERI.**

**Dated this the 22<sup>nd</sup> day of January 2025**

**::PRESENT:**

Sri. Nemachandra  
C/. Civil Judge and J.M.F.C.,  
Sankeshwar.

**O.S. No.222/2020**

**Plaintiff:** Shri. Maruti S/o. Lagamappa Shindirmar

**Vs.**

**Defendant:** Shri. Allauddin S/o. Kashimsab Mulla

**I.A No.I**

**Applicant:** Shri. Maruti S/o. Lagamappa Shindirmar

**Vs.**

**Opponents :** Shri. Allauddin S/o. Kashimsab Mulla

|                                                        |   |                                       |
|--------------------------------------------------------|---|---------------------------------------|
| The provision under which application is filed         | : | O.XXXIX R.1 & 2 R/W Sec.151 of C.P.C. |
| Relief Sought for                                      | : | Temporary Injunction                  |
| The date on which application is filed                 | : | 06.10.2020                            |
| Number of application                                  | : | 01                                    |
| The date on which objections are filed by opponents    | : | 24.11.2020                            |
| The date on which Orders are passed on the application | : | 22.01.2025                            |

**ORDERS ON APPLICATION FILED UNDER ORDER  
XXXIX RULE 1 AND 2 R/W SEC.151 OF C.P.C.**

The present application is filed by the plaintiff under O.XXXIX R.1 and 2 r/w sec.151 of C.P.C. with a prayer to grant Order of temporary injunction restraining the defendant, his agents, servants or anybody acting on his behalf from making any sort of interference, encroachment or any kind of obstruction over, causing disturbance, inconvenience to the plaintiff to make use and enjoyment of the suit schedule property until the disposal of this suit in the interest of justice and equity.

2. In the affidavit filed along with the application, it is submitted by plaintiff that, he is the absolute owner of suit schedule agricultural property and his name is mutated in the property register. It is further contended that defendant is residing towards northern side adjacent to the suit property and he is trying to encroach upon suit property by removing the boundary stones fixed in the suit property with an intention to grab the suit property and that he is throwing the garbage and shrubs by trespassing into the suit land.

3. It is further contended that the defendant is having the hidden agenda to grab the suit schedule

property with a mischievous motive and he is not heeding to the request of the plaintiff and he is trying to put the permanent structure over the suit property and he is disturbing peaceful possession and that, even after approaching the jurisdictional Police with a written complaint, the police handing glove with defendant are not ready to register FIR against the defendant. The Police instead taking action against the defendant have manhandled the plaintiff. Hence the present suit is filed. It is further submitted that, if this application is allowed no loss or hardship will be caused to defendant. With all these contentions prays to allow the application.

**4.** On the other hand, defendant has filed memo to consider the written statement as objections to I.A.

**5.** The defendant in the written statement has denied the entire contentions of the plaintiff and contended that he has purchased the property in R.S.No.22/3 on 20.11.1990 and he is possession and enjoyment of the same and he has also constructed the house in the said property and the Islampur mandal panchayath has given property No.271 to the house constructed by the defendant and that he is in possession and enjoyment of the same without

inference from any one and that he has grown trees in the vacant place. The defendant has denied the right, title and interest of plaintiff over the suit schedule property and contended that the plaintiff do not have any property in the suit survey number and that the property of plaintiff is situated in RS No.32 and he is residing in the said property and that the plaintiff in order to grab the property of the defendant has filed the present suit and application with all false facts. With all these contentions prays to dismiss the application.

**6.** I have heard the arguments advanced by advocate for plaintiff and defendant. Perused the materials on record.

**7.** From the above materials, the points that arise for consideration of this Court are as follows;

- 1.** Whether the plaintiff has made out a prima facie case?
- 2.** Whether the balance of convenience lies in favour of the plaintiff?
- 3.** Whether the plaintiff will be put to irreparable loss and injury which cannot be compensated in any terms, if the temporary injunction is not granted?
- 4.** What order?

