

KABR310012982024



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI**

PRESENT

SRI. NATARAJ YADAV .S, M.B.A., LL.B.,

*Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.*

Dated this day of 01st July, 2026

O.S.No.912/2024

BETWEEN:

Sri. B.M Shivanna : **Plaintiff**
Aged about 55 years,
S/o Sri. Muninanjappa
R/at: B.K Halli Village and Post,
Jala Hobli,
Yelahanka Taluk,
Bengaluru-562149

(Plt. - By Sri.H.R., Advocate)

AND:

Sri. B.M Muniraju : **Defendant**
Aged about 61 years,
S/o Sri Muninanjappa,
R/at: B.K Halli Village and Post,
Jala Hobli,
Yelahanka Taluk,
Bengaluru-562149

(Deft- By Sri. K.V.M., Advocate)

**PARTIES TO I.A. No.1**

Applicant/ Plaintiff : *B.M. Shivanna*

-V/s-

Opponent/ Defendants : *B.M Muniraju*

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<i>i</i>	<i>Provision under which the application is filed</i>	<i>under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908,</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Temporary injunction</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>11-09-2024</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No. 1</i>
<i>v</i>	<i>Date of filing objection</i>	<i>Nil</i>
<i>vi</i>	<i>Date of Pronouncement of Order</i>	<i>01-07-2026</i>

Sd/-
(NATARAJ YADAV .S)
Prl. Senior Civil Judge & JMFC.,
Devanahalli.



ORDERS

BACKGROUND

1. The plaintiff filed the present suit seeking declaration of ownership over the suit schedule-A property and recovery of possession of the encroached portion, along with a prayer for removal of the compound wall alleged to have been raised by the defendant around the suit schedule-C property, which was stated to be a portion of the suit schedule-A property. Along with the suit, the plaintiff filed the present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking ad-interim temporary injunction restraining the defendants and all persons claiming under them from raising any kind of construction in the suit schedule-C property till the disposal of the suit on merits.

FACTS OF THE APPLICATION

2. The plaintiff stated in the application that the plaintiff and the defendant were brothers. The plaintiff claimed to be the absolute owner of the suit schedule-A property, having acquired the same under a registered partition deed dated 16.03.1995 executed between the parties.

2.1. The plaintiff further stated that by virtue of the said registered partition deed, the revenue records stood mutated in the name of the plaintiff in respect of the suit schedule-A



property and that the plaintiff had been in continuous possession and cultivation of the said property without any interference from any person.

2.2. The plaintiff further stated that the defendant, who was the brother of the plaintiff, was the owner of 1.23 acres comprised in the suit schedule-B property, having acquired the same under the very same registered partition deed dated 16.03.1995. The plaintiff stated that the suit schedule-A property and the suit schedule-B property were adjacent to each other.

2.3. The plaintiff alleged that during the month of March 2024, the defendant illegally encroached upon an extent of 3.12 guntas of the plaintiff's property, which formed part of the suit schedule-A property and which was specifically identified as the suit schedule-C property in the plaint.

2.4. The plaintiff further stated that when the plaintiff questioned the defendant regarding the said encroachment, the defendant admitted to having encroached upon the plaintiff's property and sought time from the plaintiff to remove the encroachment. The plaintiff agreed to the request and granted three months' time to the defendant to vacate the encroached portion and hand over possession thereof to the plaintiff.

2.5. The plaintiff stated that the defendant failed to vacate the encroachment within the time granted and that instead of doing



so, the defendant laid a compound wall all around the suit schedule-C property and also dug a borewell therein, thereby attempting to unlawfully claim the plaintiff's land and alter the nature of the property.

2.6. The plaintiff contended that if the defendant was not restrained from raising any construction or further altering the suit schedule-C property during the pendency of the suit, the plaintiff would be put to serious hardship and irreparable injury.

OBJECTIONS OF THE DEFENDANT

3. The defendant filed detailed objections opposing the application.

3.1. The defendant admitted in the objections that there had been a partition between the parties and that the plaintiff was the owner of the suit schedule-A property as per the registered partition deed dated 16.03.1995.

3.2. However, the defendant contended that the defendant was in possession and enjoyment of his own property that had been allotted to him under the said partition deed and that the defendant had not encroached upon any portion of the plaintiff's property at any point of time.

3.3 The defendant further contended that no construction had been raised over the disputed property and that the defendant



had only laid a compound wall all around his own land to protect the same from encroachment and intrusion. The defendant stated that the photographs placed on record by the defendant clearly showed that there was no construction whatsoever over the disputed property.

