

**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE AND
J.M.F.C. DEVANAHALLI, AT: DEVANAHALLI.**

::PRESENT::

Sri. KENCHANAGOUDA PATIL

BA.LL.B

II Addl. Civil Judge and J.M.F.C.
Devanahalli.

ORIGINAL SUIT NO. 490/2023

Dated this the 05th Day of July, 2025.

BETWEEN:

Plaintiff/s : 1. Sri. Srinivasa,
S/o Late Narayanappa,
Aged about 53 years,

2. Sri. Muniraju
S/o Late Narayanappa,
Aged about 46 years.

Both are R/at: No. 17,
Bagaluru Village,
Jala Hobli,
Yelahanka Taluk,
Bengaluru Urban District.

(Rep. by Sri. M. Venkatagiriappa – Advocate)

V/s

Defendant/s : 1. Smt. Rathnamma
@ Nagarathnamma,
Since deceased by LR's

2. Sri. Ramesh S/o Late Anjinappa,
Aged about 43 years,
3. Sri. Nagaraj S/o Late Anjinappa,
Aged about: 37 years,

Both are R/at: Bagaluru Village,
Jala Hobli, Yelahanka Taluk,
Bengaluru Urban District.

(Rep. by Sri. Gopal. N – Advocate)

PARTIES TO I.A. NO. I and II

Plaintiffs/applicants:1. Sri. Srinivasa,
S/o Late Narayanappa and another

V/s

Defendants/Opponents:1.Smt. Rathnamma @ Nagarathnamma,
Since deceased by her Lrs & others

**COMMON ORDERS ON I.A. NO. I AND II FILED BY THE
PLAINTIFFS UNDER ORDER XXXIX RULE 1 AND 2 R/W
SECTION 151 OF C.P.C.**

The plaintiffs have filed I.A. No. I under Order XXXIX Rule 1 and 2 R/w Sec. 151 of CPC for grant an ad-interim order of temporary injunction restraining the defendants, their agents, servants or anybody claiming through them from putting up the construction over the suit schedule Item No.3 and 4 properties till pending disposal of the suit.

SCHEDULE PROPERTIES**Item No.3**

All that part and parcel of the House property bearing Old Re-survey No.17 towards eastern side and assigned as Panchayath Katha No. 737/1381/17, H.No.17, Measuring to an extent of East to West: 7 Feet; North to South 7 1/2 Feet; totally measuring to an extent of 52.5 Sq.Feet out of total extent of East to West: 18 Feet; North to South; 25.5 Feet; totally measuring 178.5 Sq.ft, situated at Bagaluru Village, Jala hobli, Yelahanka Taluk and bounded on :

East by : Property of Ramaswamappa and Jayamma;

West by : Property of Muniraju (Plaintiff No.2);

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

Item No.4,

All the part and parcel of the House property bearing old Re-survey No.17 towards eastern side and assigned as Panchayath Katha No.737/1381/17, H.No.17, measuring to an extent of East to West; 11 Feet; North to South; 7 1/2 Feet; totally measuring to an extent of 82.5 Sq. Feet out of total extent of East to west; 18Feet;

North to south 25.5 Feet; totally measuring 280.5 sq.ft, situated at Bagaluru Village, Jala hobli, Yelahanka Taluk and bounded on:

East by : Property of Srinivasa;

West by : Property of Muniraju;

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

2. The plaintiffs have filed I.A. No. II under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC for grant ad interim order of temporary injunction restraining the defendants, their agents, servants or anybody claiming through them from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule properties till pending disposal of the suit.

SUIT SCHEDULE PROPERTIES

Item No.1.

All the part and parcel of the House property bearing Old Re-survey No.17 towards eastern side and assigned as Panchayath Katha No. 737/1381/17, H.No.17, Measuring to an extent of East to West: 7 Feet; North to South 25.5 feet; totally measuring to an extent of 178.5 Sq.Feet out of total extent of East to West: 18 Feet;

North to South; 25.5 Feet; situated at Bagaluru Village, Jala Hobli, Yelahanka Taluk and bounded on.