8. This Court answers to the above points are as follows:-

**Point No.1 : In the Negative**  
**Point No.2 : In the Negative**  
**Point No.3 : In the Negative**  
**Point No.4 : As per the order**  
**for the following:**

**::REASONS::**

9. **Reason for the Point No.1:** The present suit is filed for the relief of permanent injunction to restrain the defendant from causing interference, encroachment, obstruction, disturbance and inconvenience to the plaintiff to make use and enjoyment of plaintiff by contending that land bearing Sy No.23/3 is totally measuring 1 acre 1 guntas, out of which plaintiff is the owner of 35 guntas and that towards northern side, there is house of defendant and there is vacant space measuring 4002 square feet and the said land is shown as A.B.C.D.E.F.G.H in the rough sketch and the said area is the suit schedule property and that the defendant without having any rights over suit schedule property is disturbing the possession of plaintiff over suit schedule property. Hence the present suit is filed and relief the temporary injunction is sought in the present application.

**10.** The plaintiff in support of his case had produced RTC pertaining to Sy No.22/3 and it shows that plaintiff is the owner of 35 guntas in the said land. Except the said RTC, the plaintiff has not produced any other documents to show his rights.

**11.** It is a settled law that the mutation of a property in the revenue record does not create or extinguish title nor does it have any presumptive value on the title and it only enables the person in whose favour mutation is ordered to pay the land revenue in question and a party is not divested of his title in the suit property as a result of mutation entry. Considering the said principle, only the production of RTC, which is the revenue record, the plaintiff cannot show his rights over suit schedule property. Hence this court holds that at this stage, plaintiff has not made out prima facie case.

**12.** Further the defendant has denied the title of plaintiff and in respect of the same, the plaintiff has filed IA No.4 U/o. 6 Rule 17 RW Sec. 151 of CPC to amend the plaint and seek the relief of declaration. Considering the said fact, as the defendant has denied the title of plaintiff and the plaintiff has sought amendment to get relief of

declaration of his title and considering that plaintiff has not produced any title document except the revenue record, this court holds that at this stage, plaintiff has not made out prima facie case.

**13.** Further as per plaintiff he is the owner of 35 guntas. 1 guntas is equal to 1089 square feet. Hence 35 guntas will be 38,115 square feet. But the plaintiff claims that suit schedule property is only measuring 4002 square feet. But the plaintiff has not stated what happened to remaining area. Further the plaintiff has also pleaded that defendant has constructed house towards northern side in suit property. The said pleading shows that plaintiff is not aware about his land and that considering the conduct of plaintiff of not disclosing the fact about remaining area other than 4002 square feet, makes the court to hold that, plaintiff has suppressed the materials fact and has filed the present suit.

**14.** Considering the pleadings of the plaintiff, the plaintiff has not produced any documents to show that, he is the owner in possession of 4002 square feet in Sy No. 22/3 and the plaintiff has also not produced any documents to show that what happened to remaining extent. Hence

considering that there are no sufficient materials produced by the plaintiff to show his rights over suit schedule property measuring 4002 square feet and considering that there are no other documents for identification of suit schedule property out of 35 guntas, this court holds that plaintiff has not made out prima facie case.

**15.** Further it is also settled that when there are no materials for identification of suit property, relief of injunction cannot be granted. Considering the said principle, in the present case plaintiff has produced only revenue documents pertaining to 35 guntas and not pertaining to 4002 square feet and that there is no explanation by the plaintiff about remaining area in 35 guntas, hence there are no sufficient material for identification of suit schedule property. Hence considering that plaintiff has not produced sufficient materials in support of this case and for the reasons stated above this court holds that plaintiff has not made out prima facie case.

