



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 6th DAY OF DECEMBER 2023

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 119/2021

BETWEEN :

Surendra
S/o Late Subramanya V.
Aged about 34 years,
R/o # 91/1 Munireddy Building,
Singasandra, Anekal,
Bengaluru-560068.

Rep. by his G.P.A.Holder
R.Vishnu S/o R.Raghu,
Aged about 30 years,
Auto Driver,
R/o Samse Tea Estate,
Samse Village and Post,
Kalasa Hobali, Mudigere
Taluk, Chikkamagaluru
District.

... Plaintiff

(By Sri. B.T.Nataraj, Adv.)

AND :



1. Kumara
S/o George,
Aged about 40 years.
2. Vijay
Aged about 40 years,
R/o Pathi Gudde,
Samse Village & Post,
Kalasa Hobli, Mudigere
Taluk, Chikkamagaluru.

...Defendants

(By Sri.H.B.Shamanna, Adv.,)

PARTIES ON I.A.NO.I

BETWEEN :

Surendra Rep by his GPA Holder R.Vishnu ... Applicant

AND :

Kumara & Anr. ...Opponents

i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	22.09.2021
iv	Number of the application	I
v	The date on which the objections are filed by different opponents	10.12.2021
vi	The date on which the orders were passed on the said application	06.12.2023



ORDERS ON I.A.NO.I

The Plaintiff has filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendants, their men, agents, servants or anybody claiming through them from trespassing into the suit schedule property, constructing compound wall therein or in any way interfering with the plaintiff's peaceful possession, enjoyment and occupation of the suit schedule property till disposal of the present suit.

2. It is the case of plaintiff that he is the absolute owner in peaceful possession and enjoyment of the suit schedule property which is a vacant site and boundary stones are laid towards all four corners. The suit schedule property is granted to the father of plaintiff vide grant certificate bearing No.(95),243306 dated 16.11.1998 issued by the Executive Officer, Taluk Panchayath, Mudigere. The defendants are owners of the property situated adjacent towards western side of suit property and they are not in good terms with the plaintiff. This being the case, on 11.09.2021, the defendants with their Hench men and agents have intentionally tried to trespass and encroach the



western side of suit property and also tried to construct compound wall therein. Though the plaintiff and his men have resisted the defendants from their illegal acts, the defendants and their agents are continuing in their illegal acts and though the plaintiff had approached the Kuduremukha Police, they have not protected the plaintiff stating the dispute is in the civil nature. On these averments, the plaintiff has sought for interim order of temporary injunction till disposal of the suit.

3. The defendants have filed memo adopting the written statement as objections to the present application. It is the defendant No.2 who has filed the written statement along with counter claim. In the written statement, defendant No.2 has denied the plaint averments and contended that he has no knowledge of nature of suit property, boundary stones laid to its four corner and the same is granted to the plaintiff's father. The defendant No.2 has further contended that the plaintiff is not in possession of plaint schedule property as he is residing at Bengaluru from long back. The plaintiff is not aware about the identity of his property. Defendant No.2 has purchased a site from Smt. Sara W/o K.K. Kutti through oral agreement. The said



site is adjacent to the site of defendant No.1 and defendant No.2 has paid Rs.50,000/- to said Smt.Sara who has gave possession of said site to the defendant No.2.

4. It is further contended that, the defendant No.2 is paying tax in the name of Smt. Sara. One Shivakumar who wanted to purchase the site from Smt. Sara is in inimical terms with the defendants. It is on the instigation of said Shivakumar, the GPA holder of plaintiff has filed the present suit suppressing the true facts. Having fraudulently obtained ex-parte injunction in the above suit, the plaintiff and his men have forcibly tried to tress pass into the property belonging to the defendant No.2 towards northern side and tried to encroach the same to construct small tarpaulin hut. But the said act of plaintiff is resisted by the defendant and the matter was also informed to the Kuduremukha Police who have taken no action against the plaintiff. On these averments, the defendants seeks for rejection of the application.

5. Heard both side and perused the entire materials available on record. In view of the above contentions, the following points arise for consideration.



1. *Whether the plaintiff has made out prima-facie case in his favour to grant temporary injunction as prayed for?*
2. *Whether the balance of convenience lies in favour of plaintiff?*
3. *Whether the Plaintiff will be put to irreparable injury if the injunction is not granted in his favour?*
4. *What order?*

6. Now, the findings of this Court on the above points are as follows:

Point No.1 : ***In the Affirmative***

Point No.2 : ***In the Affirmative***

Point No.3 : ***In the Affirmative***

Point No.4 : *As per final order*

for the following:

REASONS

7. POINT No.1 TO 3: Since these points require common consideration of materials on record, they are taken for discussion together so as to avoid repetitions.



