

KABG900022132023



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.
AT MUDALAGI**

PRESENT:-

SMT. JYOTHI PATIL

B. A., LL.M.

Civil Judge And JMFC At Mudalagi

Dated this the 21st DAY OF APRIL, 2025

O.S.No.344 / 2023

PLAINTIFF:

01. Shri. Apparao S/o Yarayya Sattiwad

//VERSUS//

DEFENDANT:

01. Shri. Baba S/o Balasaheb Jamakhandi

I.A. No.V

APPLICANT :

01. Shri. Apparao S/o Yarayya Sattiwad

... Plaintiff

(Reptd. by Shri. A.K.K. Advocate.)

//VERSUS//

OPPONENT:

01. Shri. Baba S/o Balasaheb Jamakhandi

... Defendant

(Reptd. by Shri. M.L.S. Advocate.)

ORDERS ON I.A.No.VI FILED U/ORDER**XXXIX RULE 1 and 2 OF C.P.C**

The present suit filed by plaintiff against the defendant for the relief of declaration, declaring plaintiff is the owner of suit property and restraining the defendant and their men from dispossessing the plaintiff from joint possession of the suit property.

02. In the plaint it is averred that the suit schedule property being the agricultural land bearing R.S.No.417 measruing 01 Acre 06 Guntas out of it 01 Acre 24 Guntas and another suit property bearing R.S.No.420 measuring 01 Acre out of it 36 Guntas, both lands are adjacent to each other having same boundaries as follows;

To the East : Land of Hanamant Fakirappa Banaj

To the West : Land of Ramappa Mahalingappa
Dodagoni

To the South : Land of Gadadi

To the North : Canal.

Further, it is averred that plaintiff has purchased above said suit property under registered sale deed

since the date of purchase the plaintiff is in possession of above said suit schedule property. Further, it is averred that the defendant has opened xerox as well as Panshop in the plaintiff's land thereby the defendant obstructed the plaintiff in use and enjoyment of suit schedule property wherein the plaintiff requested the defendant not to encroach the suit schedule property, but the defendant ignored the same. Further, it is averred that the plaintiff has moved an application to M.E. Authorities for Tatakall Phodi in the year 2014 wherein the Revenue Authorities issued notice to the plaintiff and defendant on 15-07-2014 application No.01040813342592. Based on the said application the Revenue Authorities came for measurement of the property and defendant obstructed the same. With this background the plaintiff filed the present suit for the relief for declaration and consequential relief of injunction.

03. On the contrary the defendant filed Written Statement thereby denied all the plaint averments and specifically contended that the suit property bearing R.S.No.417 standing in the name of

defendant and his brothers alongwith relatives but the plaintiff did not made them as party to the suit who are necessary and proper parties for complete adjudication of the matter. Further, contended that the plaintiff alongwith GPA holder colluding with each other created false sale deed as the description of the property in the plaint is not proper as per the Record of rights bearing R.S.No.417 is measured and 01 Acre 06 Guntas out of it 04 Guntas is standing in the name of defendant and his brother in R.S.No.420 measuring 01 Acre exlcuding P.K. to the extent of 31 Guntas is reflected at Record of rights. But as per the sale deed the measurement to mentioned as 31 Guntas + 09 Guntas P.K. totally 36 Guntas and same is not correct. With this background the contention of the defendants prayed for dismissal of the suit.

- 04.** Further, when the suit was staged for furnishing memo of instructions by the plaintiff, the defendant as per the order on I.A.No.5 filed U/Order 26 Rule 9 as same was allowed by this Court and ADLR, Gokak was appointed for measurement of the suit properties as the case was staged for arguments. Further, on 22-02-2025 the case was advanced by the counsel for

plaintiff and plaintiff counsel came up with present I.A. U/Order 39 Rule 1 and 2 of C.P.C.

- 05.** Further, by way of I.A.No.6 the advocate for plaintiff prayed for relief of temporary injunction restraining the defendant from constructing any type of building by encroaching over the suit property of plaintiff. On the contrary the advocate for defendant filed objection to said application thereby denied all the contents of affidavit annexed with I.A.No.6 and specifically contended that as per the plaint averments the plaintiff filed present suit for declaration and injunction and suit bearing R.S.No.417 measuring 01 Acre 06 Guntas out of it 01 Acre 24 Guntas and another property bearing R.S.No.420 out of it 36 Guntas are both adjacent to each other having common boundaries as contended in para No.6. Further, the defendant contended that as per the boundaries shown by plaintiff in plaint as well as registered sale deed on the northern side canal is situated it means up to the canal plaintiff's property situated thereby contended that plaintiff is in owner of property to the extent upto the canal as contended at plaint para No.6. Further, contended that after

canal the plaintiff has no right to claim the property where the main road situated after the canal on the northern side of the property belongs to defendant and defendant engaging without any obstruction. Hence, prayed for rejection of the said application.

06. Heard both side and perused.

07. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration;

P O I N T S

1. Whether the plaintiff has established prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?
4. What order?

08. My findings to the above points are as under;

Point No.1 - In the Negative

Point No.2 - In the Negative

Point No.3 - In the Negative

Point No.4 - As per order for the following;

REASONS

- 09. POINT NO.1 to 3:-** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under;

The present suit filed by the plaintiff against defendant for the relief of declaration and injunction. Alongwith application the advocate for plaintiff submitted photograph thereby contended that some construction is going on by the defendant by way of encroaching the property. Further, this Court is of the opinion that the present suit filed for declaration and consequential relief of injunction as per the plaint averments the plaintiff has shown the boundaries of his suit schedule property to the norther side as canal. On the contrary by filing I.A.No.6 U/Order 39 Rule1 and 2 plaintiff specifically contended that the defendant constructing building towards the northern side by encroaching the plaintiff's property at R.S.No.417.

- 10.** Further, it is pertinent to note that the plaintiff in the plaint shown the boundaries of Sy.No.417 as to the

northern side canal and on careful perusal of photograph produced by plaintiff it noticed that construction work which was going on away from the canal as shown in the photograph. Further, it is pertinent to note that as per the plaint averments his property is situated specifically towards northern side upto the canal, if it is so the chances of encroaching towards the canal does not arise at all. However, now the suit is in its ending stage as it was staged for appointment of ADLR for measurement of property. If the plaintiff gets succeeded in the suit he will be having remedy to get back his property to the extent of encroached area if really encroached by defendant. Hence, the application filed by the plaintiff is hereby rejected as there is no substantial materials put-forth by the plaintiff to pass necessary orders on I.A.No.6 filed U/Order 39 Rule 1 and 2. Further, plaintiff has failed to made out prima-facie case and balance of convenience also not tilts in his favour. If I.A.No.6 is hereby allowed the defendant will be put into irreparable loss which cannot be compensated in terms of money. Hence, for the aforementioned reasons and discussions, I answer point No.1 to 3 in the Negative.

11. POINT NO.4 :-In view of the reasons assigned above,

I proceed to pass the following;

ORDER

I.A.No.VI filed by the
plaintiff U/Order 39 Rule 1 and 2
of C.P.C. is hereby rejected.

(Dictated to the stenographer, transcript computerized by him, corrected and then pronounced by me in the open Court court on this the 21st day of APRIL, 2025.)

Sd/-

(SMT. JYOTHI PATIL)
CIVIL JUDGE & JMFC. MUDALAGI.

ORDER

10

O.S.No.344 / 2023