

KABK610002992026



**IN THE COURT OF CIVIL JUDGE AND JMFC,
BANAHAATTI**

PRESENT: Smt. SAUMYA HOOLI
B.A.,LL.B.
Civil Judge & JMFC,
BANAHAATTI

O.S.No.34/2026

Dated this the 12th day of March-2026

PLAINTIFF:

Rafiqahamad S/o Abdulsab Soudagar,
Age: 51 years, Occ: Driver,
R/o: Behind Kadasiddeshwar Temple, Pendari Oni,
Banahatti, Tq: Rabakavi-Banahatti, Dist.: Bagalkot.

(By Sri I.C.B., Advocate)

//Versus//

DEFENDANTS:

1. Lalsab S/o Goresab Pendari,
Age: 58 years, Occ: Weaver,
2. Rasoolma W/o Lalsab Pendari,
Age: 52 years, Occ: Weaver,
3. Maiboob S/o Lalsab Pendari,
Age: 30 years, Occ: Coolie,

4. Saddamhussain S/o Lalsab Pendari,
Age: 26 years, Occ: Coolie,
All are R/o: Pnedari Galli, Banahatti,
Tq: Rabakavi-Banahatti, Dist.: Bagalkot.

(By Sri Z.L.K., Advocate)

PARTIES ON I.A.No.I

Applicant/Plaintiff:

1. Rafiqahamad S/o Abdulsab Soudagar

//Versus//

Opponents/ Defendants

1. Lalsab S/o Goresab Pendari & others

Provision under which applications are filed	:	U/o 39 Rule 1 & 2 of CPC
Reliefs sought for	:	Discretionary relief of temporary injunction
Date of filing the application	:	11.02.2026
Number of the application	:	I.A No.I
Date of filing objection	:	10.03.2026
Date of pronouncement of the order	:	12.03.2026

ORDER ON IA.I

1. Stage: IA No.I is filed U/O 39 Rule and 2 of CPC. The instant application is filed seeking temporary injunction against defendants. The instant suit is filed for the relief of permanent injunction. The I.A.No.I is filed on 11.02.2026. The number of application in this suit is one. The date on which the orders on IA No.I passed is 12.03.2026. The current stage is for compliance U/Sec.89 of CPC.

2. The applicant/plaintiff filed this IA No.I Under order 39 Rule 1 & 2 of C.P.C., seeking temporary injunction against defendants to restrain them from constructing their illegal and unauthorized constructions without legal permission from the Municipality over EFGH portion I.e, CTS No.5069A/113 situated at Banahatti so as to cross X1 to X2 mark as shown in the hand sketch map as well as CTS joint map, till the disposal of this suit.

3. In the affidavit annexed to IA No.I, the plaintiff averred that the defendants without having any right, title or interest

over the EFGH portion in CTS No. 5069A/113, are attempting to put up construction illegally, unauthorisedly and high-handedly so as to extend the construction by crossing X1 to X2, as shown in red colour in the hand-sketch map. It is further averred that such construction is being undertaken without obtaining any lawful permission from the concerned municipality. The plaintiff has further contended that if the defendants, under the guise of such illegal construction, cross X1 to X2 towards the southern side as depicted in the hand-sketch map, the same would cause serious loss and injury to the plaintiff and his property, which cannot be adequately compensated in terms of money. The plaintiff further stated that, the prima facie case and balance of convenience lies in his favour. On these grounds plaintiff prayed to allow IA No.I.

4. On the other hand, the defendants at the stage of orders have filed objections to IA No.1 along with memo of undertaking stating that the defendants are constructing residential building within their property without

encroachment of the plaintiff's property by obtaining permission from the competent municipal authority on 20.02.2026 and that the construction is being carried out as per the sanctioned plan which specifies mandatory setbacks. The sanctioned plan clearly shows that the construction is confined to the defendants' property and does not in any manner encroach upon the plaintiff's property. The defendants in their undertaking have stated that if at all the construction is made by encroaching the plaintiff's property, the defendants would demolish the same at their own cost. On these grounds, the defendants prayed to dismiss IA No.I.

5. Upon hearing the arguments and on perusal of materials placed on record, the following points that arise for consideration are;

- (1) Whether the plaintiff has made out a prima-facie case in his favour?
- (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?

6. The findings to the above points are as under;

Point No.1 : Partly in the Affirmative
Point No.2 : Partly in the Affirmative
Point No.3 : Partly in the Affirmative
Point No.4 : As per final order for the following;

REASONS

7. Point No.1:- The facts of the present application are already narrated above and the same are not repeated hereinafter for the sake of brevity.