It is the specific case of plaintiff that he is the owner in possession and occupation of suit property having obtained the same through grant certificate. To show the prima-facie possession over the suit property, the plaintiff has produced grant certificate dated 16.11.1998 wherein it discloses that the site No. 23 measuring 30X40 formed in Sy. No. 279 of Samse Village is granted to one Subramanya S/o Vasu. It is the case of plaintiff that the said Subramanya is his father. In this regards the plaintiff has produced genealogy affidavit which prima-facie discloses that the plaintiff is the son of said Subramanya. The plaintiff has also produced sketch pertaining to suit property and also the certificate dated 10.02.2023 issued by the Samse Village Panchayath wherein it is certified that the plaintiff's father Subramanya was granted with the suit schedule property wherein the boundaries are also mentioned.

8. It could be seen from the meeting proceedings dated 04.10.2021 of Samse Village Panchayath, that it is resolved to mutate the khatha pertaining to suit property in favour of plaintiff. Whereas, the meeting proceeding dated 04.01.2022 produced by the defendants itself discloses that the Panchayath has resolved to not register the khatha with



respect to sites formed under Ashraya Scheme in Sy. No. 279 of Same Village. It is the further case of plaintiff that the suit property is vacant site. In this regards the plaintiff has produced photographs which needs consideration at trial.

9. On the other hand, the defendant No.2 has specifically contended that he has purchased a site from one Smt.Sara through oral agreement and he is in possession of said site by paying tax in her name itself and the said site is adjacent to site of defendant No.1. In this regards, the defendants have produced tax paid receipt and copy of grant certificate dated 16.11.1998 wherein it discloses that the said Smt. Sara was granted with site No.20 measuring 40 X 30 formed in Sy. No. 279 of Samse Village.

10. The defendant No.2 has further contended that the plaintiff having got ex-parte injunction, he tried to interfere with the defendant No.2's possession of the said site No.20 towards northern side. The plaintiff himself has produced e-swathu of the property in the name of Smt.Sara and it discloses that towards north of said site there is Panchayath road. The plaintiff has further produced the letter dated 18.12.2021 wherein it discloses the said Smt.Sara has



requested the Samse Village Panchayath not to change khtaha pertaining to her property submitting that she has not sold the same to any person. Thus, if the boundaries of suit property and so also that of the property granted to Smt.Sara, is looked into, it could at this stage be considered that they are totally different sites and they are not adjacent towards either side.

11. Further, the plaintiff has produced the copy of grant certificate and e-swathu pertaining to site No. 22 which is seen to be granted in favor of defendant No.1. As could be seen from the grant certificate issued in favour Smt.Sara, her Site No. is 20 which the defendant No.2 claims to be situated adjacent to property of defendant No.1. The e-swathu pertaining to property belonging to defendant No.1 discloses that the site No.20 is not situated towards either side of property of defendant No.1 but the suit property is situated towards eastern side of said property which is also admitted by the plaintiff. Though, the boundaries appearing in the e-swathu needs to be considered on apperception of evidence adduced in the trial. But, the boundary details mentioned in the said documents cannot be kept aside so as to ascertain



prima-facie case as the e-swathu is a document recorded by the public servant in exercise of his official duty.

12. The plaintiff has further contended that the defendants who are not in good terms with him, they have tried to trespass and encroach towards western side of suit property and also tried to construct the compound wall. Whereas, the defendant No.2 has contended that the plaintiff having got ex-parte injunction has tried to trespass into the property which he had purchased from Smt.Sara, towards its northern side and tried to construct small tarpaulin hut. As discussed earlier, there is a panchayath road towards northern side of the property belonging to Smt.Sara and the suit property is not situated toward either side of said property. It is also discussed that the suit property is situated towards the property of defendant No.1. If at this stage, the nature of suit property being vacant land is considered along with the grant certificate produced by the plaintiff, it could be held at this stage that the plaintiff has made out prima-facie case in his favour. If the assertion made by the defendant No.2 that he purchased a site belonging to Smt.Sara through oral agreement is carefully considered on conjoint reading with the letter dtd: 18.12.2021 made by said Sara and moreso the



FIR's in Cr.No.15 and 16/2021 lodged by Kuduremukaha Police, it could at this stage be considered that the balance of convenience lie in favor of plaintiff and if the temporary injunction as sought for is refused, hardship or injury will be caused to the plaintiff. Hence Point No.1 to 3 are answered in **Affirmative.**

13. POINT No.4: In view of the above findings on point No.1 to 3, this Court is of view to allow the present application. Hence, the following.

ORDER

I.A. No.1 filed by the Plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is allowed.

The defendants, their men and servants are hereby temporarily restrained from trespassing into the suit schedule property, constructing compound wall therein or in any way interfering with the plaintiff's peaceful possession, enjoyment and occupation of the suit schedule property until disposal of the suit.



For Issues by: 12.12.2023.

*(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the **6th day of December, 2023**)*

(Vishwanath.A)
Addl. Civil Judge & JMFC,
Mudigere.

***BSM**