



**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 24th day of January, 2024

OS.No.772/2023

Sri. H.T. Revanasiddappa W/o Late. Thimmaiah,
Aged about 69 years, Agriculturist,
R/o Hadagalu Village, Chowlahiriyur Hobli,
Kadur Town, Chikkamagalur District. **PLAINTIFF**

(Reptd by Sri. H.T. Advocate)

-versus-

Sri. Raghu H.K. S/o Kamsagarappa,
Aged about 32 years, Agriculturist,
R/o Hadagalu village, Chowlahiriyur Hobli,
Kadur Taluk, Chikmagalur District. **DEFENDANT**

(Reptd by Sri. K.R.U. Advocate)

I.A.No.I

Sri. H.T. Revanasiddappa **Applicants**

Vs

Sri. Raghu H.K. **Opponents**



1.	Provision under which the application is filed.	U/O.XXXIX Rule 1 & 2 CPC
2	Relief sought for	Ad-interim order of temporary injunction
3	The date on which the application is filed	25.11.2023
4	Number of applications	I.A.No.I
5	The date on which the objections are filed by different opponents	02.01.2024 filed by defendant.
6	The date of order	24.01.2023

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

The Plaintiff has filed Interlocutory application under Order Order 39 Rule 1 & 2 of CPC, praying to restraining the defendant from trespassing into the suit schedule property and encroaching the suit schedule property towards the Southerner side and to put up any permanent structure over the suit schedule property by causing damage to the suit schedule property and thereby dispossessing from the suit schedule property, either by himself, his agents, servants or anybody on his behalf till disposal of the suit.

2. In the affidavit sworn by the applicant, it has been stated that, the suit schedule property is an



ancestral property of the plaintiff family. Thereafter, the plaintiff and his brother divided the said property among themselves before Panchayathdars in the year 1993-94. As such, the suit schedule property and other properties has been allotted to the share of the plaintiff and Katha has been mutated vide MR No.7/1993-94. The defendant is having his property towards the southern side of suit schedule property. But, the defendant have no manner right, title or interest over the suit schedule property trying to interfere and disturb the peaceful possession and enjoyment of suit schedule property of the plaintiff and the defendant has also trying to encroach the suit schedule property towards the southern side and trying to put up structure by causing damage to the suit schedule property and also trying to dispossess the plaintiff. This act of the defendant is illegal. If the defendant is not restrained the plaintiff will be put to lot of hardship. Hence, he filed this suit along with IA and prayed for the relief of injunction till the disposal of the suit.

3. Per contra, the defendant appeared through his counsel and filed objection to IA. In the objection it is contended that, on 05.11.2020 the plaintiff and his elder brother Manjunath K have purchased the property



in Sy.No.75/9 measuring 8 guntas from one Smt. Chandramma, Kumari Manjula, Kumari Ranjitha for the valid consideration of Rs.1,00,000/- by way registered sale deed. As per document No.KDR-1-04918-2020-21 CD No.KDRD662.

The defendant and his elder brother have filed an appeal before DDLR Chikmagalore and the same has been allowed. The Katha to the extent of 8 guntas stands in the name of defendant and his elder brother, since that period the defendant is in possession. The surveyor visited the spot and prepared the sketch by visiting the property. Later, the defendant as per that sketch, by living 15 feets space towards the northern side of his property started to construct house. The plaintiff with a old enmity obstructing the defendant in his work with a intention to stay the house warming function of the defendant. Hence, prayed to reject the IA with costs.

4. Heard the arguments from the counsels for plaintiff and defendant and perused the material placed before the court.

5. After carefully analysing the averments in affidavit accompanying the applications and the



objections put forth by the other side this court raises following points for consideration:

1. Whether the Plaintiffs have made out prima-facie case to grant the relief sought for in I.A.No. I?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Who will be put to irreparable loss and injury if the I.A.No. I is granted or rejected?
4. What Order?

