

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

Present : **Smt.N.Narasamma**, B.A.L.L.L.B.,
Senior Civil Judge and
J.M.F.C., Mudigere.

OS No.28/2021

DATED THIS THE 24th DAY OF JANUARY 2022

PLAINTIFF : Syed Pyaru S/o Syed Ibrahim,
Aged about 61 years,
Agriculturist, R/o J.M.Road,
Mudigere Town, hikkamagaluru
District.

[By Sri Harish Singatagere, Advocate]

V/s.

- DEFENDANTS:1. D.R.Raju S/o Ramaiah, Aged
about 68 years, R/o 'Krithika
Estate', Bankenahalli Village,
Mudigere Taluk, Chikkamagaluru
District.
2. B.J.Chandregowda S/o Junjegowda,
Aged about 65 years,
R/o Bankenahalli Village, Mudigere
Taluk, Chikkamagaluru District.
3. Harish S/o Late Eshwara Poojari,
Aged about 45 years, R/o Indira
Nagara, Bankenahalli Village,
Mudigere Taluk, Chikkamagaluru
District.

[D.1 and 2 By Sri K.S.Adithya,
D.3 by Sri K.M.Prashanth, Advocates]

PARTIES IN I.A.No.1

Applicant: Syed Pyaru - Plaintiff
- V/s -
Opponent: D.R.Raju and others - Defendant

: ORDERS ON I.A.No.1:

This I.A.No.1 is filed by the plaintiff U/o 39 Rule 1 and 2 R/w Section 151 of C.P.C.,for grant of temporary injunction restraining the defendants or their agents or men or anybody claiming through them from causing interference to the possession of the plaintiff over the plaint 'A' schedule property excluding plaint 'B' to 'D' schedule properties in any manner or making constructions over the plaint 'B' to 'D' schedule properties till the disposal of the suit

2. It is submitted by the plaintiff that the plaint averments is to be read as part and parcel of this application.

3. The brief facts of the plaint averments is that, the plaintiff is the absolute owner of the plaint 'A' schedule property by virtue of the registered sale deed bearing document No.MGE-1-01408-2015-16, dated 22.07.2015 registered on 16.10.2015 executed as per decree passed in OS No. 106/2011 and he entered into an agreement of sale dated 11.01.2008 with the erstwhile owner of the plaint Schedule property by

name Oliver Wilfred Coelho in order to purchase the plaint schedule property. The said vendor failed to honour the terms and conditions of the said agreement. The plaintiff filed the suit for the relief of specific performance in O.S.No.106/2011 on the file of Civil Judge, Chikkamagaluru. The said suit was decreed vide judgment and decree dated 11.08.2013. The said defendant Oliver Wilfred Coelho filed an appeal in R.A. No. 11/2014 against the said judgment and decree on the file of Hon'ble Prl. District Judge, Chikkamagaluru which was dismissed vide judgment and decree dated 26-02-2015. Thereafter the said vendor filed the second appeal in RSA 839/2015 before the Hon'ble High Court of Karnataka which was also dismissed vide judgment and decree dated 07.06.2016. Thereafter the said vendor approached the Hon'ble Supreme Court of India in Special Leave to Appeal (C) 6708/2017 which was also dismissed vide order dated 07-04-2017.

4. The plaintiff further submits that, in the meanwhile the plaintiff filed the execution petition in Ex.No. 12/2014 on the file of Hon'ble Addl.Senior Civil Judge, Chikkamagaluru in order to execute the judgment and decree passed in OS.No.106/2011 dated 11-08-2013. As per the order passed in the execution petition, the court commissioner executed the said registered sale deed dated 22.07.2015 bearing

document No.MGE-1-1408-2015-16 registered on 16.10.2015. Thereafter the plaintiff took possession of the plaint schedule property on 04.02.2016 as per the execution the delivery warrant in Ex 12/2014. The plaintiff is in enjoyment cultivation of the said property since from 04.02.2016.

