

**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C., AT
DODDABALLAPURA**

PRESENT: Deepa. K.R., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Doddaballapura.

Dated: This the 10th day of March 2023

O.S. No.243/2021

Plaintiff: Sri. Mutharasaiah
S/o Late Mutharayappa,
Aged about 78 years,
R/at, Tanneranahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk

(Repd. By Sri G.G., Advocate)

V/s.

Defendants: 1. Sri. T.R. Chikkarangaiah
S/o Rangaiah,
Aged about 50 years,

2. Sri. T.C. Rangaiah @ Ranganath
S/o T.R. Chikkarangaiah
Aged about 28 years
Both are R/at, Tanneranahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk

(D.1 and 2 are Repd. By Sri. R.M., Advocate)

ORDER ON I.A.NO.I

The plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure for an order of temporary injunction restraining the defendants from putting up Mud and waste stones towards Eastern side of

the suit schedule property disturbing the peaceful possession and enjoyment of the schedule property, till the disposal of the suit.

2. It is the case of the plaintiff that, he is the absolute owner in possession and enjoyment of the suit schedule property. It is the contention of the plaintiff that, the Khatha of the suit schedule property is standing in his name and he is in possession and enjoyment of schedule property measuring East to West 12 feet and North to South 62 feet, which was acquired by the plaintiff; that the plaintiff is in actual possession and enjoyment of the schedule property without any disturbance or interference from anybody. It is the contention of the plaintiff that, he paid up to date taxes to the concerned Authority in respect of the schedule property.. It is the contention of the plaintiff that the defendants are strangers to the suit schedule property and they are trying to interfere over the suit schedule property by putting waste mud and brick stones.

3. It is the further case of the plaintiff that, where the defendant was questioned in this regard, the defendants threatened him with dire consequences and warned him that he should not approach the defendants in respect of the said issues. It is the contention of the plaintiff that, he requested not to put up any mud and waste stones to the plaintiff schedule property for which the defendants had agreed for the said request made by him; that but later the defendants started putting up mud and waste stones towards his schedule property by breaking the promises made by the defendants. It is contention of the plaintiff that the defendants started scolding the plaintiff in filthy language and started assaulting and issued dire consequences threats to him.

4. It is the further case of the plaintiff that, the schedule property is a vacant property belonging to him; that the defendants have disturbed upon his property and have put the illegal acts towards Eastern side of the schedule property, on the other hand the defendants have dumped all their waste materials in the schedule property only to arm twist the plaintiff to encroach upon the schedule property; that the defendants are trying to change the nature of the schedule property by dumping all waste building materials. It is the contention of the plaintiff that, the defendants do not have valid right, title or interest to enter upon the schedule property and put up waste materials in the schedule property and hence he filed this application.

5. Per contra the defendants filed written statement and also filed memo to treat the written statement as objection to this application. In the written statement the defendants denied all the allegation made in the plaint and submitted that the plaintiff by suppressing material facts had approached the jurisdictional Bhakatharahalli Grama Panchayath and secured certificate styled as "Dhrudikarana Patra" dated 07.08.2020 and thereafter, complaint being lodged by the defendants herein and other villagers; that then the plaintiff had undertook before the office of the Grama Panchayath that he would resolve the dispute; that the plaintiff has the audacity of blocking the public road and thus causing public nuisance by exercising his money, muscle and political power; that there is no cause of action to file the above suit seeking injunction, either mandatory or permanent against these defendants in as much as it is the plaintiff who is at fault and hence prays to dismiss the application.

7. Heard the learned counsel for the plaintiff and defendants.

8. The points that arise for my consideration are:

- Whether the plaintiff has made out a prima facie case for grant of temporary injunction?
- Whether the plaintiff proves that the balance of convenience lies in his favour?
- Whether the plaintiff proves that irreparable loss and injury will be caused to them, if an order of temporary injunction is not granted?
- What order?

9. My findings on above points are as under:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per final order
for the following ...

REASONS

Point No.1to 3:-

10. As these points are interconnected with each other, hence in order to avoid repetition of facts, these points are taken for common discussion.

11. The plaintiff at this stage has produced the Certificate of Bhaktarahalli Village Panchayath and Photographs.

12. The defendants at this stage has produced the Certified copy of police compliant, Certified copy of the village Notice, Certified copy of the Village maps, Certified copy of the Bhakatarhalli Village Panchayath certificate, Certified copy of the Government PDO Notice, Certified copy of the Demand Register and Photographs.

13. At the stage of deciding an application under Order XXXIX Rule 1 and 2, the court cannot embark upon a trial as to the veracity or otherwise of the allegations and counter allegations made. Therefore, firstly the court have to see whether the plaintiff has made out a prima facie case, whether the balance of convenience lies in his favour and whether any irreparable loss and injury would be caused in the event of an injunction not being granted.

14. It is the case of the plaintiff that, the defendants are trying to interfere over the suit schedule property by putting waste mud and brick stones towards Eastern side of suit schedule property. In order to prove his possession over the suit schedule property he is relying on a Certificate issued by Secretary Bhaktarahalli Village Panchayath. It is the contention of the defendant that the plaintiff has dumped mud in the public road showed in the village map. Further, the defendant has produced another Certificate issued by the same Secretary Bhaktharahalli Village panchayath which shows that the Certificate relied by the plaintiff is dismissed as the plaintiff has showed some other property when mahazar was conducted. Hence, at this juncture it can be said that there are no documents available on records to show the exact boundary and measurement of the suit schedule property. Hence, in the absence of document to show the exact location and boundary

of the suit schedule property, court at this juncture cannot hold that the plaintiff is in possession of the plaint schedule property. On the other hand it is the contention of the defendant that the plaintiff is putting mud and dust over the public road. Though plaintiff has mentioned the boundaries with regard to suit schedule there are no photographs or any document to contend the same. Court at this juncture cannot rely upon photographs produced by the both the parties. It is to be seen that the photographs produced by the parties can only be believed after trial since at this stage court cannot express any opinion as to the genuineness or otherwise of the photographs. Hence, looking at the facts and circumstances of the case there are too many facts which are required to be vetted at trial. Before trial court cannot come to any finding as in whose possession the suit schedule property belongs to. I would like to quote decision reported in **2008 SAR(Civil) 401** in case of **Sri. Thimmaiah V/S Shabeera** and others which speaks about possession of plaintiff over the property and without their being proof of possession injunction cannot be granted.

15. Hence looking at the fact and circumstances and relying on the documents produced by the both plaintiff and defendants, at this juncture court cannot come to conclusion that plaintiff is in possession of plaint schedule property. Hence it can be said that the plaintiff has utterly failed to prove the prima faice case which is one of the ingredient of the granting injunction. Hence if injunction is granted in favour of plaintiff there are very much possibilities of inconvenience and loss to the defendants. Moreover it is the contention of the defendants that there is no alternative road. Hence, there would be more hardship on the defendants than plaintiff. As documents in rival dispute are required to be vetted at trial, I am of opinion

that this is not a fit case to grant injunction. Hence with these observations, I answer point No.1 to 3 in the *Negative.*

Point No.4:

16. In the light of the aforesaid discussion, I pass the following..

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Typist, transcribed by her, the transcript corrected by me and then pronounced by me in the open court on this the 10th day of March 2023)

(Deepa. K.R.)
Prl., Civil Judge & JMFC.,
Doddaballapura.