



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
KADUR.**

Present: Smt. Amrin Sultana. B.A., L.L.B.,
I Addl. Civil Judge & JMFC, Kadur.

Dated: This the 19th day of June, 2024

OS.No. 213/2024

Sri. K. Ramesha S/o Kotturappa,
Aged about 36 years, Agriculturist,
R/o Kasuvanahalli Village,
Kanakatte Hobli, Arasikere Taluk.
Hassan district.

PLAINTIFF

(Reptd by Sri. G.H.K. Advocate)

-versus-

Sri. Rajappa S/o Chandrappa,
Aged about 45 years, Agriculturist,
R/o Kasuvanahalli Village,
Kanakatte Hobli, Arasikere Taluk,
Hassan District.

DEFENDANT

(Reptd by A.S.P. Advocate)

I.A.No.I

Sri. Ramesha

Applicant

Vs

Sri. Rajappa

Opponent

1.	Provision under which the application is filed.	U/O 39 Rule 1 & 2 of CPC
2	Relief sought for	Ad-interim Temporary Injunction against defendant.



3	The date on which the application is filed	18.04.2024
4	Number of applications	I.A.No.I
5	The date on which the objections are filed by different opponents	25.04.2024 filed by defendant.
6	The date of order	19.06.2024

**:: ORDERS ON IA.NO.I UNDER RULE 1 & 2 OF ORDER
39 R/W 151 OF CPC ::**

I.A.No.1 is filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 R/W Sec.151 of Code of Civil Procedure for seeking the relief of Temporary Injunction infavour of the Plaintiff with respect to Suit-B schedule property.

2. The Plaintiff has sworn to an affidavit in support of the application wherein he has stated that the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that, the Plaintiff is the absolute owner of the landed property bearing Sy.No.24/12, measuring 1 acre 21 guntas, situated at Muthganagere village, Panchanahalli Hobli, Kadur Taluk as described in



the plaint A schedule property. Originally the landed property measuring 2 acres 02 guntas was belonged to the family of the father of the defendant by name Chandrappa and his uncle Mallikarjuna and Hunumappa. They have got divided the said 2 acre 02 guntas of alnd among themselves before panchayathdars. In the said Jubane partition, the property measuring 0-32 guntas has been allotted to the share of father of the defendant Chandrappa and 31 guntas has been allotted to the share of Mallikarjuna and remaining 0-19 guntas has been allotted to the share of Hanumappa and the khata have been changed to their respective names.

3. It is further stated in the plaint that, the father of the Defendant had sold 0-30 guntas by retaining 0-02 guntas in his name towards western side and put the plaintiff in possession over the 0-30 guntas in Sy.No.24/1. Thereafter the Mallikarjuna had sold his share of property measuring 0-31 guntas in favour of the plaintiff. Hence, the plaintiff became owner and in possession over 1 acre 21 guntas land as described in the plaint A schedule property.



4. It is further averred in the plaint that, taking advantage of absence of the plaintiff, the defendant in collusion with the survey authorities conducted survey on 17.12.2023 over the property belonging to the defendant measuring 0-02 guntas and prepared report that, the plaintiff has encroached the property of the defendant and taking undue advantage of the said survey document and also undue advantage of the absence of the plaintiff, on 17.12.2023, the defendant has illegally encroached 0-05 guntas property of the plaint A schedule property towards the western side and fixed barbed wire fence and stone pillars to the end of encroached area which included nine yielding coconut trees of the plaintiff. The encroached portion of the land has been described as Plaint- B schedule property. Hence the Plaintiff has filed the present suit. It is also stated that the defendant on 17.12.2023 encroached the western side of the plaint A schedule property and damaged 10 coconut trees, barbed wire fence with the help of JCB. Plaintiff has made out prima facie case, balance of convenience liens in his favour and if the equitable relief of



Temporary Injunction is not granted in favour of the Plaintiff, then he will be put to irreparable loss and hardship. **With these averments, the Plaintiff has sought for allowing the I.A.No.1.**

5. The Learned Counsel for the Defendant has filed the written statement along with objections to I.A.No.1. In the written statement, it is contended at para No.11 of the written statement that the Defendant is the owner of the property measuring 0-02 guntas and grand father of the Defendant is the owner of the property measuring 0-19 guntas in Sy. No.28/8. The plaintiff himself encroached the property measuring 0-03 guntas in Sy. No.24/9 and 0-02 guntas in 24/7. When the defendants got surveyed the property they came to know about the illegal encroachment made by the plaintiff. As per the survey report the defendant taken possession of the property encroached by the plaintiff. Hence, the plaintiff not entitled for relief of temporary injunction. **With these contentions, the Defendant has sought for rejection of I.A No.1.**



6. Heard the arguments of the Learned Counsels appearing for the parties and perused the materials on record.

7. Now the following points arise for consideration of this Court are.

Point No.1: Whether the Plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?

Point No.2: Whether the balance of convenience lies infavour of the Plaintiff?

Point No.3: Whether the Plaintiff will be put irreparable loss and hardship, if IA No.1 is not allowed?