**16.** The Advocate for plaintiff has argued that defendant has not produced sale deed as contended by him, hence injunction can be granted against defendant. In respect of said arguments, the plaintiff has approached this

court for the relief of injunction and that on producing documents by the plaintiff in support of his case, this court can hold that failure of defendant to produce sale deed is fatal to the case of defendant. Whereas in the present case, the plaintiff has not produced any documents to show his rights. Hence failure of defendant to produce documents in support of his defence cannot come to the aid of plaintiff to grant the reliefs. Further the plaintiff has admitted that defendant is in possession of northern side of suit property, when such being the case, failure of defendant to produce document will not come to the aid of plaintiff.

**17.** The Advocate for defendant has relied upon following decisions:

- 1.** In case of Kethaki Rohith Ryan Paul V/s- Kamalamma and Ors reported in AIR 2020 Karnataka 179.
- 2.** In case of Pratap and another V/s- Anil reported in AIR 2019 Uttarakhand 93.
- 3.** In case of Makers development Services Ltd., V/s- M. Visvesvaraya Industrial Research and development Center reported AIR 2012 Supreme Court 437.
- 4.** In case of Basavarah Shivaramgouda Patil V/s- Mahesh reported in 1998(2) Kar.LJ 211.

**5.** In case of Anathula Sudhakar V/s- P. Buchi Reddy (dead) by Lrs and Ors., reported in Air 2008 Supreme Court 2033.

**6.** In case of T. Venkatramana Bhat V/s- Subramanya Bhat reported in HCR 2024 Kant. 540.

**7.** In case of Vishram alias Prasad Govekar and Ors V/s- Sudesh Govekar (D) By Lrs and Ors., reported in AIR 2017 Supreme Court 583.

**18.** The above decisions, do not come to the aid of plaintiff, as the plaintiff has suppressed facts about the area in suit property and that plaintiff has not produced any documents to show his rights over suit property. The above decisions deal with granting of injunction, whereas in the present case the plaintiff has not met the requisite conditions to grant injunction. Hence the decisions do not come the aid of plaintiff.

**19.** Further the plaintiff has not produced any documents in support of rough sketch filed along with the plaint. As stated above 35 guntas would be 38,115 square feet, but the plaintiff is claiming relief only in respect of 4002 square feet without disclosing any facts about remaining extent. Hence considering the said fact and considering that plaintiff has only produced revenue record

and considering that defendant has denied the title of plaintiff and considering that plaintiff has admitted that defendant is in possession of part of Sy No.22/3, this court holds that plaintiff has not made out prima facie case. Hence, for the reasons stated above, this court answers point No.1 **in the Negative.**

**20. Reasons for point No.2 and 3:-** Since both the points are interlinked with each other, in order to avoid repetition of facts and discussions, they are taken up together for common discussion.

**21.** For the reasons stated while answering point No.1, plaintiff has not made out prima facie case. Hence plaintiff will not be put to irreparable loss and injury and that balance of convenience does not lie in favour of plaintiff. If temporary injunction is granted there are chances that plaintiff by taking advantage of the same might interfere with possession of defendant, which is admitted by him and by said act, rights of defendant will be affected and he will be put to irreparable loss and injury. Hence, the version of plaintiff in respect of measurement of suit property without any sufficient details does not inspire confidence of this Court, to believe the version of plaintiff

and that if temporary injunction is granted, the defendant will lose his rights on his property. Hence, the balance of convenience lies in favour of defendant and not plaintiff. Further when suit property cannot be identified, the relief of injunction cannot be granted. Hence the plaintiff is not entitled for the reliefs as sought for the present application. Accordingly, this court answers point No.2 and 3 **in the Negative.**

**22. Reasons for point No.4:-** For the reasons stated above, this court proceed to pass the following:

**:O R D E R:**

**The I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w. Section 151 of C.P.C is hereby dismissed.**

(Dictated to the Stenographer directly on computer, typed by her and the transcript revised and corrected by me and pronounced in the open Court, on this 22<sup>nd</sup> January, 2025)

22.01.2025.

**(Sri. Nemachandra)  
C/c., Civil Judge & JMFC,  
Hukkeri.**