



**IN THE COURT OF THE III ADDL. DISTRICT &
SESSIONS JUDGE, CHIKKABALLAPURA.**

:PRESENT:

SHRI. SIDDANNA B. HANDRAL.
B.Sc.,LL.B (Spl)
III Addl. Dist. & Sessions Judge,
Chikkaballapura.

MISCELLANEOUS APPEAL No.29/2025

DATED THIS THE 31st DAY OF AUGUST, 2026

APPELLANTS

1. Sri.Narayanaswamy
S/o. Sriramappa,
Aged about 45 years.
2. Smt. Roopamma,
W/o. Narayanaswamy
Aged about 34 years.
3. Sri.Mohan,
S/o. Narayanaswamy,
Aged about 22 years.

All are R/at Yallampalli village,
Kasaba Hobli,
Bagepalli Taluk,
Chikkaballapura District.

(The defendants before the Trial
Court)

(By Shri. P.S., Advocate)

//Vs.//

RESPONDENTS

1. Sri.Beera Muneppa@ Muniyappa,
S/o. Beere Venkatasamy,

Aged about 65 years,
R/at Yallampalli village,
Kasaba Hobli,
Bagepalli Taluk,
Chikkaballapura District.

(The plaintiff before the Trial Court)

(By Shri. K.M.G., Advocate)

Date of institution of : 02.12.2025
suit

Miscellaneous Appeal : Appeal against the order on I.A
against No.I in O.S.No.576/2024
dated 25.04.2025

Date on which : 31/08/2026
Judgment Pronounced

Total Duration : Year/s Month/s Day/s
- 08 29

J U D G M E N T

Being aggrieved by the order of the learned Sr. Civil Judge at Bagepalli dated 25.04.2025 on Interim application filed under Order 39 Rule 1 and 2 of CPC in O.S.No.576/2024, the appellants have preferred the present appeal U/o. 43 rule 1 of CPC.

2. The appellants were the defendants and respondent was the plaintiff before the learned trial Court. Parties are referred as per their respective ranks assigned before the learned Trial Court.

3. **Brief facts of the case is as under;**

The plaintiff is the absolute owner and in possession of the suit property bearing Sy.No.524 measuring to an extent of 1 acre 21 guntas situated at Yallampalli village, Kasaba Hobli, Bagepalli Taluk. Originally the suit property belongs to father of the plaintiff, after his death, the plaintiff succeeded the suit property through inheritance vide MR No.H-30/2013-14 dated 1.6.2014 since then he is in possession of the suit property along with his family members by raising different crops in the suit property. About 7 years back he installed the bore well towards southern side of suit property, such being the case he is growing crops by utilizing the said bore well water, though the defendants are not having any right over the suit property are trying to encroach the suit property towards southern side by that time the plaintiff applied for survey of the suit property before the concerned authority, the survey authority conducted the surveys of the suit property and identified the boundaries. The defendant No.1 is the adjacent owner of the suit property is having land bearing Sy.No.525 measuring 0.39 guntas towards southern side of the suit property, he also applied for survey of his land and survey authorities conducted the survey by issuing notice to the adjacent owners and plaintiff, the survey authorities conducted the haddubasth work of the suit property and defendant No.1's property and fixed the boundaries of the respective lands. The defendant No.1 is the husband and father of the defendant No.2 and 3 and stranger to the suit property and family of the plaintiff, such being the case

with malafide intention to cheat and knock off valuable property of the plaintiff making hectic efforts to create 3rd party interest over the suit schedule property and have also came near the suit property and trespassed into the same and attempted to cause damage to the bore well and tried to cut and remove the standing trees in the suit property, the plaintiff with the help of neighbors resisted the illegal acts of the defendants, thereafter lodge the complaint before the police, but the police have not taken any action, hence approached the court by filing the suit and also application U/O.39 Rule 1 and 2 R/w. Sec. 151 of CPC seeking grant of ad-interim temporary injunction against the defendants.

