

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

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

O.S. NO: 110-2021

Dated this 12th Day of September 2022

**Applicant/
Plaintiff**

: Sri.Bharathamma
W/o Anjinappa
Age : 44 years,
R/at E Hosahalli,
Hosakote Taluk,
Bengaluru Rural District.

(By Sri. Chalapathi., Advocate)

-V/s -

**Respondent/s
Defendant/s**

:1. Sri. Nagesh
S/o Munishamappa
Age: 38 years,
R/at Kodagurki,
Devanahalli Taluk,
Bengaluru Rural District and others.

(By D1 to 5- Sri. N L S ., Advocate)

**ORDER ON IA NO. I FILED UNDER ORDER 39
RULE 1 AND 2 READ WITH SECTION
151OF CIVIL PROCEDURE CODE**

The applicant/plaintiff has filed this application with prayer to grant the relief of temporary injunction against the defendants, restraining the defendants or or anybody claiming under them from damaging stone slabs erected in the suit property. In support of the application 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. In the written statement defendants denied all the averments of the plaint and interim application as false and frivolous. Further contended that the defendants are owners of property bearing Sy.no.8 situated at E Hosahalli Village, and they are in actual possession of it. Survey authority has conducted survey and prepared sketch in respect of their property. Plaintiff being adjacent owner is trying to encroach in the suit property. On 27.01.2021 plaintiff and her supporters have assaulted defendants and threatened them. Though defendants have approached the concerned police station regarding the same, police did not take

any action. Further it is contended that plaintiff has encroach 20 feet space in the property of defendants towards the eastern side and thereby trying to harrass the defendants. Therefore prayed to dismiss the application.

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. What order?

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- : 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 suit schedule property. It is the specific contention of the plaintiff that suit property bearing Sy.no.8 measuring east to west 42 feet and north to south 20 feet is in actual possession and enjoyment of the plaintiff and her name has been entered in the concerned panchayath in respect of suit property. It is further contention of the plaintiff that she is absolute owner of the suit property and in actual possession and enjoyment of it. Defendants having no any right over the suit property are trying to interfere in the peaceful possession of the suit property and trying to damage the compound of the plaintiff. On 2.04.2021 plaintiff approached the concerned police station but they did not take any action. Hence, plaintiff is constrained to file this suit along with I.A No 1.

7. In support of the application, plaintiff has filed copy of grant certificate, photo copies , copy of first

information given to Sulibele PS. On the other hand defendants has also produced photo copies and copies of first information and copy of survey report and other connected documents.

8. Learned advocate for the plaintiff has vehemently argued that plaintiff is the absolute owner of suit property and she is in possession of the suit schedule 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 defendants are owners of adjacent property to the suit property. Plaintiff has encroached in the property of defendant and trying to construct compound wall. Plaintiff has suppressed the material facts before the court and has not approached the court with clean hands. Further argued that plaintiff has no prima-facie case and balance of convenience in her favour.

Therefore prayed to dismiss the I.A. No.1.

10. I have carefully gone through the materials placed by both side. On perusal of documents placed by the plaintiff it appears that property to an extent of 42*20 feet of E Hosahalli Village, is granted in favour of plaintiff in the year 2018 but plaintiff has not placed any recent property extracts to show that suit property is standing in her name. Further on perusal of photo copies produced by the plaintiff it appears that already there exist a compound wall erected with stones. Further on perusal of documents produced by the defendants and plaintiff as well it appears that they have adversely lodged complaints against each other. Further it is the contention of the defendant that plaintiff has encroached some portion of land in their property. Therefore when there is the dispute regarding the total measurement of their respective properties it is not proper to grant any restraint orders unless there being a prima facie case by means of genuine documents. In the present case on hand plaintiff has not placed any recent documents in respect of suit property to show that suit property standing in her name and she in actual possession of it. This being suit for bare injunction plaintiff has to necessarily

prove the possession over the suit property irrespective of title and interference by the defendants. Obviously it needs full fledged trial, where both parties can prove their contention by leading cogent and reliable evidence. 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:** As discussed above in point No. 1 now at this stage the prima- facie case is not existing in favour of the plaintiff. Further on perusal of materials placed by both side it appears that the balance of convenience is also 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 to 3 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.

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 12th day of September 2022)

**Prl. Civil Judge and JMFC.,
Hosakote.**

12.09.2022

Case called out

**(Orders on I.A.No.1 pronounced in
the open court vide separate orders)**

ORDER

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

No order as to cost.

Call on for framing of issues by 15.11.2022.

**Prl. Civil Judge and JMFC.,
Hosakote.**