

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
HOSAKOTE AT: HOSAKOTE**

**Present; Sri Basavraj. G. Sanadi,
B.A L.L.B(Spl.),
Prl. Civil judge And JMFC Hoskote**

O.S. NO: 124/2020

Dated this 20th day of September 2021

**Applicant/
Plaintiff**

: 1. Smt. Munirathnamma
W/o Narayanaswamy,
Age : 46 years,
R/at Marasandahalli village and post
Nandagudi hobli,
Hosakote Taluk,
Bengaluru Rural District.

(By Sri. A.R.K., Advocate)

-V/s -

**Respondent/s
Defendant/s**

:1. Smt. Akkayamma
W/o Chikkamuniyappa,
Age: 65 years,
R/at Marasandahalli village and post
Nandagudi hobli,
Hosakote Taluk,
Bengaluru Rural District and others

(D1 to3 by Sri. M.V.S., advocate)

**COMMON ORDER ON IA NO. 1 FILED UNDER
ORDER 39 RULE 1 AND 2 R/W 151 AND RULE 4
OF CIVIL PROCEDURE**

The applicant/plaintiff has filed this application with prayer to grant the relief of temporary injunction against the defendants, restraining the defendants or anyone claiming through them from interfering in the peaceful possession and enjoyment of the plaintiff over suit schedule property. In support of the application the plaintiff has filed the affidavit and prayed to allow the application.

2. On the other hand defendants have appeared through counsel and filed written statement and prayed to treat it as objection to IA No.1 and also filed I.A No 2 U/o 39 R 4 of C.P.C with prayer to vacate the order of ad interim temporary injunction. In the written statement defendants denied all the averments of the plaint and interim application as false and frivolous and contended that the plaintiff and the defendants are related to each other. The properties of the plaintiff and defendants are abutting. The actual measurement of the plaintiff's property is measuring East to West 60 feet and North to south 30 feet bearing khata No.87 of the then Bylanarasapura Grama Panchayath and the defendants

property bears khata No.107/1 measuring East to West 24 feet and North to South 45 feet of the then Bylanarasapura Grama Panchayath and both lands are situated at Marasandahalli Village. The plaintiff's property is towards Southern side of the defendants property.

2(a). It is further contended that after forming the Hethakki Grama Panchayath the properties of the plaintiff and defendants among others were merged with the Hethakki Grama Panchayath. At that point of time, the plaintiff by undue influence and misusing the power has got manipulated the khata records of her property entering the House Number as 99/1 and entering 50 feet dimension towards North to South and altered the boundaries of Northern side and southern side. The plaintiff is not the owner nor in possession of the suit schedule property measuring East to West 60 feet and North to South 50 feet.

2(b). It is further contended that defendants from the time of their generations are residing in the said village and in the said land by putting hut. With a view to have a roof on their head, the defendant have dismantled the hut and borrowed loan to put up the small house and

laid foundation. Thereafter the family members of the plaintiff have prevented and obstructed the defendants from proceeding with further construction. Defendants have made a representation to the Executive officer of the Hosakote Taluk panchayath about manipulation made in the measurement of the plaintiff's property. The Executive officer of the Hosakote Taluk pachayath has forwarded the same to the panchayath development officer Hethakki Grama Panchayath on 27.07.2020. But so far no action has been taken in this regard. Further contended that plaintiff has suppressed the material facts and has no prima-facie case. Hence prayed to dismiss the I.A No. 1 and prayed to allow I.A No. 2 filed U/o 39 Rule 4 of C.P.C.

3. The following points arise for my consideration;

1. Whether the applicant/plaintiff has Prima - facie case in her favour?
2. Whether the balance of convenience lies in favour of applicant/plaintiff ?
3. Whether the applicant/plaintiff would suffer irreparable loss if the prayer for Interim injunction is rejected?

4. Whether the defendants have made out sufficient grounds to allow I.A.No 2?

5. What order?

4. I have heard arguments of both side and I have perused the documents on record.

5. My findings on the above said points are as follow;

Point No. 1- : In “Negative”
Point No. 2- : In “Negative”
Point No. 3- : In “Negative”
Point No. 4- : In “Affirmative”
Point No. 5- : As per final order for the following reasons;

: REASONS :

6. Point No. 1; This is the suit filed by the plaintiff against the defendants for the relief of Permanent Injunction in respect of the suit schedule Property. It is the specific contention of the plaintiff that the plaintiff is an absolute owner of the suit schedule property. The property bearing House

No.99/1, measuring East to West 60 feet and North to South 50 feet, 60x50 feet, totally 3000/- sq. feet, situated Marasandahalli Village, Hosakote Taluk, Bengaluru Rural District is ancestral property and it is in the actual possession of the plaintiff. It is further contended that recently the defendants on 08-06-2020, accompanied with supporters entered the suit property illegally and committed trespass and attempted to interfere in the peaceful possession of the plaintiff over the schedule property. Further threatened that they would come again and dispossess the plaintiff. Defendants have no any right title or interest over the schedule property. Therefore plaintiff is constrained to file present suit against the defendants along with I.A.No. 1.