The plaintiff, in order to establish his prima facie case, has produced the CTS extract pertaining to CTS No. 5278/A. On perusal of the said document, at this stage, it is forthcoming that the said property stands in the name of the plaintiff. The plaintiff has also produced the CTS extract relating to CTS No. 5069A/113, on perusal of which it is revealed that the names of the defendants are entered in the

said extract. Further, the plaintiff has produced the CTS map and on perusal of the same, at this stage, it appears that the said CTS map tallies with the hand-sketch map annexed to the plaint. On perusal of the hand-sketch map annexed to the plaint and the CTS map produced by the plaintiff, it is forthcoming, at this stage, that the property of the plaintiff is situated towards the southern eastern side and that there appears to be a gap in between the property of the plaintiff and the property of the defendants, which is shown as X1 to X2 in the said maps. On the other hand, the defendants have produced the building construction permission issued by the Municipality. On perusal of the said document, it is forthcoming, at this stage, that the defendants have been permitted to construct a residential building after demolishing the old existing structure standing on the property. In addition to the documents produced by both the parties, upon hearing the arguments advanced by the learned counsels for both sides, it is forthcoming at this stage that the learned counsel for the plaintiff has submitted that the

plaintiff has no objection for the defendants to put up construction within their own portion of the property. However, it is contended that the defendants shall not cross X1 to X2, as shown in the hand-sketch map and encroach upon the property of the plaintiff. On the other hand, the learned counsel for the defendants has contended that the defendants are carrying out the construction strictly in accordance with the permission granted by the Municipality and that such permission has been issued only after directing the defendants to leave the required setbacks. Hence, it is argued that the defendants are entitled to construct the residential building in their property and that there is no question of crossing X1 to X2 or encroaching upon the property of the plaintiffs.

8. Upon hearing the arguments advanced by the learned counsels for both parties, it appears that the crux of the dispute between the parties is with regard to the portion marked as X1 to X2. The contention of the plaintiff is that while putting up construction, the defendants shall not cross

the said X1 to X2 portion. On the other hand, the defendants have contended that they are constructing the building strictly within their own property and that there is no question of crossing X1 to X2. In the present case, the defendants have produced the construction permission issued by the Municipality for putting up the building. Further, the defendants have also filed an undertaking before this Court stating that they would not encroach upon the property of the plaintiffs or cross the portion marked as X1 to X2, and that they would carry out the construction only within their own property. In such circumstances, from the materials available on record at this stage, the defendants cannot be restrained from putting up construction over the EFGH portion of their property. However, it is made clear that while carrying out the said construction, the defendants shall not cross the portion marked as X1 to X2 as shown in the hand-sketch map and the CTS map nor shall they encroach upon the property of the plaintiff so as to cause any loss or injury to the plaintiff. In the present case, it is forthcoming at

this stage that the plaintiff has expressed an apprehension of injury to his property. In such circumstances, this Court deems it proper to ensure that the rights of the plaintiff over his property are duly protected. However, at the same time, this Court is also required to consider the rights of the defendants. In the present case, the defendants have undertaken that while putting up the construction, they would not cause any loss or injury to the plaintiff by crossing the portion marked as X1 to X2. In view of the said undertaking and the materials available on record, this Court is of the opinion that the defendants cannot be restrained from putting up construction over the EFGH portion of their property bearing CTS No. 5069A/113. However, the defendants are hereby restrained from crossing the portion marked as X1 to X2, as shown in the hand-sketch map annexed to the plaint, while carrying out the said construction. Hence, this court answered point No.1 **Partly in the Affirmative.**

9. Point No.2: It is a well-settled principle of law that prima facie case and balance of convenience go together while considering an application for temporary injunction. In the present case, if the defendants are allowed to put up construction by crossing the portion marked as X1 to X2, the plaintiff would be put to great hardship and loss, which cannot be adequately compensated in terms of money. At the same time, if the defendants are completely restrained from putting up construction within their property without crossing the portion marked as X1 to X2, it would also cause inconvenience and hardship to the defendants. Therefore, in the facts and circumstances of the case, the balance of convenience also lies in permitting the defendants to carry out construction within their property while restraining them from crossing the portion marked as X1 to X2. In view of the foregoing discussion, as the balance of convenience lies in favour of both parties to the extent discussed above, this Court answered point No. 2 **Partly in the Affirmative.**

10. Point No. 3: With regard to irreparable loss and injury, it is to be noted that if the defendants are permitted to put up construction by crossing the portion marked as X1 to X2, the same would result in encroachment over the plaintiff's property and cause irreparable loss and injury to the plaintiff, which cannot be adequately compensated in terms of money. On the other hand, if the defendants are completely restrained from putting up construction over their property despite having obtained permission from the Municipality, it would also cause hardship and loss to the defendants. Therefore, in order to safeguard the rights of both parties, it is just and proper to permit the defendants to proceed with the construction within their property while restraining them from crossing the portion marked as X1 to X2 during the course of such construction. Hence, this court answered point No. 3 **Partly in the Affirmative.**

11. Point No.4: For the foregoing reasons assigned in point No. 1 to 3, this court proceeds to pass the following :

ORDER

The IA No. 1 filed by the applicant/ plaintiff under Order 39 Rule 1 and 2, of CPC, is hereby allowed in part.

Consequently, the defendants are hereby restrained from crossing X1 to X2 portion as shown in the plaint handsketch while putting up construction in EFGH portion in CTS No.5069A/113 situated at Banahatti, till disposal of the suit

No order as to cost.

(Dictated to the stenographer directly on computer typed by him, corrected by me, then pronounced in the open court on this the 12th day of March, 2026)

(SAUMYA HOOLI)
Civil Judge & JMFC
Banahatti