

**IN THE COURT OF THE PRL CIVIL JUDGE & JUDICIAL  
MAGISTRATE FIRST CLASS AT HIRIYUR**

Present: - Smt. Shilpa G. Timmapur,  
(B.A. LL.B (HONS) LL.M.)  
Prl. Civil Judge & JMFC.,  
Hiriyur, Chitradurga

**Dated:** - This the 19<sup>th</sup> day of June, 2023.

**Original Suit No.26/2020**

**PLAINTIFF:-** Sanna Rangappa and others

**-Versus-**

**DEFENDANTS:-** Sannamma and others

**PARTIES TO I.A. No.III and IVII and IV**

**Applicant/Plaintiffs** : Sanna Rangappa and others

**V/s**

**Opponents/Defendants** : Sannamma and others

**ORDERS ON I.A. No.III and IVII and IV**

L/Advocate for plaintiff has filed the I.A. No.III and IVII and IV U/O 39 Rule 1 and 2 R/W Sec.151 of C.P.C., praying this court to grant an Ad-interim temporary Injunction against the defendants in the interest of justice and equity.

**2.** After appearance of defendants, the defendants have filed objections to I.A. No.III and IVII and IV. The defendants prayed to reject the I.A's with cost, in the interest of justice and equity.

3. Heard both the counsels on I.A. No.III and IV. Perused the I.A. No.III and IV, objections and records available before this Court.

4. The following points arise for consideration of this Court:-

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the plaintiffs have balance of convenience in his favour?
3. Whether irreparable loss or injury would be caused to the plaintiffs, if T.I. is not granted?
4. What order?

5. The findings of this Court to the above points are as under:-

Point No.1: In the Affirmative,

Point No.2: In the Affirmative,

Point No.3: In the Affirmative,

Point No.4: As per the final order,

for the following:-

### **REASONS**

6. **Point No.1 to 3 :-** Since these points are interconnected to each other and as such they have been taken together for common discussion and consideration.

7. The plaintiffs have filed suit for the relief of permanent injunction and consequential relief of mandatory injunction

against the defendants along with present application. The plaintiff in the affidavit accompanying the applications states that, he is the plaintiff No.1 in this case. The suit is filed under the representative capacity in the interest residence of Nanajiahnakottige. He further states that, plaintiffs are the residence of Nanajiahnakottige, Hiriya taluk. One Bannikatte and one Banni Tree is situated in the Municipality Katha bearing No.3781/1818A/3781 measuring 10 X 10 feet. The said tree was considered as holy tree in Hindu religion and is worshiped by the villagers since time immemorial.

**8.** The defendants houses are situated towards the southern side of the said Banni Kattu. The defendants encroaching the Banni Kattu have constructed a compound. After construction of compound the defendants are not allowing the villagers to perform pooja at Banni Kattu. Now the defendants are trying to demolish the Banni Kattu and tree for construction of house. The defendants are not having any manner of right to do so. The plaintiffs got advised the defendants from the elders of the village. But the defendants are not heeding to the request of elders. Hence, the plaintiffs have filed the present suit along with the present applications. The plaintiffs states that, they have a prima-facie in their favour and prays for the orders of injunction.

**9.** Per contra the defendants in their objections denied all the contents of affidavit and states that, defendant No.1 had purchased the property from one S. Siddaiah under registered

sale deed Dtd.03.01.1985 measuring 46 X 46 feet bearing old Katha No.24, Assessment No.26, New E-Katha No.3782/1819/3782. After the purchase the defendant No.1 has gifted a portion of his property measuring 5 X 46 feet to the Municipality, Hiriyur for the purpose of Road through a registered deed Dtd.12.08.2011.

**10.** There was a property of One Gopalappa to the western side of above said property. After the death of Gopalappa the said property was mutated in the name of defendant No.1 and 2 as they are daughters of Gopalappa. After the mutation of the names of defendnat No.1 and 2 they became the owner of the property of Gopalappa and the above said property. Thereafter, several suits were filed with respect to the above said properties which were decreed in favour of defendant No.1 and 2.

**11.** The defendant No.1 and 2 in the year 2011 has obtained a licence for construction of compound around their property which was granted by C.M.C., Authority after due verification and spot inspection. This being the facts the plaintiffs in order to abstract the possession of defendants have filed this false suit. The said Banni Tree is situated within the property of defendant No.1 and 2 and it is not usage for public. The Khatha produced by the plaintiff is created one. The plaintiff is not having a prima-facie case for grant of temporary injunction.

**12.** The plaintiff has produced D.C.B., Register extract, copy of rough sketch, certain photographs, copy of assessment extract

for the year 1995-96, copy of tax paid receipt. The defendants along with the suit has produced copies of sale deeds, copies of judgments, copy of licence, copy of plan, copies of tax paid receipts, certain photographs of the property.

**13.** Counsel for plaintiff has produced the copy of assessment register extract, wherein assessment No.3781 measuring 10 X 10 feet space is standing in the name of Banni Katte. He has produced copy of D.C.B., Register extract for the year 2019-20 standing in the name of Banni Katte. The defendant in his objections contends that, the documents produced by the plaintiff are created by the plaintiffs colluding with Municipality Authorities. The said fact is a matter of trial.

**14.** The D.C.B., Register extract produced by the plaintiff prima-facie shows that, 10 X 10 feet space stands in the name of Banni Katte. So it shows the presence of Banni Katte whether it is available for public excess or not is a matter of full fledged trial. All the contentions of defendants can be met at the time of trial. Now, it is pertinent to see whether an order of injunction is necessary or not. If the temporary injunction is not granted the plaintiffs will be put to great hardship. On the other hand there will be no hardship to the defendants. The documents produced by the plaintiffs shows prima-facie case in favour of plaintiffs. Hence, this Court answers point No.1 to 3 in Affirmative.

**15. Point No.4**:- In view of the above reasons stated and findings to the point No.1 to 3, this Court proceed to pass the following:

**ORDER**

The I.A. No.III filed U/O 39 Rule 1 and 2 R/W Sec.151 of C.P.C, by the plaintiffs are hereby allowed and I.A. No.IV filed U/O 39 Rule 1 and 2 R/W Sec.151 of C.P.C, by the plaintiffs are hereby partly allowed.

The defendants are hereby temporarily restrained from causing damage to the Banni Tree and putting up any construction in the property measuring 10 X 10 feet standing in the name of Banni Tree till further orders.

Any observations made above are only with respect to the disposal of this application.

(Directly dictated to Typist in the open court and is corrected and then signed by me and pronounced in open court on this 19<sup>th</sup> day of June, 2023)

Smt. Shilpa G. Timmapur,  
Addl. Civil Judge and JMFC.,  
Hiriyur.