3.4 The defendant further contended that a borewell was dug by the defendant solely for the purpose of carrying out agricultural activities and that mere digging of a borewell did not change the nature of the property, as water was required for carrying out agricultural activities and cultivation of seasonal crops.

3.5 The defendant submitted that the present application had been filed by the plaintiff only to harass the defendant and to obstruct the defendant from carrying out agricultural activities and protecting his own land and that there was no factual or legal basis for the allegation of encroachment levelled against the defendant.

3.6 The defendant further contended that although the plaintiff alleged encroachment, the plaintiff had not produced any survey sketch or other material document to establish that the defendant had in fact encroached upon the plaintiff's property.

3.7 The defendant prayed for dismissal of the application with costs.

**ARGUMENTS**

4. The learned counsel for the plaintiff submitted that the plaintiff had established a clear prima facie case of ownership over the suit schedule-A property by virtue of the registered partition deed dated 16.03.1995 and the consequent mutation of revenue records in the name of the plaintiff. It was argued that the defendant himself had admitted the partition and the plaintiff's ownership over the suit schedule-A property and that therefore, the prima facie ownership of the plaintiff was not in dispute.

4.1 The learned counsel for the plaintiff further argued that the dispute pertained to the alleged encroachment by the defendant over an extent of 3.12 guntas comprised in the suit schedule-C property and that the defendant was attempting to alter the nature of the suit schedule-C property by laying a compound wall and digging a borewell thereon during the pendency of the suit. It was submitted that if the defendant was permitted to raise any construction or further alter the disputed property during the pendency of the suit, it would affect the subject matter of the suit and create serious complications at the time of execution of the decree, if the plaintiff succeeded in the suit. It was therefore submitted that the balance of convenience lay in favour of granting the injunction and that the plaintiff would suffer irreparable loss and injury if the injunction was not granted.



4.2 The learned counsel for the defendant argued that the defendant was in lawful possession of his own property that had been allotted to him under the registered partition deed and that there was no encroachment whatsoever over the plaintiff's property. It was submitted that the photographs placed on record clearly established that no construction had been raised by the defendant over the disputed property and that the defendant had merely laid a compound wall to protect his land. It was further submitted that the borewell was dug only for agricultural purposes and that digging of a borewell for water supply did not change the nature of the agricultural property. It was submitted that the plaintiff had not produced any survey sketch or other cogent material to establish the alleged encroachment and that the application had been filed only to obstruct and harass the defendant in the enjoyment of his own property and agricultural activities. It was therefore prayed that the application be dismissed.

POINTS FOR CONSIDERATION

5. The following points arose for consideration in the present application:

I. Whether the plaintiff had made out a prima facie case for grant of temporary injunction?

II. Whether the balance of convenience lay in favour of the plaintiff or the defendant?



III. Whether the plaintiff would suffer irreparable loss and injury if the injunction was not granted?

FINDINGS

Point No. I: Prima Facie Case

6. The documents produced by the plaintiff, including the registered partition deed dated 16.03.1995, indicated that the plaintiff had acquired right, title, and interest over the suit schedule-A property under the said registered partition deed. The defendant, in his objections, admitted the fact of partition and also admitted that the plaintiff was the owner of the suit schedule-A property. In view of the said admission of the defendant, the plaintiff's ownership over the suit schedule-A property was not in serious dispute at this stage.

7. The dispute between the parties was confined to the alleged encroachment by the defendant over the suit schedule-C property measuring 3.12 guntas, which was stated to be a portion of the suit schedule-A property. The said question of encroachment was required to be adjudicated in detail during the course of trial after recording of evidence by both sides. At this stage, this Court was not required to enter into a detailed examination of the factual question of encroachment and was only required to examine whether the subject matter of the suit required protection during the pendency of the proceedings.



7.1 The plaintiff had placed material on record showing that the plaintiff had a right and interest over the suit schedule-A property. The defendant had also admitted his separate allotment under the same partition deed. The allegation of the plaintiff that the defendant was altering the nature of the suit schedule-C property by laying a compound wall and digging a borewell required examination. The photographs placed on record by the defendant clearly showed that no construction had been raised over the disputed property. The defendant had explained that the compound wall was laid only to protect his land and that the borewell was dug for agricultural activities. It was also a matter of common knowledge that digging of a borewell for the purpose of sourcing water did not by itself change the nature of an agricultural property, as water was essential for carrying out agricultural operations.