4. The defendants have appeared through their counsel and filed their written statement and also filed memo to adopt the written statement as objection to the application and in the written statement they have denied the entire plaint averments. The defendants have specifically contended that, they are the absolute owner of Sy.No.525 measuring 0.39 guntas including 01 gunta of kharab of Yallampalli village which is adjacent to the suit property and acquired the same under the family partition dated 12.6.1978. A common road 12 feet width and 100 feet length runs in the plaintiff property is using by the defendant since more than 100 years for their ingress and egress to access their property without having any alternative road to reach their property. The defendants have dugged up a bore well in the property more than 30 years and above and got the power license from the

concerned authorities and also using the said bore well water for their livelihood purpose and growing crops in their land. The plaintiff and his family members spoiled the road running in their land to reach the property of the defendants and also broken the bore well pipe of the defendants, in this regard the defendant No.1 has filed a suit in O.S.263/2024 against the plaintiff and others before Civil Judge, Bagepalli and in the said suit the defendant No.1 has also obtained interim order of restraining the plaintiff and his family members for not to obstruct the road, using by the defendants and also not to interfere with possession of their property and their bore well. The plaintiff has not made out prima facie case and balance of convenience is also not lies in their favour as the defendants are in possession and enjoyment of the bore well and portion of the suit property and plaintiffs have no any manner of right to entering into bore well digged by the defendants. Hence, prayed for dismissal of the application.

5. The Learned Trial court has heard the arguments canvassed by both counsels and thereafter framed the following points for its consideration,

1. Whether the plaintiff has made out a prima facie case to grant of temporary injunction ?
2. Whether the balance of convenience lies in favour of the plaintiff ?
3. Whether the irreparable loss and injury would be caused to the plaintiff if

injunction is not granted as prayed in I.A.No.I ?

4. What order ?

6. Thereafter, the learned trial court has passed the following order;

O R D E R

I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 R/w. Sec. 151 of CPC is hereby allowed and thereby, the defendants or anybody claiming through them are hereby restrained by way of temporary injunction from not to cause bore well and not to cut standing trees like neem and honge and other trees in the suit schedule property in any manner till pending disposal of the suit.

No order as to cost.

7. The appellants being aggrieved from the said impugned order has challenged the same on the following grounds:

GROUND S

- i. The trial court grossly erred in allowing the I.A. No.I under order 39 rule 1 and 2 read with Section 151 of CPC filed by the plaintiff / respondent.
- ii. The plaintiff / respondent has filed suit in O.S. No.576/2024, before the Trial court for Declaration and Permanent Injunction against the appellants / defendants in

respect to the schedule property i.e., Land bearing Sy. No.524, measuring 1 acre 21 gunta of Yallampalli Village, Kasaba Hobli, Bagepalli Taluk.

iii. The appellants contended that the respondent has filed a suit against them for declaration and consequential relief for permanent injunction against the appellants. The respondent has also filed an application under order 39 rule 1 and 2 CPC against the appellants and restrain them from damaging the bore well and not to cut and removing the standing trees in the schedule property. But under the law the said application is not maintainable as the respondent is not in possession over the schedule property.

iv. It is further contended that, the appellants are the absolute owners of Sy. No.525, measuring 0-39 guntas, of 0-01gunta karab of Yallampalli village, Bagepalli Taluk, which is adjacent to the plaint schedule property and have dig up a borewell in their property. Now the survey authorities have recently surveyed the plaint schedule property and Sy. No.525 and have also drawn the survey sketch. According to the survey sketch, the defendant bore well is covers portion of the plaint schedule property. As per the said survey sketch the appellants are in possession and enjoyment of the portion of the schedule property. The respondent has also aware the same, but has not seeking any relief for recovery of the possession against the appellants, on this ground alone, the application does not survive, as the respondent is not in possession over the bore-well portion of the property, but the trial court has not

considering the same and come to the wrong conclusion and allow the application.

v. It is further contended that, the 1st appellant has already filed a O.S. No.263/2024 against the respondent and other before Civil Judge, Bagepalli in respect to the Sy. No.525 and the court in the said suit has also granted the interim order in favour of the appellant no.1 against the respondent and others and same is still in force and the said suit is still pending, on this ground also the application filed by the respondent does not survive. but the trial court has not considering the same and come to the wrong conclusion and allow the application.

vi. It is further contended that there is no prima facie case in favour of the respondent as the appellants are in possession and enjoyment of the bore well and the portion of the schedule property, then the question of cause irreparable loss to the respondent does nor arise, but the trial court has not considering the same and come to the wrong conclusion and allow the application, if the application is dismissed, no prejudice will be cause to the respondent otherwise appellants will put to great loss and irreparable injury. but the trial court has not considering the same and come to the wrong conclusion and allow the application.

Vii. The trial court not considered the documents produced by the appellants I.e. Copy of the survey sketch in Sy. No.524 of respondent which indicates that, at Sl. No.3 (red portion) is clearly mentioned that the appellants have

encroached 0- $\frac{1}{4}$ guntas in Sy. No.524 land, that clearly shows that the appellants are in possession in the portion of the plaint schedule property and RTC extracts of the lands of appellant and respondent.

viii. The trial court has not properly appreciating document produced by the appellants and the trial court has not given the importance to the same and has not properly considered the balance of convenience and irreparable loss while deciding the application filed by the respondent.