East by : Property of Ramaswamappa and Jayamma;

West by : Property of Muniraju ;

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

Item No.2.

All that part and parcel of the House property bearing Old Resurvey No.17 towards eastern side and assigned as Panchayath Katha No. 737/1381/17, H.No.17, Measuring to an extent of East to West: 7 Feet; North to South 25.5 Feet; totally measuring to an extent of 178.5 Sq.Feet out of total extent of East to West: 18 Feet; North to South; 25.5 Feet; situated at Bagaluru Village, Jala hobli, Yelahanka Taluk and bounded on :

East by : Property of Srinivasa

West by : Property of Muniraju;

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

Item No.3

All the part and parcel of the House property bearing Old Re-survey No.17 towards eastern side and assigned as Panchayath Katha No. 737/1381/17, H.No.17, Measuring to an extent of East to West: 7 Feet; North to South 7 ½ Feet; totally measuring to an extent of 52.5 Sq.Feet out of total extent of East to West: 18 Feet; North to South; 25.5 Feet; totally measuring 178.5 Sq.ft, situated at Bagaluru Village, Jala hobli, Yelahanka Taluk and bounded on :

East by : Property of Ramaswamappa and Jayamma;

West by : Property of Muniraju (Plaintiff No.2);

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

Item No.4

All the part and parcel of the House property bearing Old Re-survey No.17 towards eastern side and assigned as Panchayath Katha No. 737/1381/17, H.No.17, Measuring to an extent of East to West: 11 Feet; North to South 7 ½ Feet; totally measuring to an extent of 82.5 Sq.Feet out of total extent of East to West: 18 Feet; North to South; 25.5 Feet; totally measuring 280.5 Sq.ft, situated at Bagaluru Village, Jala hobli, Yelahanka Taluk and bounded on :

East by : Property of Srinivasa;

West by : Property of Muniraju;

North by : Property of Angadi Anjinappa;

South by : 1.5 feet road and property of Narayanaswamy;

3. Brief facts of the plaintiffs case are as follows:

The Plaintiff no.2 has sworn to affidavits in support of the I.A. No. I and II, wherein he has stated that the plaintiff no.1 is his elder brother and authorized him to swear to the affidavit on his behalf also and that the plaintiff no.1 filed the above suit for the relief of declaration and mandatory injunction and for other consequential reliefs against the defendants in respect of the suit schedule properties and that the averments made in the plaint be read as part and parcel of this affidavit to avoid repetitions of facts and that his grandfather namely Sri. Venkatappa was purchased the property bearing Re-survey No.17 measuring to an extent of East to West 18 feet (6 Gaja) and North to south 25 ½ feet (8 ½ Gaja) totally measuring to an extent of 450 square feet through registered sale deed dated: 13/09/1956, vide Reg.No. 1307/1956-57,

registered at Sub-registrar, Devanahalli, Thereafter the Bagaluru Grama Panchayath (issued the Panchayath Katha No. 737/1381/17 and after demise of said Venkatappa the Katha came to be transfer to his mother Smt. Muniyamma after demise of his mother, said suit schedule property was allotted to them through the registered partition deed dated 14/11/2017 vide document No. No. JAL-1-02620/2017-18, stored in C.D.No.JALD231, Book No.1, Registered in the office of Sub Registrar, Gandhinagara(Jala) and that he and plaintiff no.1 are brothers and they are sons of one Late. Narayanappa and Muniyamma and that as per the partition deed date 14/11/2017 the plaintiff no.1 is the absolute owner of the House property situated on the eastern side bearing Panchayath Katha No. 737/1381/17, H.No.17 measuring to an extent of East to West: 7 feet North to south 25.5 Feet; totally measuring 178.5 Sq.feet, out of total extent of East to West: 18 Feet; North to south: 25.5 Feet; situated at Bagaluru Village, Jala Hobli, Yelahanka Taluk the description on which is fully given in the schedule hereunder and hereinafter called and referred to as the item No.1 of the suit schedule properties and that as per the partition deed date

