

KACD510030972025



**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JUDICIAL MAGISTRATE FIRST CLASS AT HOSADURGA.**

Present: **SMT. THRINETHRA M.N. M.A., L.L.B.,
Addl. Civil Judge and JMFC.,
Hosadurga.**

O.S.NO.558/2025

DATED THIS THE 21st DAY OF JULY-2026

PLAINTIFF : Sri. A.R Manjunatha,
 S/o. Rudrappa,
 Aged about 62 years,
 Agriculturist,
 R/o. Anivala village,
 Kasaba Hobli,
 Hosadurga taluk.

(Rep. By Sri. GNP, Advocate)

Versus

DEFENDANT : Sri. Omkaramurthy,
 S/o. K. Veerabhadrapa,
 Aged about 60 years,
 Agriculturist,
 R/o. Anivala village,
 Kasaba Hobli,
 Hosadurga taluk.

(Rep. By Sri. NG, Advocate)

Parties to IA No.I**PLAINTIFF/
APPLICANT :**

Sri. A.R Manjunatha,

Versus**DEFENDANTS/
OPPONENTS :**

Sri. Omkaramurthy,

ORDERS ON IA No.I

The plaintiff has filed the present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking an ad interim order of temporary injunction restraining the defendants, their agents, servants, men, or anybody claiming through or under them from interfering with the plaintiff's possession and enjoyment of the suit schedule 'B' property (the alleged encroached portion shown in the sketch) in any manner whatsoever, pending disposal of the suit.

2. The suit schedule property is land bearing Re-Sy. No.2/12, measuring 36 guntas, encroached portion is 2 guntas, bounded as follows: East: Land of defendant Omkaramurthy ,West: Land of plaintiff, North: Gramatana, South: Land of Niranjnamurthy Situated at Anivala Village, Kasaba Hobli, Hosadurga Taluk.

3. The gist of the plaintiff's case is that, the suit schedule 'A' property is land bearing Sy. No. 2/12, measuring 32 guntas, bounded on the East by the land of the defendants, West by the Shivamurthappa land, North by Gramatana, and South by the land of Niranjanamurthy. It is the specific case of the plaintiff that he is the absolute owner and in lawful possession of the suit schedule 'A' property. According to him, the suit schedule property fell to his share in a family partition, and pursuant thereto, Mutation Register No.16/2000-01 was effected in his favour and the khata was also transferred to his name. Since then, he has been in peaceful possession and enjoyment of the suit schedule 'A' property without interference from anybody.

It is further contended that the defendants have no manner of right, title, or interest over the suit schedule 'A' property. However, they have illegally encroached an extent of 2 guntas situated on the eastern side of the suit schedule 'A' property. The said encroached portion is described as the suit schedule 'B' property. On coming to know of the encroachment, the plaintiff questioned the defendants and requested them to vacate the encroached portion. Despite the intervention and advice of village elders, the defendants refused to remove the encroachment.

Thereafter, the plaintiff submitted an application before the Taluk Office, Hosadurga, seeking survey and haddi bastu of the suit schedule property. Pursuant thereto, the jurisdictional Surveyor measured the property, and on such measurement, it was found that the defendants had encroached an extent of 2 guntas out of the suit schedule 'A' property, which is described as the suit schedule 'B' property. The plaintiff also lodged a complaint before the Hosadurga Police, and though the police advised the defendants to hand over the encroached portion, they failed to do so.

Hence, the plaintiff, having no other efficacious remedy, instituted the present suit seeking declaration of title, mandatory injunction directing removal of the alleged encroachment, and permanent injunction. Pending disposal of the suit, the plaintiff has filed the present application seeking an order of temporary injunction restraining the defendants from interfering with his alleged possession and enjoyment of the suit schedule 'B' property.

4. Upon service of summons, the defendant has not filed separate objections to the application. However, he has filed a memo seeking to treat the averments made in the written statement as objections to the present application.

5. In the written statement, the defendants contend that the defendant is the absolute owner and in lawful possession of the

written statement schedule property. It is their specific case that in O.S. No. 29/2014, the written statement schedule property fell to the share of the defendant under a compromise decree dated 17.06.2014. Ever since the said compromise, the defendant has been in peaceful possession and enjoyment of the property and has been improving the same.