Hence, the appellants prays to allow the appeal by setting aside the impugned order passed by the trial court.

8. In response to the notice, respondent appeared through his counsel and filed detailed objections by denying the entire contents of the appeal memo and also reiterated the plaint averments.

9. Heard the arguments of the learned counsels of both parties and perused the materials placed on record and perused the written arguments submitted by both sides. The counsel for appellants have also filed undertaking affidavit of the appellants and photos and documents.

10. The following points that arise for consideration :

- 1) Whether trial court is justified in allowing the application for grant of temporary injunction by holding that the plaintiff has made out prima facie case, balance of

convenience tilt in his favour and if injunction is granted, irreparable loss and injury will be caused to him ?

2) Whether the impugned order of the trial court in the present appeal is illegal, arbitrary and perverse and call for interference at the hands of this court ?

3) What order?

11. The above points are answered as under;

Point No.1 : In the Affirmative

Point No.2 : Partly in Affirmative

Point No.3 : As per the final order for the following;

REASONS

12. **Point No.1**: The respondent herein has filed a suit for declaration and permanent injunction against the appellants in respect of suit property i.e. Sy.No.524 measuring 1 acre 21 guntas situated at Yallampalli village, of Bagepalli Taluk, claiming that, he is the owner and in possession of the suit property and acquired the suit property from his father through inheritance vide MR No.H30/2013-14 dated 1.6.2014 since then he is in possession and enjoyment of the suit property along with his family members by raising different crops. It is also his case that, a bore well was drilled on the southern side of the suit property about 7 years ago and various trees including Neem and Honge were standing in the suit properties and he is raising the crops by using the bore well

water, such being the case the defendants are the adjacent owners of the suit property in respect of land bearing Sy.No.525 measuring 0.39 guntas towards southern side of the suit property and though they are not having any right or title over the suit property trying to encroach the suit property, in this regard the plaintiff has applied for survey of the suit property, the survey department have conducted the survey work and fixed the boundaries to the suit property on 21.8.2024, the defendant No.1 has also applied for survey in respect of his land and the survey department have also conducted the survey by issuing survey notice to him and other adjacent owners and thereafter have surveyed the land of the defendant and fixed the boundaries. In spite of it, the defendants are making hectic efforts to create 3rd party rights along with their followers came near the suit property and trespassed into his land and trying to cause damage to the bore well and cut and remove the standing trees in the suit property, hence he has constrained to file the suit.

13. On the other hand, the defendants in their written statement and objections have denied the allegations made by the plaintiff, but they have admitted that, plaintiff is the owner of suit property to the extent of 1 acre 21 guntas and have also admitted that, they are the owners of adjacent land bearing Sy.No.525 measuring 0-39 guntas including 0-1 gunta kharab which is situated towards southern side of the suit property. It is the specific defense of the defendants that, they have dugged up a bore well in their property and recently survey authorities have

conducted the survey and drawn the survey sketch which discloses that, the defendants bore well is covers the portion of the suit schedule property and as per the survey sketch they are in possession and enjoyment of the portion of the suit property which is well aware of the plaintiff, but the plaintiff instead of seeking relief of recovery of the possession has filed the present suit. It is also their defense that, the defendant No.1 has already filed suit in O.S.263/2024 against the plaintiff and others before Civil Judge, Bagepalli and in the said suit the court has granted interim order in favour of the defendant No.1 against the plaintiff and others, hence the plaintiff has not made out prima facie case and balance of convenience is not in favour of the plaintiff and prayed to dismiss the suit and application.

14. On careful considering the rival pleadings of the plaintiff and defendants at this stage it appears that, there is no dispute by the defendants regarding the ownership of the plaintiff over the suit property i.e. land bearing Sy.No.524 measuring 1 acre 0.21 guntas. It is also not disputed by the defendants that, their land is situated towards southern side of the suit property and they are the owners of land bearing Sy.No.525 measuring 0-39 guntas. But the dispute between the plaintiff and defendants is that, both are claiming that they have installed a bore well in their respective lands and raising the crops by using the said bore well water. In order to establish the ownership over the bore well, it requires evidence at this stage the

court can consider the documents which are produced by both parties.

15. On perusal of the RTCs of land bearing Sy.No.525 and 524, it appears that, the bore well is shown as situated in land bearing Sy.No.525 i.e. the land belongs to the defendants and in the RTC of the plaintiffs bore well is not shown, hence at this stage prima facie the disputed bore- well is shown in the RTC of land bearing Sy.No.525. It is also seen from the survey sketch produced by the plaintiff it reveals that, the defendants have encroached 0-0 $\frac{1}{4}$ guntas of land in Sy.No.524 i.e. the property of the plaintiff. Hence at this stage prima facie the document produced by the plaintiff i.e. survey sketch discloses that, defendants have encroached the portion of the suit property.