14/11/2017 he is absolute owner of the House property situated on the eastern side bearing panchayath Katha No. 737/1381/17, H.No.17 measuring to an extent of east to West: 11 feet; North to South; 25.5 Feet, totally measuring to an extent of 280.5 Sq. Feet out of total Extent of East to West; 18 Feet; North to South 25.5 Feet; situated Bagaluru Village, Jala hobli, Yelahanka Taluk the description of which is fully given in the schedule hereunder and hereinafter called and referred to as the Item No.2 of the suit schedule properties and that they are acquired the suit schedule properties in pursuance of a Registered Partition deed dated 14.11.2017 which was executed amongst their joint family members vide Document No.JAL-1-02620/2017-18, stored in C.D.No.JALD231, Book No.1, Registered in the office of Sub Registrar, Gandhinagara(Jala) on 14.11.2017 and On the basis of the said Registered Partition Deed dated 14.11.2017 they were put in physical possession of the Item No.1 and 2 of the suit schedule properties respectively and have been in their respective physical, peaceful possessions and enjoyment till date without any hindrance by paying necessary taxes thereon. Furthermore, the concerned

katha and other records in respect of the Item No.1 and 2 of the suit schedule properties were Transferred in our favour by the concerned authorities. After got the partition deed we are approached the revenue authorities to demarcate the out extent and the revenue authorities postpone the same by one or other the pretext in spite of several request made by them regarding the illegal and unlawful encroachment made by the defendants from southern side of their property and towards the northern side of out property and the defendants are encroached the northern side portion of the 1st plaintiffs property i.e., measuring to an extent of east to west 7 feet and north to south 7 ½ feet total 52.5 sq.ft in item No.1 of the suit schedule property and the defendants illegally and unlawfully without having no manner of right, title, possession or interest build the unauthorized construction over the property of plaintiff no.1 and which is fully given in the schedule hereunder and hereinafter called and referred to as encroached Item No.3 of the suit schedule properties. Further the defendants are also encroached the northern portion of 2nd plaintiffs property measuring to an extent of east to west 11 feet and north to south 7 ½ feet total

82.5 sq.ft in Item No.2 of the suit schedule property and the defendants illegally and unlawfully without having no manner of right, title. Possession or interest build the unauthorized construction over the property of plaintiff No.2 and which is fully given in the schedule hereunder and hereinafter called and referred to as the Item No.4 of the suit schedule properties and that such being the state of affairs on 20.09.2023 the defendants who are the neighboring land owners on the northern side of the Item No.1 and 2 of the suit schedule properties along with their huge number of supporters made hectic efforts to put up construction in suit Item No.3 and 4 and they somehow resisted the illegal acts of the defendants with the help of neighbors and well wishers and the defendants left the spot by threatening them with dire consequences and that, they are the absolute owners of the suit schedule Item No.1 and 2 properties respectively by having right, title, interest and possession over the same whereas, the defendants have no right title, interest and possession over the suit schedule item No.3 and 4 properties and defendants have been encroached for wrongful gain to their and for wrongful loss to them and the suit

schedule properties are to threat of encroachment by the defendants. and that not the defendants have been making hectic efforts to interfere with the peaceful possession and enjoyment over their respective Item No.1 and 2 of the suit schedule properties and they being law abiding citizens cannot stop the illegal acts of the defendants whereas the defendants are powerful persons having money and muscle power, if the illegal acts of the defendants are not prevented by this Court, then they will be put to great hardship and injury and it leads to multiplicity of proceedings and that the suit schedule properties are in threat of interference. **With these assertions, the Plaintiffs have sought for allowing I.A. No. I and II.**