It is further contended that, under the compromise decree passed in O.S. No. 29/2014, a passage measuring 15 feet was left on the eastern side of the defendant's property to enable his brother, Niranjanamurthy, to have ingress and egress to his land. According to the defendant, the said passage has been misused by Niranjanamurthy in collusion with the plaintiff and the officials of the Survey Department. It is alleged that, while conducting the survey, the Survey Authorities improperly reduced the width of the said passage and falsely depicted an extent of 2 guntas of the defendant's land on the western side as an encroachment in the survey sketch.

The defendant further contends that he has been in continuous possession and enjoyment of the said extent of 2 guntas for more than 12 years. Therefore, the allegation of encroachment made by the plaintiff is false and untenable. It is also contended that the survey was conducted in violation of the prescribed procedure,

without issuing any notice to the defendant and without following the applicable rules and regulations. According to the defendant, the plaintiff, in collusion with Niranjanamurthy and the Survey Department officials, has instituted the present false suit. On these grounds, the defendant has prayed for dismissal of I.A. No.1.

6. Heard the arguments on both side and perused the entire records.

7. Upon hearing arguments and on perusal of materials placed on record the following points that arisen for consideration.

1. Whether the plaintiff have made out a prima facie case in their favour?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be cause to the plaintiff, if injunction is not granted?
4. What order?

8. My findings to the above points are as under.

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| Point No.1 | - In the Negative |
| Point No.2 | - In the Negative |
| Point No.3 | - In the Negative |
| Point No.4 | - As per final order, for the following |

REASONS

9.**Point No.1 to 3 :-** The plaintiff has instituted the present suit seeking the reliefs of declaration, mandatory injunction, and permanent injunction in respect of the suit schedule properties. It is the specific case of the plaintiff that the defendants have illegally encroached an extent of 2 guntas out of the suit schedule 'A' property, and the said encroached portion is described as the suit schedule 'B' property.

10. By way of the present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, the plaintiff seeks an order of temporary injunction restraining the defendants from interfering with his alleged peaceful possession and enjoyment of the suit schedule 'B' property pending disposal of the suit.

11. A careful perusal of the plaint averments reveals that the plaintiff himself has specifically pleaded that the defendants have encroached upon the suit schedule 'B' property and are in possession of the same. The plaintiff has further averred that he approached the Survey Department for measurement of the property, pursuant to which it was found that the defendants had encroached the suit schedule 'B' property. The very relief of mandatory injunction sought in the suit is for removal of the alleged

encroachment by the defendants. Thus, the plaintiff's own pleadings indicate that he is not in possession of the suit schedule 'B' property as on the date of filing of the suit.

12. It is well settled that, for grant of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, the applicant has to establish the existence of a prima facie case, balance of convenience in his favour, and likelihood of suffering irreparable injury if the relief is refused. In a suit seeking injunction relating to immovable property, the plaintiff must, at least prima facie, establish his lawful possession over the property sought to be protected.

13. In the present case, the plaintiff's own pleadings disclose that the defendants are in possession of the suit schedule 'B' property by way of alleged encroachment. Therefore, the plaintiff cannot simultaneously seek protection of possession over the very property which, according to his own case, is in the possession of the defendants. Whether the defendants have in fact encroached upon the suit schedule 'B' property and whether the plaintiff is entitled to the reliefs of declaration and mandatory injunction are matters to be adjudicated upon after a full-fledged trial on appreciation of the oral and documentary evidence.

14. In these circumstances, this Court is of the considered opinion that the plaintiff has failed to establish a prima facie case for grant of temporary injunction in respect of the suit schedule 'B' property. Consequently, the balance of convenience and irreparable loss also does not lie in favour of the plaintiff. ***With these observations, this court has answered point No.1 to 3 in the Negative.***

15. **Point No-4.** For the reason assigned above, this court proceeds to pass the following

ORDER

IA No-I filed by the Applicant/plaintiff U/o.
39 Rule 1 and 2 of the Civil Procedure Code is
hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on the computer typed by her, corrected and pronounced by me in the open court on this the 21st day of July, 2026).

**Addl. Civil Judge & JMFC.,
Hosadurga.**