16. It is also relevant here to mention that, as per the documents placed by the both parties and admitted facts by the defendants at this stage the plaintiff established his ownership over the suit property, but the survey sketch produced by him discloses that, the defendants have encroached 0-0 $\frac{1}{4}$ guntas of plaintiff's property and the RTC of the defendants discloses that, the alleged bore well is situated in the land of the defendants, therefore it is to be ascertain as to whether the disputed bore well is situated in the suit property or encroached property. At this stage the admitted facts by the respondent in their written statement and undertaking memo filed before this court as per the survey sketch they

have encroached the property of the plaintiff to an extent of 0-0 $\frac{1}{4}$ guntas of plaintiffs property, hence till completion of the trial it cannot be held that, the disputed bore-well is situated either in suit property or in the alleged encroached property as shown by the surveyor in his sketch. However at the same time, it is to be considered that, till conclusion of the trial damages should not be caused to the existing bore well which is claiming by both parties. In this back ground, the impugned order passed by the trial court is to be looked into. The trial court in its order though it has come to the conclusion that, plaintiff has made out prima facie case and balance of convenience also lying in favour of the plaintiff, but it has observed that, as per the survey sketch, the defendants have encroached the portion of the plaintiffs land and in such circumstances if the interim order is not granted against the defendants as prayed in I.A. the defendants may encroach the entire property of the plaintiff and may cause damage to the bore-well and may cut and remove the standing trees in the suit property i.e. the trial court though come to the conclusion that, defendants have encroached the property of the portion of the suit land, but it has held that, the bore-well is situated in the suit property, that much of observation of the trial court is appears to be incorrect since admittedly both parties are claiming the disputed bore-well is situated in their respective properties and the documents i.e. RTCs of suit property and defendants property discloses that, the bore-well is situated in the land of defendants, in such circumstances, the impugned order passed by the trial

court would amount to a mandatory eviction of the appellants from the portion of the property where the bore-well is situated prior to the adjudication of disputed facts is impermissible. However the appellants cannot be permitted to alter the nature of the property and cause damages to the bore-well and standing trees and the bore-well must be protected by either side until disposal of the main suit, therefore for the above said reasons in the interest of justice the modifications of the impugned order is required in respect of causing damages to the bore-well situated on the disputed land. So far as concerned to the injunction granted against the defendants for restraining them from cutting of standing trees either in the suit property or in the encroached property is not required for interference since the trial court has rightly observed that, the defendants have encroached the portion of the suit property and if the interim order is not granted against the defendants they may encroach the entire property or further encroachment appears to be correct and legal, therefore the injunction order granted to that effect is required to be confirmed by this court.

17. Hence, for the above said reason this Court do not find any illegality, perversity or arbitrariness in the impugned order passed by the trial court except the modification of the order in respect of the situation of the bore-well in the disputed property as observed above to that extent interference of this court is required in modification of the impugned order. Hence, for the above said reasons, the appellant has not made out any grounds

for interference of this Court in the impugned order, accordingly, point No.1 is answered in the **AFFIRMATIVE** and Point No.2 is answered in the **PARTLY AFFIRMATIVE**.

18. **Point No.3:** In the light of the discussions made and answer to the above point, it is just and proper to pass the following:

ORDER

Appeal filed by the respondents U/o 43 Rule 1 of CPC is hereby **ALLOWED IN PART**.

The impugned order dated 25.04.2025 passed on IA No.I filed under Order 39 Rule 1 and 2 R/w. Sec.151 of CPC in O.S.No.576/2024 by the learned Sr. Civil judge at Bagepalli is hereby modified as under,

I.A.No.I filed by the plaintiff U/O.39 rule 1 and 2 R/w. Sec. 151 of CPC is hereby allowed and thereby the defendants or anybody claiming through them are hereby restrained by way of temporary injunction from not to cause damage to bore well and not to cut standing trees like Neem and Honge and other trees situated in disputed property i.e. encroached property as shown by the surveyor in the sketch furnished by the plaintiff in any manner pending disposal of the suit.

No order as to costs.

Send copy of this judgment to the trial court forthwith.

(Dictated to the Stenographer directly on computer, the same is corrected, signed and then pronounced by me on this the 31st day of August 2026.)

(SIDDANNA B. HANDRAL)
III-Addl. District and Sessions Judge,
Chikkaballapura.