Point No.4 : What Order?

8. The findings of this Court on the above points are as under:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per the final order for the following :



REASONS

9. **Point No.1:** It is the case of the Plaintiff that he had purchased the suit schedule property under the registered sale deed, during his absence, the defendant has encroached 0-05 guntas of land, hence the Plaintiff has filed the present suit. Per contra, it is the case of the Defendants that as per the Survey report, they have taken possession of the property which was encroached by the Plaintiff. But the Plaintiff by suppressing all these facts has filed the false suit.

10. The Learned Counsel for the Plaintiff vehemently argued before the Court that the Defendant have damaged the coconut trees, barbed wire fence and boundaries, hence he has filed the present I.A's for temporary injunction. With these submissions, the learned counsel for the Plaintiff sought for granting equitable relief of temporary injunction infavour of the Plaintiff.

11. Per contra the Learned Counsel for the Defendants argued that as per the Survey report and sketch they have taken possession over the property. Now the Defendant is in



possession over the property. hence, question of granting injunction does not arise.

12. In the light of arguments canvassed by the Learned Counsels for the parties, this Court has carefully perused pleading. In the I.A, the plaintiff though sought for temporary injunction against the defendant, but his prayer is not specific. He has not prayed in what manner the relief of temporary injunction to be given.

13. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

14. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are



adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

15. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

16. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him.

KACM210013552024



The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

17. In order to ascertain the prima-facie case, this Court has carefully perused the materials on record. It appears to this Court that the defendant is in possession of the Suit B schedule property. It is the case of the Defendant that they are in possession of the suit B property as per the report given by the survey authority. Even the Plaintiff admits the preparation of survey sketch but disputes its genuineness. But the Learned Counsel for the Plaintiff vehemently argued before the Court that the survey sketch relied upon by the Defendants cannot be considered at all as the position of the suit schedule property and the Defendants properties could have been changed, hence no importance can be attached to the said documents.



18. In order to appreciate the said submission of the learned counsel for the Plaintiff, **it is relevant to refer Section 36 of the Indian Evidence Act 1872 which reads as follows:**

Section 36: Relevancy of statements in maps, charts and plans - Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans are themselves relevant facts.

After considering Section 36 of Indian Evidence Act and by applying the said provision to the facts on hand, this court is of the opinion that the Village map and other **survey sketches** relied upon by the Defendants are prepared by the Government of Karnataka, hence the same have got relevancy in order to ascertain the encroachment in the suit schedule property.



19. Further as per Section 83 of the Indian Evidence Act 1872 there is a presumption as to maps or plans made by the authority of the Government. ***As per the Section 83 of the Indian Evidence Act, the Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.*** As per Section 83 of Indian Evidence Act, this Court shall presume a map or plan prepared by the Government. In the instant case, the Defendants have relied the survey sketches of suit schedule property; hence as per Section 83 of the Indian Evidence Act, this Court at this stage presumed it to be true. It is left open to the Plaintiff to rebut the said presumption under Section 83 of the Indian Evidence Act attached to the said documents during the trail. Hence, this Court is of the opinion that the Plaintiff is not made out prima-facie case for granting the equitable relief of Temporary Injunction.



Moreover, the prayer of the Plaintiff in I.A No.1 is not specific regarding relief claimed by him in the I.A. it only contains as the defendant caused damage to the suit B schedule property temporary injunction order is very much required. He has not specified, what kind of temporary injunction he required. **With these observations, this Court has answered point No.1 in the Negative.**

20. **Point No.2 & 3:** The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

21. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no



other remedy open to him by which he can protect himself from the consequences of apprehended injury.

22. The learned Counsel for the Plaintiff vehemently argued before the Court the Defendant has damaged valuable coconut yielding trees, hence he has to be temporarily restrained. Per contra, the Learned Counsel for the Defendants submitted before the Court when the Defendant themselves in possession of the property, question of granting Injunction does not arise at all. Hence the application has to be rejected. It is to be noted is that the Plaintiff also admits the preparation of Haddubast and survey sketch, but his contention is, the said sketch was not prepared in accordance with law. However, the plaintiff has to prove his contention during trial. In these circumstances, this Court is of the opinion that if I.A.No.1 is rejected no hardship and mischief will be caused to the Plaintiff, than the mischief and hardship will caused to the Defendants if I.A.No.1 is allowed. Further this Court is of the opinion that if I.A.No.1 is rejected no loss or hardship will caused to the Plaintiff and on the contrary if the said application is



allowed, then the Defendants will be put to irreparable loss and hardship. Further this court is of the opinion that the balance of convenience does not lean infavour of the Plaintiff. **With these observations, this court has answered Point No.2 and Point No.3 in the Negative.**

24. **Point No.4:** For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

O R D E R

I.A.No.1 filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 of CPC is hereby rejected.

No order as to cost.

*[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of **19th day of June 2024**]*

Sd/-
(AMRIN SULTANA)
I Addl. Civil Judge & JMFC,
Kadur.