7. In support of the application, plaintiff has filed affidavit and reiterated averments of the plaint and in support of her case plaintiff has produced the copy of property extract and copy of tax demand register. Tax paid receipts, photos, copy of Newspaper, endorsement given by village panchayath, copy of first information, and other connected documents. On the other hand defendants have also produced copy of property extract and copy of tax demand register. Tax paid receipts,

electricity and water bills, copy of Newspaper, endorsement given by village panchayath, copy of permission to construct house issued by village panchayath and other connected documents.

8. Learned advocate for the plaintiff has vehemently argued that plaintiff is absolute owner and in actual possession of the suit property. Defendants have no right over the suit property but trying to encroach and put construction in the suit property. Further argued that plaintiff has prima-facie case in her favour. If IA is not allowed then the plaintiff will be put into great loss and hardship and the irreparable loss will be caused to the plaintiff, which will not be compensated in terms of money. Therefore prayed to grant the temporary injunction against the defendants by allowing the I.A. No.1.

9. On the other hand learned advocate for the defendants has vehemently argued that, the plaintiff has suppressed the material facts before the court and she has not approached the court with clean hands. Further vehemently argued that plaintiff by colluding with panchayath authority has got changed the boundaries and measurement of the suit property. If the

IA is allowed then it is the defendants who will be put into great hardship and loss, which will not be compensated in terms of money. On other hand if IA is not allowed then no hardship or loss will be caused to the plaintiff. Further argued that plaintiff has no prima-facie case in her favour and balance of convenience also does not lie in favour of plaintiff. Therefore prayed to dismiss the I.A No. 1 and allow the I.A No. 2.

10. After having heard both side and on perusal of materials placed by the both parties on record, it appears that earlier property of plaintiff and property of defendants were under the jurisdiction of Bylanarasapura village and they were bearing old separate numbers. But after forming the Hethakki village Panchayath the properties of the plaintiff and defendants were merged with the Hethakki village Panchayath and they were assigned with separate numbers. Further it appears that both properties are adjoining to each other. Now it is the contention of defendants that plaintiff by undue influence and misusing the power has got manipulated the khata records of her property entering the House Number as 99/1 and entering 50 feet dimension towards North to

South and altered the boundaries of Northern side and southern side. On perusal of documents though it appears that in the recent property extracts there is mention about measurement of the properties of plaintiff and defendants as well. But the measurement has not been mentioned in the earlier property extracts. However both parties can prove their contention, this being suit for permanent injunction plaintiff has to necessarily prove her possession over the suit property irrespective of title. Obviously it needs a full fledged trial. Therefore at this stage looking into facts and circumstance of the case and analyzing the materials placed before the court, it appears that plaintiff has no prima-facie case in her favour. Accordingly, I answer Point No. 1 in the Negative.

11. **Point No 2:** That now at this stage the prima-facie case is not existing in favour of the plaintiff. Further on perusal of documents placed by the plaintiff and defendants it appears that both properties of plaintiff and defendants are adjoining to each other and defendants have obtained permission by the village panchayath to construct house in their property. Hence

the balance of convenience is not in favour of plaintiff. Hence, I answer point No. 2 in Negative.

12. **Point No 3:** As discussed above in Point No.1 and 2 the prima-facie case and balance of convenience are not in favour of the plaintiff. Therefore the question of hardship or irreparable loss to the plaintiff does not arise. Hence I answer point No. 3 in the Negative.

13. **Point No 4:** In view of my findings on Point No. 1 t 3 as discussed above, plaintiff has no prima-facie case and balance of convenience in her favour and if the temporary injunction is granted then defendants will be put into great hardship. On the other hand defendants have made grounds to allow the I.A No.2 filed U/o 39 Rule 4 of C.P.C. to vacate the temporary injunction order. Accordingly, I answer point No. 4 in the Affirmative.

14. **Point No 5:** In view of my findings on Point No. 1 to 4 as discussed above, I proceed to pass the following:

ORDER

I.A. No. I filed U/o 39 Rule 1 and 2

R/w. 151 of CPC by plaintiff is hereby dismissed.

In the result I.A No.2 filed by the defendants U/o 39 Rule 4 R/w sec151 of C.P.C is hereby allowed.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 20th day of September 2021)

Prl. Civil Judge and JMFC.,
Hosakote.

20.9.2021

Case called out
**(Orders on I.A.No.1 and 2 pronounced in
the open court vide separate order)**

ORDER

I.A. No. I filed U/o 39 Rule 1 and 2
R/w. 151 of CPC by plaintiff is hereby
dismissed.

In the result I.A No.2 filed by the
defendants U/o 39 Rule 4 R/w sec.151
of C.P.C is hereby allowed.

No order as to cost.

Prl. Civil Judge and JMFC.,
Hosakote.