7.2 However, the fact remained that the plaintiff had alleged encroachment over the suit schedule-C property and the defendant had denied the same. The question of whether the compound wall and the borewell were situated over the plaintiff's suit schedule-C property or over the defendant's own property was a matter that required evidence and detailed adjudication during trial.

7.3 Taking into consideration the totality of the material placed on record, this Court was of the opinion that the plaintiff had



made out a prima facie case for grant of temporary injunction to the extent of preserving the suit schedule-C property in its present condition and restraining any further construction or alteration pending the suit. Accordingly, Point No. I was answered in the affirmative in favour of the plaintiff.

Point No. II: Balance of Convenience

8. The plaintiff was the owner of the suit schedule-A property as per the registered partition deed dated 16.03.1995, which fact had been admitted by the defendant himself. The suit schedule-C property measuring 3.12 guntas was alleged to be a portion of the suit schedule-A property over which the plaintiff claimed ownership. The dispute revolved around the alleged encroachment and the laying of the compound wall and borewell by the defendant.

8.1 If an injunction was granted restraining further construction or alteration, the only inconvenience that the defendant would suffer was that the defendant would not be able to carry out any further construction over the disputed portion during the pendency of the suit. The defendant would still be in a position to continue his agricultural activities and protect his existing compound wall. On the other hand, if the injunction was not granted and the defendant was permitted to raise construction over the disputed portion, and if the plaintiff ultimately succeeded in the suit, the plaintiff would be put to serious



hardship and inconvenience in recovering possession of the encroached portion and in dealing with the construction raised thereon.

8.2 The balance of convenience therefore lay in maintaining the existing state of affairs and in preserving the suit schedule-C property in its present condition, without permitting any further construction, till the rights of the parties were adjudicated on merits through the trial of the suit.

8.3 Accordingly, Point No. II was answered in the affirmative in favour of the plaintiff.

Point No. III: Irreparable Loss and Injury

9. The suit schedule-C property was stated to be a portion of an agricultural and immovable property. The photographs placed on record showed that no construction had been raised over the property as of now and that the property continued to be used for agricultural purposes, apart from the laying of the compound wall and the digging of the borewell. The digging of the borewell for agricultural purposes did not change the fundamental nature of the property as agricultural land.

9.1 However, if the defendant was permitted to raise any new construction over the said disputed portion during the pendency of the suit, and if the plaintiff ultimately succeeded in the suit, the plaintiff would be put to hardship in recovering possession of



the encroached portion in its original state, as any construction raised thereon would alter the nature of the property. The loss that would be suffered by the plaintiff in such an eventuality, in terms of the property being fundamentally altered by permanent construction, would not be adequately compensable in terms of money alone.

9.2 On the other hand, if the injunction was granted restraining further construction and the suit was ultimately decided in favour of the defendant, the defendant would not suffer any irreparable loss or injury, as the defendant would be at liberty to raise the construction upon conclusion of the trial and the existing agricultural activities and the compound wall would not be disturbed by the present order.

9.3 This Court was therefore of the opinion that the plaintiff would suffer irreparable loss and injury if the injunction against further construction was not granted.

9.4 Accordingly, Point No. III was answered in the affirmative in favour of the plaintiff.

10. In view of the findings recorded above on all the three points for consideration, this Court was of the opinion that the plaintiff had made out a sufficient case for grant of temporary injunction and that the balance of convenience and the consideration of irreparable loss and injury also lay in favour of the plaintiff.



Accordingly, the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, has merits and deserves to be allowed. Consequently, I proceed to pass the following;

ORDER

The application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, was hereby allowed.

The defendant and all persons claiming under the defendant or on the defendant's behalf were hereby restrained from raising any construction or in any manner altering the nature of the suit schedule-C property measuring 3.12 guntas, which was stated to be a portion of the suit schedule-A property, till the disposal of the suit on merits.

It was made clear that this order would not prevent the defendant from continuing his existing agricultural activities or from maintaining the compound wall already laid by him, and that the question of whether the compound wall and the borewell constituted encroachment upon the suit schedule-C property would be adjudicated during the trial of the suit.



It was further made clear that the observations made herein were only for the purpose of disposal of the present interlocutory application and that the same shall not be construed as an expression of opinion on the merits of the suit and shall not influence the trial of the suit in any manner.

No order as to costs.

Issues framed and read over in open court.

For L/W or L/D and for P/E on 24.7.2026

(Dictated to the Stenographer on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the 01st day of July, 2026.)

Sd/-
(NATARAJ YADAV .S)
Prl. Senior Civil Judge & JMFC.,
Devanahalli.