6. My findings on the above points are as follows:

- | | |
|-------------|---|
| Point No.1: | In the Negative. |
| Point No.2: | Does not arise for consideration. |
| Point No.3: | Does not arise for consideration. |
| Point No.4: | As per final orders for the following:- |

REASONS

7. POINTS NO.1:- IA.No.1 is filed under Order 39 Rule 1 & 2 of CPC, praying to restraining the defendant from trespassing into the suit schedule property and



encroaching the suit schedule property towards the southern side and putting up any permanent structure over the suit schedule property by causing damages to the suit schedule property and dispossessing the plaintiff from either by themselves, their agents, servants or anybody on their behalf pending disposal of the suit.

8. In supporting of the contention of the plaintiff, the plaintiff has produced the RTC Extract pertaining to Sy.No.75/6 and Mutation Register pertaining to the suit schedule property. Photographs of the building constructed by the defendant. Old RTC extracts. Records of rights. Old MR extracts and also RTC extracts bearing Sy.No.75/9 and Tax paid receipts. Per contra the defendant has produced copy of Sale deed, copy of Encumbrance certificate, RTC extract pertaining to the Sy.No.75/6 dated:18.12.2023. MR Extract dated:18.12.2023. Sketch and the Spot Inspection Mahazer and the Notarized copy of order passed by DDLR, Chikmagalur.

9. On perusal of the photographs furnished by the plaintiff, it appears that the defendant has already constructed maximum portion of the building. Further,



the defendant submitted that he has already completed the building and the said building has been constructed within the boundaries of his property. When the defendant constructed the building, suit for bare injunction is not maintainable without seeking further relief. Further one interesting aspect that the present Interlocutory application consists of several prayer. Rule 23 of Karnataka Civil rules of practice permits the parties to seek only one relief in one Interlocutory application. In support of this contention I relied upon the judgment rendered by Hon'ble High Court of Karnataka in **Vijayakumar Vs Suresh and another reported in 2002(6)KarLJ223** where in it is held that in a single Interlocutory application there shall not be Two prayer. In this case in hand the plaintiff has sought for Temporary Injunction against the defendants a) not to trespass, b) not to encroach the suit schedule property c) not to put up any permanent structure d) not to dispossess the plaintiff from the suit schedule property. As per Rule 23 of Karnataka Civil Rules of practice it is not permissible.

10. As such at this stage of the suit it is the firm opinion of the court that, the plaintiff have failed to



make out prima-facie case in their favour. Wherefore, this court finds no hesitation on holding the point for consideration No.1 in the **Negative.**

11. Point No.2 & 3:- This court has already discussed on the above point and deems to hold on merits that, the plaintiff has failed to prove the existence of prima-facie case in his favour. Under such circumstances, this court need not be looked into the other aspects i.e., balance of convenience and also irreparable loss and this view of the court is further supported by the decision passed by Hon'ble Apex Court in Kashinath Samsthan and Anr., Vs. Srimad Sudhindra Thirtha Swamy and Anr, reported in AIR 2010 SC 296, wherein it is held that;

“In order to obtain an order of injunction the party, who seeks for granting of such injunction has to prove that, he has made out prima-facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is granted. But it is equally well settled that, when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, i.e., to say, if that party fails to prove prima-facie case to go for trial it is not open to the court to grant injunction in his favour even if he made out a case of



balance of convenience being in his favour and would suffer irreparable loss and injury, if no injunction order is granted".

12. However, in the present case on hand the plaintiff has to prove his case at full fledged trial. Moreover, without looking in to the deep discussion on point No.2 and 3, on prima facie by looking into the documents it is noticed that, the defendant denied his interference over the suit schedule property. Therefore if the injunction order sought by the plaintiff is rejected, no hardship or irreparable loss will be caused to the plaintiff.

13. Therefore, this court upon discussion on point No.1 come to the conclusion that, this court need not proceed to consider the point No.2 and 3. Hence, on the above said findings and discussions and abiding by the legal principles this court holds point No.2 and 3 **do not survive for consideration of this court.**

14. Point No.4: For the above discussion on point No.1 to 3 this court proceeds to pass the following :-

**ORDER**

I.A. No.1 filed by the plaintiff
under Order 39 Rule 1 and 2 of
C.P.C. is hereby dismissed.

The discussion made above
on the said IA will not affect the
merits of the case.

Parties shall bear own costs.

(Typed by me directly on laptop, corrected and then pronounced in the
open Court, this the 24th day of January 2024)

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

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