

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

**PRESENT: Sri.RAVI BETAGAR B.A.LL.B.(Hons.)
II. Addl Civil Judge & J.M.F.C.,
Doddaballapura
Bengaluru Rural District**

Dated this the 7th Day of November 2024

O.S.No.246/2021

Plaintiff/s : **Sri.Rajkumar**
S/o Nallaganappa.

(By Sri.R.M., Advocate)

- **V/s.** -

Defendant/s: 1.Smt.Lakshamma
S/o Nadipanna,
and others.

(By Sri.S.M., Advocate for defendants No.1 to 3)

Parties in I.A. U/o 39 Rule 1 & 2 of C.P.C. filed by Plaintiff

Applicant / : Sri.Rajkumar

Plaintiff /s

V/s.

Opponents / : 1.Smt.Lakshamma

Defendants S/o Nadipanna,
and others.

**Orders on I.A.I U/o 39 Rule 1 & 2 of C.P.C filed by the
Plaintiff**

The plaintiff filed the IA No.I U/O XXXIX Rule 1 and 2 of CPC supported by the affidavit praying to grant temporary injunction restraining the defendants, their agents, henchmen or any person or persons claiming through or under them directly or indirectly from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

2.Suit schedule property as hereunder:-

All that piece and parcel of the property bearing Khaneshumari No.76, property No.71/76, measuring East to west 30 feet and north to south 32 feet, situated at Hiremuddenahalli Village, Thubagere Hobli, Doddaballapura Taluk, Bengaluru Rural District and bounded on the

East By	:	Property of Hanumanthappa
West By	:	Road
North By	:	Property of Narayanappa
South By	:	Road

3.The plaintiff in his application and affidavit states that is the absolute owner of the suit schedule property and he acquired the same from Gangappa under registered sale deed dated 8th September 1997 and since then he has been in possession and enjoyment of the schedule property as an absolute owner. Furtherance to the select all the revenue

records and khata of the schedule property chain in his name and he also obtained the house building license from the village panchayat to construct a building over the schedule property on 26th April 2021. The plaintiff went near the suit schedule property on 24th June 2021 construction by cleaning the suit schedule property at that time the defendants try to interfere with the plaintiff. Thereafter on 26th June 2021 the defendants along with his henchmen came near the suit schedule property and tried to dig trenches by encroaching the portion of the suit property this act of the defendant was registered by the plaintiff with his friends and well wishers help the defendants threaten to disposes the plaintiff from the suit schedule property. In this regard the plaintiff approached the jurisdictional police to lodge a complaint but they are advised to approach Civil Court. Hence left with no other alternatives the plaintiff filed the present suit and present I.A.

4.The defendants file the written statement and adopted the written statement as objection to the I.A.No.I filed by the plaintiff. The defendant in the written statement denies the entire case of the plaintiff. The defendants to contention that suit schedule property is the ancestral property of themselves and it originally belong to one person named Gangappa who is the grandfather of the defendants. He executed registered will deed dated 26th April 1989 in favour of his only daughter Munniakkayamma who is the mother of the defendants. and in pursuant to the said will deed she is in possession of the suit schedule property and she died on 16th March 2006. Thereafter

the defendants are in possession of the schedule property. The plaintiffs along with the henchmen came near the suit schedule property and tried to dig trenches by encroaching the portion of the suit schedule property which was registered by the defendants with the help of the well wishers and villagers the plaintiff went away stating that they will come with more men and disposes them from the suit schedule property. In this regard they approached jurisdictional police on 21st June 2021 but the police gave NCR report. The defendants being fed up with the act of the plaintiff filed a suit against the plaintiff in O.S.No.136/2021 and the plaintiff to escape the set liability filled the present suit.

5.Heard counsels for both the sides and perused the materials available on record.

6.The following points arise for consideration

- 1) Whether the plaintiff has prima-facie case in his favour?**
- 2) Whether the balance of convenience lies in favour of plaintiff?**
- 3) Whether irreparable loss would be caused to the plaintiff if the temporary injunction is not granted? In his favours?**
- 4) What order?**

7. My answer to the above points are as under

Point No.1 to 3 : In the Affirmative

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

REASONS

8.POINT NO.1: The facts of the case of the plaintiffs and the defendants are stated above.

In order establish that the plaintiff has prima facie case in his favour he relied on copy of registered sale deed dated 8th September 1997, wherein it shows that he purchased suit schedule property from one person Gangappa. And the plaintiff also produced the building construction license obtained by the village panchayat and also the tax paid receipts. He also produced tax demand registers off 1999-2000 and 2021 and 2022 he also produced photographs. The perusal of the documents produced by the plaintiff goes to show that he became owner of the suit schedule property under registered sale deed and he has been paying taxes to the government with respect to the suit schedule property. From the documents produced by the plaintiff it appears that he is in possession of the suit schedule property. Per contra defendant has not produced any documents on his behalf. Apart from his pleadings there are no materials on record placed by the defendant which raise suspicion in the case of the plaintiff or to show that plaintiff do not any prima facie case. Based on the materials produced by the plaintiff this court is of the considered opinion that the plaintiff has shown

existence of prima facie case in his favour. **Accordingly the point number 1 is answered in the Affirmative.**

9.Point No.:-2 and 3 :- When assessing the balance of convenience the Court should see as to the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant is greater than that, which is likely to be caused to the opposite party by granting it. "The term 'irreparable injury' means injury which is substantial and could never be adequately remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exists any standard for ascertaining the actual damage likely to be caused. It is most apposite to mention here that irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one that cannot be adequately remedied or compensated by way of damages.

10. When the plaintiff has made out prima facie case if the temporary injunction is not granted if the property or life gets damaged then it would effect the legal right of the plaintiff which cannot be measured in terms of money and therefore the injury is irreparable in nature. Hence, balance of convenience lies in favour of the plaintiff. **Therefore Point No.2 and 3 answered in the Affirmative.**

11.Point No.4:- For the afore mentioned reasons this Court proceeds to pass the following:-

ORDER

The I.A. U/O XXXIX Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed. and the defendants, their agents, henchmen or any person or persons claiming through or under them directly or indirectly from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property till the disposal of the suit.

(Typed, computerized and corrected by me. Then signed and pronounced in open court on this 7th the day of November - 2024))

Sd/-

(Sri.Ravi Betagar)
II. Addl. Civil Judge & JMFC.,
Doddaballapura.