

IN THE COURT OF THE CIVIL JUDGE & JMFC, AT SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur

Dated: 10th day of July 2025

O.S. No.42/2024

Plaintiff/s : Khasim Peera S/o late Yamunappa. B,
Age: about 56 years, Occu: Agriculture,
R/o 1st ward, Krishnanagar village,
Sandur Taluk, Ballari District.

(By Sri. A.H.S., Advocate)

V/S

Defendant/s : 1. Smt. Chittangi Noorjahan Bee,
W/o Chittangi imam Sab,
Age: about 55 years,
R/o 1st ward, Krishnanagar village,
Sandur Taluk, Ballari District.

2. Chittangi Imam Sab,
Chittangi Fakrusab,
Age: about 65 years,
R/o 1st ward, Krishnanagar village,
Sandur Taluk, Ballari District.

(D1 & D2 By Sri. A.V.K., Advocate)

I.A.No.I

Applicant : Khasim Peera S/o late Yamunappa. B
(Plaintiff)

V/s

Opponents : Smt. Chittangi Noorjahan Bee and another.
(Defendants)

ORDER ON I.A.No.I FILED UNDER ORDER XXXIX**RULE 1 AND 2 R/W Sec. 151 OF C.P.C.**

The plaintiff has filed this application U/O XXXIX Rule 1 and 2 R/w Sec. 151 of C.P.C., seeking to restrain defendant no.1 to 2 from interfering and causing obstruction in his possession over the suit property, till the disposal of the suit.

2. The plaintiff is the absolute owner in respect of the suit house property bearing Door No.241 measuring 20.60 X 16.79 Mtrs situated at Chappardalli, KrishnaNagar Village, Sandur Taluk. The said property is acquired by the plaintiff through his ancestors.

3. It is submitted that the plaintiff is in possession and enjoyment of the suit property. The khata is standing in his name

in the concerned Gram Panchayat records. The plaintiff is paying tax to the Gram Panchayat regularly. The Panchayat has issued Form No.9 and 11 in his favour.

4. The defendants are no way concerned to the suit property. They are not in possession and enjoyment of the suit property. The defendants are unnecessarily interfering and disturbing the peaceful possession of the plaintiff towards northern side of the suit property. It is stated that on 15 January 2024, when the plaintiff and his family members were in the suit property, the defendant No.1 and 2 unnecessarily caused interference and disturbance in his peaceful possession towards northern side of the suit property. The plaintiff resisted the high handedness of the defendant No.1 and 2. However, again on 19 March 2024, the defendant interfered and disturbed the possession of the plaintiff. Thereafter, the plaintiff approached the concerned police authorities, but no action was taken on the ground that the matter is in civil nature. Thus, the plaintiff approached this court with this suit. The plaintiff maintained this

present application seeking temporary injunction. It is stated that the plaintiff has got *prima facie* case and balance of convenience is in his favour. If no injunction is granted, the plaintiff would suffer prejudice and hardship. On these grounds, he prays to allow his application.

5. After service of summons, the defendants appeared through their counsel and filed written statement. They filed a memo to consider the written statement as also objections to IA no.1.

6. According to defendants, the suit of the plaintiff is false, vexatious and not maintainable under law. The defendant denied the entire case of the plaintiff.

7. It is submitted that the suit property within the extent and the boundary described in the plaint is not in existence. It is further submitted that the plaintiff is not the owner and in possession of the suit property. According to defendants, cloud is created over the title of the plaintiff in respect of suit property. It is stated that the plaintiff has encroached the portion of the

property of defendants. It is equally submitted that the suit of the plaintiff for the relief of declaration and permanent injunction is without valid title.

8. According to them, defendant no.2 had instituted suit against the present plaintiff and others in OS No.100 /2020 before this Court for the relief of permanent injunction pertaining to the property of defendants. In the said suit, one application was maintained seeking interim injunction. This court by allowing the application on 19 December 2023, restrained the plaintiff *herein* from flowing roof water into the basement of the property of the defendants. But the plaintiff *herein* violated the said order resulting in registration of Civil Misc. No.8/2022. The plaintiff suppressed these material facts. The plaintiff instituted this suit against defendant to escape from the order of this court. It is equally submitted that the plaintiff has not produced any documents to show his ownership over the suit property.

9. According to defendants, the plaintiff has contended that the suit property is ancestral, but did not implied his father,

mother, and other siblings. As such, the suit is bad for non-joinder of necessary parties. Amongst other grounds, the defendants pray to dismiss the application.

10. Heard the argument of learned counsel for the plaintiff. Perused the records.

11. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour to the grant the interim relief as sought for?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that he would suffer irreparable loss if injunction is not granted as sought for?
4. What order?

12. My answer on the above points are as follows:-

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

REASONS

13. **POINT NO.1 TO 3:-** All these points are taken together for common discussion to avoid repetition of facts and appreciation of materials on records.

14. This suit is for the relief of bare permanent injunction. This court is not in *seisin* of the matter to decide the ownership of the plaintiff. The plaintiff claim that he succeeded the suit property bearing House No.241 measuring 20.60 X 16.79 Mtrs situated at Chappardalli, Krishnanagara, Sandur Tq. from his ancestors. He did not mention whether he is lone successor of his ancestor. Even otherwise, it is not necessary that all the family members should join in a suit for permanent injunction. It is enough if one of the family members institute suit alleging interference by third party.

15. The plaintiff filed FORM No.9 and 11A which demonstrate that he is the owner and in possession of suit schedule property. The extent and the boundaries mentioned therein correlate with the details given in the plaint. He has also

produced tax paid receipts to show his possession. Those documents and pleadings *prima facie* establish the possession of plaintiff over the suit property. The defendants have not produced any documents which create cloud over the ownership of plaintiff. Merely saying that the plaintiff is not the owner of property does not warrant the plaintiff to file suit for declaration unless strong cloud is created over the title. The records furnished by the defendants are in relation to different property covered by their suit in O.S.No.100/2020. The interim order passed in the said suit nowhere come in a way of plaintiff seeking relief in respect of his property.

16. At this juncture the applicant/plaintiff has shown *prima-facie* case in his favour to grant interim relief. The records placed at this stage demonstrate that the plaintiff is in possession of the property. The applicant has submitted that the defendant no.1 and 2 are causing interference in his possession and enjoyment of the suit property in the manner narrated in the application. If the defendants are not restrained from causing

interference and obstruction, there are all possibilities that the defendants continues interference in the enjoyment of the plaintiff over suit property. Therefore, the balance of convenience tilt in favour of plaintiff. The applicant has raised apprehension of recurring interference by the defendants. Since the plaintiff *prima-facie* appears to be in possession of the property, the defendants must be restrained from causing interference in his favour, otherwise irreparable loss will be caused to him. As such, I answers point no.1 to 3 in the **AFFIRMATIVE**.

17. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

IA. No.I filed by the applicant– plaintiff
U/O XXXIX Rule 1 and 2 R/W. Sec. 151 of
C.P.C., is hereby allowed.

The defendant no.1 and 2, or their agents
etc., or anybody on their behalf are hereby
restrained from interfering in the possession
and enjoyment of the plaintiff over the suit

schedule land by any means, till the disposal of the suit.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Directly typed on Laptop, the same is corrected, revised, signed and then pronounced by me in the open Court, the 10th day of July-2025).

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur