



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

DATED: THIS THE 8th DAY OF SEPTEMBER 2023

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

ORIGINAL SUIT No: 120/2021

BETWEEN :

1. Smt. Lalithamma
W/o Late Thimme Gowda,
Aged about 57 years.
2. Sri. Raghavendra
S/o Late Thimme Gowda,
Aged about 32 years.
3. Smt. Ramya
D/o Late Thimme Gowda,
Aged about 37 years.

All are R/o R/o Hadlugadde,
Idakani Village, Hemmakki Post,
Kalasa Hobli, Mudigere Taluk.

... Plaintiffs

(By Sri. B.Jagadeesh, Adv.)

AND :

Smt. Suma @ Sumithra
W/o Late H.K.Sandeep,



Aged about 36 years,
R/o Hadlugadde, Idakani
Village, Hemmakki Post,
Kalasa Hobli, Mudigere Taluk.

...Defendant

(By Sri.M.M.Raghavendra, Adv.,)

PARTIES ON I.A.NO.I

BETWEEN :

Smt. Lalithamma & Ors.

... Applicants

AND :

Smt. Suma @ Sumithra

...Opponent

| | | |
|-----|---|---------------------------------|
| 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 | 28.09.2021 |
| iv | Number of the application | I |
| v | The date on which the objections are filed by different opponents | 21.03.2022 |
| vi | The date on which the orders were passed on the said application | 07.09.2023 |



ORDERS ON I.A.NO.I

The Plaintiffs have filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendant, her men, agents, servants or anybody claiming through her from trespassing into, causing acts of waste or in any way interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property till disposal of the present suit.

2. The Plaintiffs have contended that, they are the owners in possession of the suit property. The said property was granted in favour of plaintiff No.1's husband and after his death the katha of suit property is mutated to the name of plaintiffs. Since then they are in peaceful possession, occupation and enjoyment of the suit property. The defendant having got no manner of right, title or interest over the suit property she on 20.09.2021 at about 10.00 AM along with her men tried to trespass upon the suit property towards northern side. On these averments the plaintiffs have sought for allowing the present application.



3. The defendant has filed a memo adopting the written statement as objection to the present application. In the written statement, the defendant has denied the plaint averments but admitted the fact that suit property stands in the name of plaintiffs. Defendant has contended that she has got land to an extent of 2 acres in Sy.No.275 and 1.13 acres in Sy.No.24 of Idakani Village. The plaintiffs having took the advantage of fact that the defendant is a widow who has no background support, have filed the above suit with a sole intention to grab the property belonging to the defendant. On these averments, the defendant has sought for rejection of the application.

4. In view of the above contentions, the following points arise for consideration.

- 1. Whether the plaintiffs have made out prima-facie case in their favour to grant temporary injunction as prayed for?**
- 2. Whether the balance of convenience lies in favour of plaintiffs?**
- 3. Whether the Plaintiffs will be put to irreparable injury if the injunction is not granted in their favour?**



4. What order?

5. Heard both side and perused the entire materials available on record. Now, the findings of this Court on the above points are as follows:

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

6. 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.

The Plaintiffs have filed the above suit for the decree of permanent injunction against the defendant with respect to the suit schedule property. Suit property is a dry land to an extent of 2.08 acres in Sy. No. 274(Old No.26) of Idakani Village. It is their case that the said property was granted in favour of husband of plaintiff No.1 and after his death the same has been mutated to the name of plaintiffs. Plaintiffs



have produced grant certificate, RTC, Mutation and Tax paid receipt pertaining to the suit property which discloses that the suit property was granted to one H.B.Thimmegowda and the RTC is in the name of plaintiffs. The fact that the suit property stands in the name of plaintiff is also admitted by the defendant.

7. The plaintiffs have further contended that the defendant who is no way related to the suit property has on 20.09.2021 along with her men has tried to trespass into the suit property towards northern side. On the other hand the defendant has contended that she has not trespassed the suit property and the plaintiffs have filed the false suit in order to grab the property belonging to the defendant. On perusal of the plaint schedule, it could be seen that the defendant has got land towards northern side of suit property and as per the sketch produced by the plaintiffs it is not certain whether there is a land belonging to the defendant towards northern side of suit property. Though the plaintiffs have contended that the defendant has tried to trespass upon the suit property no materials is placed on record at this stage in support of the said contention. Thus, at this juncture it appears that the plaintiff has not made out prima-facie case



and balance of convenience does not lie in their favour. If the injunction is granted in favour of plaintiffs at this stage in absence of materials regarding alleged interference, then the defendant would be put to injury. Hence Point No.1 to 3 are answered in **Negative**.

8. POINT No.4: In view of the above findings on point No.1 to 3, this Court proceed to pass the following.

ORDER

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

For Issues by: 19.09.2023

*(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the **8th day of September, 2023**)*

Sd/-

(Vishwanath.A)

Addl. Civil Judge & JMFC,
Mudigere.