4. On the other hand, in response to service of suit summons, the defendants have appeared before the Court through their counsel and filed their detailed written statement along with adoption memo stating that contents of written statement may be treated as objections to I.A No. I and II. In the written statement it is contended that the defendant No.1 has purchased the Item No.1 property bearing Khata no. 453:453:17 measuring East – West 20

feet, North-South 28 feet constructed old house and item No.2 property bearing Khata No. 453;453;17 measuring East-West 22 feet, North-South 18 feet constructed old house from one Shanbhoga Ramanna and his family through a registered sale deed vide. No. 5632/1997-98 dated 13-11-1997 before sub-Registrar Yelahanka and that the defendant No.1 and her husband have altered the old Mangalore tiled roof houses which were 50 years old by the time of aforesaid registered sale deed. They have renovated the said houses by covering the stone slab roofed house and all necessary plastering etc and that the defendant no.1 and her husband have altered the old Mangalore tiled roof houses which were 50 years old by the time of aforesaid registered sale deed and they have renovated the said houses by covering the stone slab roofed house and all necessary plastering etc. Further it is contended that, recently the defendant No.1 died during the pendency of the suit. the defendants No.2 and 3 are the children of defendant No.1 have succeeded the aforesaid property and they are in peaceful possession and enjoyment of same now the defendants No.2 and 3 have decided to construct the first floor on the existing

structure belongs to defendants and to live accordingly. But in this situation the plaintiffs being the neighbor of the defendants property without any right, interest or possession over the defendants property have obstructed the construction of the defendants and picked quarrels with them, in this regard the defendants have approached the concerned police and the said police along with the panchayathadars have observed the dispute closely on the spot and advised the plaintiffs that the defendants are constructing the house on the existing structure belongs to them and they are not encroaching the plaintiffs property and advised the plaintiffs to stop with illegal obstruction over the construction operations of the defendants and that the defendants have obtained the clear khata of their particular extent of property and paying the tax for their possession regularly to the Government the defendants have never interfered/ encroached with the suit schedule property belongs to plaintiffs the plaintiffs without conducting any survey over the suit schedule property without any valid documents have filed this frivolous suit only to harass the defendants and the schedule boundaries of the suit schedule

property are also mismatching to their registered sale deed boundaries mentioned in the plaint and suit schedule property boundaries and that the suit schedule property was earlier the Survey number property and while converting the same to house list property they have not conducted any kind of survey over the suit schedule property and they have not issued any notice to the neighboring property holders o defendants and defendant no. 2 and 3 are stated that by considering all the above true facts and circumstances the suit filed by the plaintiffs is considered to be false and that the plaintiff has filed the above suit with malafied intentions only to harass the defendants and to wast the precious time of this Court. **With these contentions the defendants have sought for rejection of I.A. No. I and II.**

5. On perusal of the pleadings and list of documents produced along with pleadings, applications, affidavits and statement of objections, the following points that arise for the Court consideration:

POINTS

- 1. Whether the plaintiffs have made out a prima facie case for grant of an order of equitable relief of temporary injunction against the defendants on IA No. I and II?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether the plaintiffs would suffer irreparable loss or injury if the Court refuses to grant temporary injunction against the defendants on IA No. I and II?**
- 4. What order?**

6. Heard the argument on present interim application No. I and II by the learned counsels appearing for the plaintiffs. In spite of granting sufficient time, the defendants have not addressed the arguments on these applications. Hence, arguments on these applications by the defendants side was taken as not argued.

7. Upon hearing of arguments by counsel appearing for the plaintiffs and on perusal of pleadings averments, list of documents, the Court answers to the above said points are as hereunder:

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

REASONS

8. Point No. 1: That the plaintiffs have filed the above suit against Defendants for seeking the relief of declaration that the plaintiffs are the absolute owners of the suit schedule Item No. 1 and 2 properties respectively. Further mandatory injunction by direct the defendants to vacate the encroached schedule Item No. 3 and 4 properties by demolishing the unauthorized construction structure and in the event the defendants fails to vacate the suit schedule Item No. 3 and 4, then this Court be pleased to vacate the defendants from the suit schedule Item No. 3 and 4 through the process of this Hon'ble Court and permanent injunction by restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties etc.,

9. That the plaintiffs to prove a prima facie case have produced certified copy of the sale deed dated 13.09.2015, certified copy of the Encumbrance Certificate, copy of the partition deed dated 14.11.2017, Tax demand registers (Form No. 9), certified copy of the Tax demand Registers (Form No. 11), Tax paid receipts, Photographs, C.D., Rough sketch.

10. That learned counsel for the plaintiffs vehemently argued and reiterated the plaint averments at the time of arguments. Further it is argued that the plaintiffs have established prima-facie case and balance of convenience lies in their favour by producing cogent documents and while praying to allow the applications, that if the applications are not allowed it will lead to multiplicity of proceedings and that they would suffer irreparable loss. Hence, they pray to allow the I.A No. I and II.

11. Apart from that the defendants in support of their defense have not produced any documents.

12. In spite of granting sufficient time, the defendants have not addressed the arguments on these applications. Hence, arguments

on these applications by the defendants side was taken as not argued.

13. That the rival contentions of the parties as already are stated above, therefore, it is not necessary to repeat the rival contentions.

14. On careful perusal of the entire pleadings and materials placed before the Court, it appears to the Court that it is not in disputed that property of the plaintiffs and defendants are adjacent and abutting to each other. It is also not in disputed that ownership of the plaintiffs and defendants properties. Further it is also not in disputed that the defendants have carrying house construction. But main dispute between the parties is that whether the defendants have encroached the suit schedule Item No. 3 and 4 properties and thereby carrying construction and causing interferences to the plaintiff's peaceful possession and enjoyment of the suit schedule Item No. 1 and 2 properties?

15. On careful perusal of the pleadings and documents it appears to the Court that the both parties have not denied their ownership and right over their respective properties. But according to the

plaintiffs, the defendants being adjacent land owners have encroached the suit schedule Item No. 3 and 4 properties and thereby carrying construction work and causing interferences to the plaintiffs peaceful possession and enjoyment of the suit schedule Item No. 1 and 2 properties. On the other hand, it is specific contention of the defendants that, there is already existing a Mangalore tiled roof houses which are 50 years old and the defendants carrying construction work in first floor. Therefore, question of encroachment does not arise. Moreover, the plaintiffs themselves obstructing the construction work of the defendants without conducting any survey. On careful perusal of the rival contentions of that partis it clearly discloses that the plaintiffs have not produced any single documents to show that the defendants have encroached the suit schedule Item No. 3 and 4 properties as alleged in the plaint except photographs. Based on the photographs the Court cannot comes to the conclusion that the defendants have encroached the suit schedule Item No. 3 and 4 properties. Further the plaintiffs have not produced any survey report by conducting survey from competent authority and without conducting survey

the Court cannot comes to the conclusion that the defendants have encroached the suit schedule Item No. 3 and 4 properties as alleged in the plaint.

16. Further on perusal of the entire records would clearly discloses that the properties of the plaintiffs and defendants are adjacent and abutting to each other and there is existence of boundary dispute in between the properties of the plaintiffs and defendants. At this stage based on the oral evidence of the both parties, the Court cannot comes to the conclusion and to decide the said aspects it requires full pledged trial.

17. Further on careful perusal of the photographs produced by the plaintiffs themselves would clearly discloses that the defendants have carrying construction work in the first floor and there is already existence of house in ground floor. If at all the defendants have encroached the suit schedule Item No. 3 and 4 properties which are belongs to the plaintiffs, then the plaintiffs ought to have question the same to the defendants at initial stage i.e. while digging the soil for the purpose of putting column. But the plaintiffs

have not questioned the same at initial stage to the defendants reasons known to them.

18. Further if the defendants are encroached the suit schedule Item No. 3 and 4 properties and thereby constructing a house, then the plaintiffs ought to have made complaint before the local competent authority regarding alleged encroachment of their property and illegal construction by the defendants, but the plaintiffs have not made any complaint before the local authority in this regard.

