

KABK710036992021



O.S./192/2021
{CASE_CAUSE_TITLE}

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC.,
JAMKHANDI, AT: JAMKHANDI

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

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

Prl. Civil Judge & JMFC,
Jamkhandi.

C/c Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 18th day of June – 2022

O. S. No.192/2021

1. Shri. Sangappa S/o Parappa Hunnur,
Age: 45 years, Occ: Agriculture,
R/o Mareguddi village,
Tq: Jamkhandi, Dist: Bagalkot.
2. Smt. Suneeta W/o Sangapa Hunnur,
Age: 35 years, Occ: Agriculture and household,
R/o Mareguddi village,
Tq: Jamkhandi, Dist: Bagalkot.

..... Plaintiffs.

(By Shri.G.I.Z., Advocate)

V/s.

1. Shri. Giramallappa S/o Nagappa Gundi,
Age: 40 years, Occ: Agriculture,
R/o Konnur, Tq: Jamkhandi, Dist: Bagalkot.

..... Defendant.

(Defendant By Sri.R.N.D., Advocate)

I. A. No.I

1. Shri. Sangappa S/o Parappa Hunnur
and another one.

..... Applicants/Orgl.Plaintiffs.

V/s.

1. Shri. Giramallappa S/o Nagappa Gundi,

.....Opponent/Orgl.Defendant.

ORDERS ON I.A. No.I FILED BY PLAINTIFFS
UNDER ORDER 39 RULE 1 AND 2
R/W SECTION 151 OF CPC

This application is filed by plaintiffs praying this court to pass an order of temporary injunction restraining defendant, his agents, hirelings claiming through him from obstructing and disturbing the peaceful possession and enjoyment from using the shed built in 3 guntas of land of plaintiffs out of R.S. No.214/3 of Konnur village and from taking water from the well as shown in hand sketch map till disposal of suit.

2. In the affidavit annexed to the application, plaintiff No.1 averred that they have filed this suit against defendant for the relief of declaration and consequential relief of permanent injunction. That plaintiffs are joint owners of R.S. No.214/3 measuring 4 acres 2 guntas which was purchased by father of plaintiff No.1 i.e., Parappa S/o Kallappa Hunnur from Sharaschandrakumar S/o Timmannagouda Patil on 17-12-2007 and after his death, plaintiffs have succeeded to suit schedule property. Defendant is owner of land bearing R.S No.214/2, which is adjacent to their land towards western side. There is common well situated in between their land and land of defendant and Kharab area of 6 guntas is kept in land of defendant and plaintiffs have half share of right to draw water from the well. Such being the case, now defendant is disturbing the use of well water by plaintiffs and amongst these grounds, prayed to allow the application.

3. After issuance of summons, defendant

appeared through his counsel and has chosen not file any written statement and objections. Hence written statement and objections was taken as nil.

4. Heard. Perused the records placed before the court.

5. The points that arise for my consideration is as under :

1. Whether prima-facie case and balance of convenience lies in favour of plaintiffs?
2. To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?
3. What Order ?
6. My findings to the above points is as under :
 - Point No.1:-** In the Negative
 - Point No.2:-** To defendant in case of granting temporary injunction
 - Point No.3:-** As per final order for the following :

: R E A S O N S :

7. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these

points are taken together for common discussion.

8. It is specific case of plaintiffs that suit schedule property was purchased by father of plaintiff No.1 Parappa from its previous owner on 17-12-2007 and after his death, they are legal heirs succeeded to the suit schedule property. Defendant is owning land bearing R.S No. 214/2, which is adjacent to their land towards western side. There is a common well situated in between their land and land of defendant, wherein Kharab area of 6 guntas is kept in the land of defendant and plaintiffs have got half share to draw water from the well. Now defendant is disturbing the plaintiffs from using the water from the well.

9. In support of their contention, plaintiffs produced in all five documents, i.e., RTC extract of R.S No.214/3, RTC extract of R.S No.214/2, notarized copy of sale deed dated 17-12-2007, photocopy of MR No.H47/2016-17 and photocopy of MR No.T376/2017-18.

10. It is pertinent to note here that the entire

contention taken by plaintiffs has remained unchallenged and unrebutted. Hence heavy burden lies upon plaintiffs.

11. On perusal of documents produced by plaintiffs, prima-facie suit schedule property is standing in the name of plaintiffs and R.S No.214/2 is standing in the name of defendant. Further prima-facie on perusal of the notarized copy of sale deed dated 17-12-2007, it appears that father of plaintiff No.1 purchased RS No.214/2A from Sharaschandra Patil and others. This document is quite contrary to the averments of the plaint and prima-facie at this stage of this case, no documents are forthcoming from the plaintiffs to show that R.S. No.214/2A is renumbered-R.S. No.214/3. Further plaintiffs in the plaint stated that they have put up shed in 3 guntas of Kharab land. Prima-facie in order to show the same, no documents are forthcoming from the side of plaintiffs. Further the contention taken by plaintiffs that defendants are obstructing them from using the shed

and also taking water from the well in the absence of specific documents cannot be believed at this stage of the case.

12. Plaintiffs in order to grant an order of temporary injunction have failed to make out three essential ingredients i.e., prima facie case, balance of convenience and irreparable loss and injury in their favour. If at all, temporary injunction as prayed by plaintiffs is granted, irreparable loss and injury would be caused to defendant, rather than plaintiffs. Hence for the above said reasons, I answer Point No.1 in the 'Negative' and answer Point No.2 as 'injury will be caused to defendant in case of granting temporary injunction'.

13. **POINT No.3:-** For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

: O R D E R :

I. A. No.I filed by plaintiffs under
Order 39 Rule 1 and 2 R/w Section 151 of

C.P.C. is hereby rejected.

Parties to bear their own costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **18th day of June- 2022**)*

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Jamkhandi.
C/c Addl. Civil Judge & JMFC,
Jamkhandi.