5. The plaintiff further submits that there is a litigation pending between Oliver Wilfred Coelho and the defendant No.1 and 3 before the Hon'ble High Court of Karnataka in RSA No.1639/2013 and the plaintiff came to know the same when the surveyor measured Sy.No.202 including the plaint schedule property. The said survey disclosed that, the plaintiff is in possession of an extent of 5 acres only. The defendant No.1 is in encroachment of approximately 2 acres 2 guntas of plaint 'A' schedule property which is described as plaint 'B' schedule property. The defendant No.2 is in encroachment of approximately 1 acre 10 guntas which is described as plaint 'D' schedule. The plaint 'A' schedule property is spread over in block No.I, II, III and IV of the report submitted in RSA.No.1639/2013. After the survey the Hon'ble High Court of Karnataka and after receipt of said survey report in the month of March 2021, the plaintiff came to know that plaint 'A' schedule property was encroached. There is no khatha standing in the name

of the defendant No.1 and 3 in Sy.No.202. The defendant No.2 has got khatha to an extent of 2 acres 30 gutnas in the said survey number. The plaintiff has not got surveyed the land at the time of taking possession of the plaint schedule property and he was of the opinion that it measured 8 acres 10 guntas.

6. The plaintiff further submits that thereafter he got it confirmed through the survey about the said encroachment and has approached the defendants in the month of March 2021 and asked them to vacate the said encroachments. The defendants refused to do so and started to make further encroachments. The defendants taking undue advantage of the litigation between himself and his vendor, encroached the plaint schedule properties. The defendants are illegal squatters and they have got no rights whatsoever over the plaint 'A' schedule property. After the receipt of the said survey sketch, the plaintiff came to know that the boundaries of southern and northern side were interchanged in the registered sale deed. The plaintiff described as second party in the said sale deed and has got his land towards the northern side of the plaint 'A' schedule property. The northern boundary of the plaint schedule property is plaintiff's property and B.Hosalli village boundary. The southern boundary is Koodahalli Village boundary.

The said boundaries were mentioned wrongly by interchanging in the said agreement and sale deed and it is required to be rectified. On these grounds, the plaintiff prayed to allow the application.

7. On the other hand the defendant No.2 has filed written statement and has filed memo to treat the written statement as objections to this IA No.1. The defendant No.1 filed memo adopting the written statement of defendant No.2. Wherein in the written statement the defendant No.2 has contended that the suit of the plaintiff is not maintainable either in law or on facts. The plaintiff and said Cohelho have colluded together and has fought as friendly battle with malafide intention. The plaintiff might have obtained the decree in OS No.106/2011 and execution of sale deed in No.MGE-1-1408/15-16. The falsity of the case of the plaintiff is prima facie visible as the said version of possession and enjoyment is contrary to later allegations in Para No.4 of the plaint, wherein he alleges that he is in possession of only 5 acres of land since the date of alleged delivery warrant.

8. The defendant No.2 further contended that the surveyor nowhere said in the report that the defendant No.1 and 2 have encroached the land of plaintiff but only stated that they are in possession of

land in excess than in their khatha without correctly verifying the revenue records furnished by the defendants. The said report is under scrutiny before the Hon'ble High Court of Karnataka. The plaintiff is not at all a party in RSA. Hence it is quite strange how he can say the contents of the said report and sketch in detail such as the land is located in 4 blocks. The said version is contrary to his stand taken in Para No.2 of the plaint wherein he has stated that he is in possession and enjoyment of the entire plaint 'A' schedule property since 04.02.2016. It is not necessary that defendant No.1 and 2 should hold khatha for all the land in their possession, they can hold the Government land in Sy.No.202 situated adjacent to their khatha/patta land. The entire decree, sale deed and execution proceedings are all false and concocted. Hence, the plaintiff will not derive any right under the decree or sale deed or execution petition. As the defendants have not encroached the land of plaintiff, the question of plaintiff requesting the defendants or the defendants refusing the same will not arise at all. Even prior to the Oliever Wilfred Cohilo or his mother obtained the khata for the land in Sy.No.202 the defendants were in possession of the land in dispute. Even otherwise mother of Oliever Wilfred Cohilo by name Lilly D'silva by misrepresentation has got up some documents and on the basis of concocted

documents in collusion with the revenue and survey authorities has succeeded in obtaining khata for 9-27 acres of land in Sy.No.202 even though she was not in possession of any land in Sy.No.202 and thereafter, making false allegations that the defendants No.2 & 3 have encroached her land and has filed the suit in No.156/2001 before Addl. Senior Civil Judge at Chikkamagaluru. After the death of his mother, Oliever Wilfred Cohilo has continued the said suit. In the said suit the Senior Civil Judge has been pleased to hold that the contention of Oliever Wilfred Cohilo is false and untrue and had dismissed the suit. When the Oliever Wilfred Cohilo himself failed to prove ownership on the land in question and failed to get the relief of possession in the said suit No.156/2001 the claim of plaintiff for possession in this suit will not survive.

9. Further it is contended that the present suit itself misconceiving. Already when there is finding on the subject property in OS No 156/2001, the present suit for same relief is not maintainable as per the principles of resjudicata. The suit is liable to be dismissed in limine. The plaintiff is making mockery of justice and making unjust claim. The title of Oliever Wilfred Cohilo itself on the subject property is under challenge, hence the plaintiff cannot derive any better title over the schedule property in question. The

plaintiff cannot have a better title than that of Oliever Wilfred Cohilo on the property. When neither the Oliever Wilfred Cohilo nor the plaintiffs are not the owners of the plaint 'A' schedule property they are not entitled to get relief of possession over plaint 'B', 'C' and 'D' schedule properties. Hence, the plaintiff is not entitled to get the relief of rectification of boundaries in Sale Deed. Even otherwise, the plaintiff cannot get the said relief against the defendants without making the Oliever Wilfred Cohilo as party. The mother of Oliever Wilfred Cohilo by name Lilly D'Silva has applied for restoration of khata 14-20 acres of land in Sy.No.202 of B.Hosahalli Village. For restoration of land there is a precondition that the person who seek restoration should be in possession of the land and land should not have been alienated/or possessed by others. The identity of land should be established. There was no proper identification of land intended to be restored and mother of Oliever Wilfred Cohilo was not in possession of any land in Sy.No.202. So, the Deputy Commissioner has rejected her application for restoration two times. But at-last the mother of Oliever Wilfred Cohilo had succeeded in getting an order for restoration on the basis of false documents created in collusion with the local revenue and survey officials. On the basis of said concocted survey report and false report of Taluk Revenue officials the Deputy

Commissioner has ordered for restoration to the name of Lilly D'Silva mother of Oliver Wilfred Cohilo of the land without prior enquiry. It is quite strange that D.C., who had two times earlier rejected the application for restoration on sufficient grounds has ordered for restoration later. But the identity of the restored land is still in dispute because land in Sy.No.202 measures more than 25 acres. The land in Sy.No.202 is Govt. land and was laying vacant during 1977-78. Hence, the defendant No.2 has cultivated about 4-00 acres in the same and obtained the Saguvali Chit for about 2-30 acres. So, also predecessors in title of defendant No.1 were in possession of 3-34 acres of land in said Sy.No.261 & 249 along with their hiduvali land in Sy.No.261 & 249. So on these grounds the defendant No.2 prayed to dismiss the application.

10. Defendant No.3 has filed Written statement and contended that the plaintiff has purposefully left out the initials of the name of defendant No.3 and purposefully mentioned the wrong age and wrong address of the defendant No.3 in the cause title of the plaint and therefore, the plaintiff has deliberately ignored the procedure contemplated U/o 6 Rule 14-A of CPC and the alleged sale deed does not comply the requirement of law and hence the same does not confer

any right, title, interest over the plaint 'A' schedule land in lawful manner.

11. The defendant No.3 further contended that as per the order passed in th execution petition, the court commissioner has executed the said registered sale deed dated 22.07.2015 bearing document No.MGE-1-01408-2015-16 registered on 16.10.2015. The alleged sale deed said to have been executed does not meet the requirements of law and therefore the alleged sale deed cannot be recognized as conveyance and it does not confer any right or title upon the plaintiff in or over the alleged land in question. Therefore, there arises no question of taking possession of the alleged plaint schedule property on 04.02.2016 under the delivery warrant in EX No.12/2014 and there is no meaning in saying that the plaintiff is in enjoyment and cultivation of the alleged property since from 04.02.2016.

12. The defendant No.3 further contended that the suit of the plaintiff lacks necessary pleading in respect of the relief sought at Para No. 7(1) of the plaint and necessary parties have not been made as parties to the suit and therefore, the frame of suit is not proper as per Order 2 Rule 1 of CPC and the plaint cannot be deemed to have been duly instituted within the measuring of Order 4 Rule 3 of CPC. The details, description, measurement, location, identification and

boundaries detailed/mentioned in schedule 'A' to 'D' of the plaint are vague besides being bald apart from being false, fictitious and misleading.

13. The defendant No.3 further contended that inspite of that this defendant is not a party to the proceedings of RSA No.1639/2013, the plaintiff has falsely misrepresented to this court that the said litigation is pending between Oliver Wilfred Coehlo and this defendant. When this defendant is not a party to the RSA No.1639/2013 before the Hon'ble High Court of Karnataka and when no notice of survey has been issued to him, how the surveyor could say that defendant No.3 is in encroachment of approximately 10 guntas i.e., plaint schedule not understandable and it appears that the plaintiff has fabricated a false story for the present suit. It is another fantastic story innovated by the plaintiff that after survey as per the orders of Hon'ble High Court of Karnataka and after the receipt of the survey report in March 2021 he came to know about the encroachment of the plaint 'A' schedule property. It is also a fantastic story that at the time of taking possession of the plaint schedule property the plaintiff did not got it surveyed and that he was under apprehension that the land measures 8 acres 10 guntas. The plaintiff appears to have concocted a false story regarding the confirmation of

the encroachment through a private survey just to make believe this court and this assertion does not find support of any document on the file of this court.

14. The defendant No.3 further contended that the plaintiff has made all efforts to obtain decree in OS No. 106/2011 for rectification of Sy.No.202 in sale agreement dated 11.01.2008 and he was not able to succeed in his effort and he has repeated the same effort here also in the present suit and the plaintiff is debarred from claiming the same relief in the present suit.

15. The defendant No.3 further contended that the wife of this defendant by name Smt. Shwetha has entered upon the Government land in Sy.No.38 of B.Hosahalli Village and occupied an extent of 2.20 acres and cultivation of the same with coffee and applied for regularization of her unauthorized occupation and the committee constituted for regularization of unauthorized occupation (ತಾಲ್ಲೂಕು ಸಕ್ರಮ ಸಮಿತಿ, ಮೂಡಿಗರೆ) while processing the said application to recommend for the grant got the said land measured/surveyed and identified the said land having boundaries to the east by bank of stream (ಹಳ್ಳದ ಗಡಿ) and to west by remaining land in Sy.No.38 and to the south by Bankenahalli boundary and to the north by bank of stream of Sy.No.38 (ಸ.ನಂ.38 ರ ಹಳ್ಳದ ಗಡಿ). Apart

from the same the father of this defendant when he was alive has entered upon the Government land in Sy.No.38 and occupied an extent of 3 acres and cultivated the same with coffee and applied for regularization of unauthorized occupation of the said land and the committee Constituted for the regularization of unauthorized occupation (ತಾಲ್ಲೂಕು ಸಕ್ರಮ ಸಮಿತಿ, ಮೂಡಿಗೇರೆ) while processing the said application to recommended for the grant got the said land measured/surveyed ad, there is a house situated within the said land and this defendant is residing there with his family members. The plaintiff who has got a wicked eye on the said land in order to grab the same has approached this court on false, flimsy and fictitious grounds by suppressing the truth.

16. The defendant No.3 further contended that the suit of the plaintiff is hopelessly barred by time as it has not been brought within 6 months from the date of his dispossession and the suit of the plaintiff is false, frivolous, vexatious and mischievous in nature and the suit of the plaintiff is devoid of merits in all probabilities and perspectives of the case. So on these grounds the defendant No.3 prayed to dismiss the application.

17. Heard arguments by Sri H.S., Advocate for plaintiff and Sri K.S.A., for defendant No.1 and 2 and

Sri K.M.P., Advocate for defendant No.3. Perused the materials on records.

18. On the basis of the above pleadings the following points arise for my consideration.

POINTS

- 1. Whether the plaintiff has made out a prima facie case to grant temporary injunction ?**
- 2. Whether the balance of convenience, lies in favour of plaintiff?**
- 3. Whether the plaintiff has made out a ground, if temporary injunction is not granted in his favour, he will be put into great hardship and irreparable loss?**
- 4. What order?**

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

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

:R E A S O N S:

20. **POINTS NO.1 TO 3:** These points are interlinked with each other and require common

discussion. Hence these points are taken altogether for common discussion in order to avoid repetition of facts.

21. It is the case of plaintiff that he is the absolute owner of the plaint 'A' schedule property by virtue of the registered sale deed bearing document No.MGE-1-01408-2015-16 dated 22.07.2015 dated 16.10.2015 executed as per decree passed in OS No.106/2011. It is also the case of plaintiff that the defendant of that suit namely Oliever Wilfred Cohilo filed an appeal in RA No.11/2014 against the said judgment and decree on the file of Hon'ble Prl.District and Sessions Judge, Chikkamagaluru which was dismissed on 26.02.2015 and thereafter the vendor has filed RSA No.839/2015 before the Hon'ble High Court of Karnataka which was also dismissed on 07.06.2016 and thereafter the said vendor approached the Hon'ble Supreme Court of India in special leave to Appeal © 6708/2017 which was also dismissed vide order dated 07.04.2017. So according to the plaintiff he is the owner and in possession, cultivation and enjoyment of the suit 'A' schedule property since from 04.02.2016 (i.e., as per the execution of delivery warrant in EX No.12/2014). It is also the case of plaintiff that he has learnt that there is a litigation pending between Oliever Wilfred Cohilo and the defendant No.1 and 3 before the Hon'ble High Court of Karnataka in RSA No.1639/2013 and the plaintiff

came to know the same when surveyor measured the Sy.No.202 including the plaint schedule property. According to the plaintiff the said survey disclosed that the plaintiff is in possession of an extent of 5 acres only and the defendant No.1 is in encroachment of approximately 2 acres 2 guntas of plaint 'A' schedule property which is described as plaint 'B' schedule property and the defendant No.2 is in encroachment of approximately 1 acre 10 guntas which is described as plaint 'C' schedule property and the defendant No.3 is in encroachment of approximately 10 guntas which is described as plaint 'D' schedule. So according to the plaintiff he came to know about the encroachment of B, C and D schedule properties by the defendant No.1 to 3 only after the survey as per the order of Hon'ble High Court of Karnataka in RSA No.1639/2013 and after receipt of said survey report in the month of March 2021. According to the plaintiff, the defendant No.1 and 3 are not having any khatha in their names in Sy.No.202 and the defendant No.2 has got khatha to an extent of 2 acres 30 guntas in the said survey number. So according to the plaintiff he had not got surveyed the land at the time of taking possession of the plaint schedule property and he was of the opinion that it measured 8 acres 10 guntas. The

plaintiff also stated that thereafter he also got confirmed about the encroachment through the private survey. So the plaintiff after the private survey approached the defendants requesting them to hand over the encroached portion to him, but they refused. So the plaintiff approached the court.

22. On the other hand, as per the contentions of the defendant No.1 and 2 the plaintiff and Oliever Wilfred Cohilo have colluded together and has fought a friendly battle with malafide intention and the litigation between the Oliever Wilfred Cohilo and defendant No.1 and 2 before the Hon'ble High Court of Karnataka in RSA No.1639/2013 and the report of surveyor regarding excess possession of land by the defendant No.1 and 2 is under scrutiny before the Hon'ble High Court of Karnataka and it is for the Hon'ble High Court of Karnataka to accept the same as correct or to reject the same, mother of Oliever Wilfred Cohilo namely Lilly D'Souza by misrepresentation has got up some documents in collusion with the revenue authorities and filed OS No.156/2001 before the Addl.Senior Civil Judge at Chikkamagaluru, the said suit was dismissed, so the claim for possession in this suit by the plaintiff will not survive. So according to the defendants the title of Oliever Wilfred Cohilo itself on the subject property

is under challenge, the plaintiff cannot derive any better title over the schedule property in question the sale agreement and the sale transaction are concocted documents, the defendant No.2 has cultivated about 4 acres in the Sy.No.202 and obtained the saguvali chit for about 2.30 guntas, so also predeceasors in title of defendant No.1 were in possession of 3.34 guntas of land in Sy.No.261 and 249 along with their hiduvali land in Sy.No.261 and 249 which handling over the possession of land in Sy.No.249 and 261 and they have also handed over the land in their possession.

23. As per the contentions of defendant No.3, he is not aware about the plaintiff filing the suit in OS No.106/2011 for the relief of specific performance of contract on the file of 1st Addl.Senior Civil Judge, Chikkamagaluru and he also does not know that the said suit was decreed dated 11.08.2013 and the defendant No.3 also contended that he do not know regarding the proceedings took place before the Hon'ble District and Sessions Court in RA No.11/2014 filed by Oliver Wilfred Cohilo in RA No.11/2014 and RSA No.839/2015 filed by the said Oliver Wilfred Coehlo before the Hon'ble High Court of Karnataka and also the special leave to appeal (C) 6708/2017 before the Hon'ble Supreme Court of

India by the Oliever Wilfred Cohilo. But the defendant No.3 denies about the court commissioner executing the registered sale deed dated 22.07.2015 dated 16.10.2015 in favour of plaintiff. So according to the defendant No.3 the plaintiff concocted a false story regarding the confirmation of the encroachment through a private survey just to make believe this court without there being any document.

24. The plaintiff in support of his application has produced the documents which are the RTC extract, MR extract, original sale deed dated 22.07.2013, certified copy of the judgment and decree passed in OS No.106/2011, certified copy of the judgment and decree passed in RA No.11/2014, certified copy of the judgment and decree passed in RSA No.839/2015, the copy of the order passed in special leave to appeal © 6708/2017, certified copy of the order sheet in EX No.12/2014, certified copy of the deliver warrant in EX No.12/2014, certified copy of the surveyor report in RSA No.1639/2013 and certified copy of the survey sketch prepared in RSA No.1639/2013. But the plaintiff in the list of documents produced before the court dated 22.06.2021 has wrongly mentioned at Sl.No.10 and 11 of the list that he has produced the certified copy of the surveyor report and survey sketch in RSA

No.839/2015. But in support of this no document is available before the court. No doubt the documents at Sl.No.1 to 7 are the documents which speaks about the plaintiff's ownership regarding 8 acre 12 guntas of land in Sy.No.202 of Bankenahalli Village since those documents are the judgment copies from Senior Civil Judge Court to Hon'ble Supreme Court and the other documents are RTC extracts and MR extracts. But the plaintiff himself in the plaint averments in one version stated that he is the owner of suit 'A' schedule property by virtue of registered sale deed dated 22.07.2015 and 16.10.2015, (as per Para No.2 of the plaint). In another version the plaintiff stated in Para No.3 of the plaint that he took the possession of the plaint schedule property on 04.02.2016 as per the execution of the delivery warrant in EX No.12/2014. In another version the plaintiff states that there is a litigation between his vendor Oliever Wilfred Cohilo and the defendant No.1 and 3 before the Hon'ble High Court of Karnataka in RSA No.1639/2013. But to support this the plaintiff has not produced any document. It is not the case of plaintiff that he is also the party in the said RSA No.1639/2013 and the defendant No.3 says he is not a necessary party to this suit. But the plaintiff has no reply to this argument of defendant No.3. The

plaintiff states that he is in possession and cultivation of 'A' schedule property since from 04.02.2016. But in Para No.4 of plaint, he stated that he came to know regarding the encroachment of 'B', 'C' and 'D' schedule properties by defendant No.1 to 3 only when the surveyor measured the Sy.No.202 including the plaint schedule property and the said survey discloses that the plaintiff is in possession of an extent of 5 acres of land. So the plaintiff himself stated that he is in possession of only 5 acres of land in the said Sy.No.202. But the documents relied by the plaintiff speaks that the plaintiff is the owner of 8 acres 12 guntas of land in the said survey number. But still the plaintiff purchased the said land from Oliever Wilfred Cohilo, but admittedly the plaintiff not made the said vendor as party to this suit. Admittedly the plaintiff has not produced the private survey report of his land in this case, though he stated that he had measured the land subsequent to the survey report submitted by the surveyor in RSA No.1639/2013. On perusal of the survey report submitted by the plaintiff at Sl.No.10 and 11 which reveals that the matter is pending before the Hon'ble High Court of Karnataka for consideration. So the plaintiff cannot submit that as per the said report the defendants have encroached the land of plaintiff.

Because it requires full fledged trial of the parties. When the matter is pending before the Hon'ble High Court of Karnataka it is not proper and safe to discuss anything about those documents before this court. Besides this, the plaintiff himself in plaint para No.4 in last 3 lines has stated that he had not got surveyed the land at the time of taking possession of the plaint schedule property and he was of the opinion that it measured 8 acres 10 guntas and in para No.5, he states that thereafter he got confirmed about the encroachment through private survey. But the said private survey report is not before the court to support the plaintiff's claim. So on over all perusal of the plaint averments and the documents relied by the plaintiff, it reveals that as per the plaint averments he states 'A' schedule property is measuring 8 acres 12 guntas, the documents at Sl.No.3 to 5 speaks the property of plaintiff is measuring 8 acres 12 guntas, the plaintiff in para No.4 of plaint states that at the time of taking possession of plaint schedule property he was of the opinion that it measured 8 acres 10 guntas and the surveyor report says that the plaintiff is in actual possession of only 5 acres of land. So the plaint averments and that of the documents relied by the plaintiff and that of the actual possession of land by

plaintiff are different from one another. And the plaintiff by only relying upon the survey report submitted in RSA No.1639/2013 has stated that the defendant No.1 to 3 have encroached 'A' schedule property. If it is so, first the plaintiff has to prove the plaintiff's possession of suit 'A' schedule property then only the plaintiff has to prove the alleged encroachment by properly measuring the encroached property. So for all these process it requires full fledged trial. Moreover, as already stated that there is a dispute pending before the parties in RSA No.1639/2013 before the Hon'ble High Court of Karnataka, the plaintiff not being the party and the defendant No.3 also not being the party in the said RSA, the plaintiff cannot rely upon the said survey report and seek an equitable relief of injunction when there is a doubt regarding the plaintiff's actual possession. So for all these reasons the plaintiff has failed to establish before the court the prima facie case for granting temporary injunction. So the balance of convenience is also not in favour of the plaintiff. And no irreparable loss and hardship will be caused to the plaintiff if injunction is with held. Hence, the plaintiff has not made out any ground to allow the application. Therefore, I answer all these points in **“Negative.”**

25. **POINT NO. 4:** In view of my findings on the above points, I proceed to pass the following:

: O R D E R :

This I.A.No.1 filed by plaintiff U/o 39 rule 1 and 2 R/w. Sec.151 of C.P.C. is hereby rejected.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, then corrected by me and pronounced in the open court on this the 24th day of January 2022)

Sd/-
(N.NARASAMMA)
SENIOR CIVIL JUDGE & JMFC.,
MUDIGERE.