19. Further the Court cannot supervise construction of building by appointing Court commissioner or any other officials whether the defendants are constructing as per the plan and permission issued by the concern authority and whether they obtained license or not and it is the Grama Panchayat or Town Municipality who has to look into the proposed construction and violation of building permission etc., when there is specific provision available in the act to approach to proper forum. Under such circumstances the Civil Court cannot exercise its discretionary power to grant injunction

against the defendants and also the plaintiffs have not made the local Grama Panchayat or Town Municipality party to the suit, who has to issue construction permission as necessary party in this suit, without hearing the Grama Panchayat or Town Municipality whether the defendants are by encroaching the suit schedule Item No. 3 and 4 properties and thereby constructing the house and the Court cannot itself infer that the defendants have encroached the suit schedule Item No. 3 and 4 properties and constructing a house.

20. Further it is most importantly any property is identified by description of its boundaries, in the instant case, the plaintiffs have not mentioned the exact measurement of the suit schedule Item No. 3 and 4 properties. As per order 7 Rule 3 of CPC, identification of property is must to grant any relief. Further on careful perusal of the photographs produced by the plaintiffs themselves which are clearly reveals that there is already existence of house in a ground floor. Further if the defendants are constructing house by encroaching the suit schedule Item No. 3 and 4 properties, then the plaintiffs are at liberty to approach the proper forum. If the Grama Panchayat fails to stop the further construction, then the plaintiffs

requires to approach before the Taluka Panchayat concern officer to take necessary action against its subordinate official. Instead of approaching the concern authority the plaintiffs have come to the Court to stop the further construction. If the plaintiffs exhaust all the available remedy then only, they can approach the Civil Court by making the concern local authority as party to the suit. Hence, the local Grama Panchayat or Town Municipality is the necessary party to the suit on hand. Because the competent authority is the necessary party to this suit to ascertain that whether the defendants are encroached the suit schedule Item No. 3 and 4 properties and thereby constructing a house. Therefore, at this stage the plaintiffs have not made out prima facie case to grant temporary injunction. Therefore, the plaintiffs have not entitled to temporary injunction as claimed in the interim applications. Accordingly, this Court answered the Point No. 1 in the **Negative**.

21. Point No. 2: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicants. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to

be caused to the applicants by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

22. The existence of prima-facie case in these matters of granting injunction is really harbinger to investigate other points as per principal cited in the decision of **Gourishankar Swamigalu Vs. Siddaganga Mutta** has reported in **ILR 1989 Karnataka 1701** and it has been further held that if there is no prima-facia case at all or the case put forward is so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiffs would fall at the very first stile itself. The relief of injunction is remedy in equity. Hence, such relief must be bestowed only on whose reputation and hands are both spotlessly clean. In the light of discussion made above, this Court is of the opinion that balance of convenience does not lies in the favour of the plaintiffs. Accordingly, this Court answered the Point No. 2 in the **Negative**.

23. Point No. 3: The existence of the prima facie case alone does not entitle the applicants for a temporary injunction. The

applicants must further satisfy the Court about the third condition by showing that they will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to them by which they can protect themselves from the consequences of apprehended injury. The balance of convenience doesn't lean in favour of the Plaintiffs and if the equitable relief of temporary injunction is not granted in favour of the Plaintiffs, then they will not be put to any such hardship. Accordingly, this Court answered the Point No. 3 in the **Negative**.

24. Point No. 4: For the above said reasons and discussions this Court proceed to pass the following order:

ORDER

The interim application No. I and II filed by the plaintiffs against the defendants Under Order XXXIX rule 1 and 2 R/w section 151 of CPC are hereby rejected.

No order as to cost.

For framing of Issues by

(Typed by me directly on my laptop and the same is revised, corrected, and then order pronounced by me in the open court on this **05th day of July, 2025.**)

Place: Devanahalli.

Date: 05.07.2025.

[Kenchanagouda Patil]
II Addl. Civil Judge and J.M.F.C.
Devanahalli.

(ORDERS PRONOUNCED IN THE OPEN COURT)

(VIDE SEPARATE ORDER)

ORDER

The interim application No. I and II filed by the plaintiffs against the defendants Under Order XXXIX rule 1 and 2 of CPC are hereby rejected.

No order as to cost.

II Addl. Civil Judge and J.M.F.C.
Devanahalli.