

KACM500006312023



1

O.S. No. 74/2023

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA
(ITINERARY COURT)

Present : Sri. Jeethu R.S., B.A.L.,LL.M.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 17th day of March 2026.

O.S. No. 74/2023

Plaintiff/s : Smt. Puttamma, W/o Late. H.Mullaiah,
Aged about 85 years, R/o Ambedkar
Nagara, Ward No. 7,
N.R. Pura Town - 577134,
Represented by her SPA Holder;
Sri. H.M. Basavaraju,
S/o Late. H.Mullaiah,
Aged about 40 years, R/o Ambedkar
Nagara, Ward No. 7,
N.R. Pura Town - 577134.
(Represented by Sri. H.R. Venkateshmurthy, Adv.,)

V/S

Defendant/s : The Chief Officer, Town Panchayath,
N.R. Pura – 577134.
(Represented by Sri. G.M. Vishwanatha , Adv.,)

- - -

KACM500006312023



2

O.S. No. 74/2023

**ORDER ON I.A. NO. 1 FILED UNDER ORDER 39 RULE 1 AND
2 (PROVISO 3) R/W SECTION 151 OF CPC**

The plaintiff has filed the IA No. 1 under Order 39 Rule 1 and 2 (Proviso 3) R/w Section 151 of CPC and has sought to pass an ad-interim exparte temporary injunction order against the defendant, restraining the defendant authority from giving permission for water connection and also restrain from digging the trench and laying pipeline in the suit schedule property, till the disposal of the suit.

2. In the affidavit annexed to the above application it is stated that the applicant is the SPA holder of the plaintiff in the suit. He knows the facts and circumstances of the suit. It is further stated that the plaintiff is the owner in possession over the Mangaluru tiled house including the vacant site measuring to an extent of 50 X 150 feet including 5 feet passage bearing Assessment No. 714/917/865 situated within the jurisdiction of

KACM500006312023



3

O.S. No. 74/2023

N.R. Pura Town Panchayath. It is further stated that the suit schedule property was granted in favour of the father of the plaintiff Sri. Dodda Huchchaiah. After the demise of the said Dodda Huchchaiah the plaintiff and her sister Jayamma have succeeded to the suit schedule property. The plaintiff's sister Jayamma is residing at Sagara Taluk and she has no adverse interest against the plaintiff. The khata of schedule property is still standing in the name of the plaintiff's father and as such she gave an application for change of khata and it is pending for consideration. In the suit schedule property there exists a tiled house measuring to an extent of 31 X 20 feet and she has extended the said house by further construction and now it measures to an extent of 31 X 45 feet. The plaintiff is residing in the said suit schedule house. She has constructed a fence over the suit schedule property and she is regularly paying the tax. It is further stated that the plaintiff had filed O.S. No. 34/2009 against

KACM500006312023



4

O.S. No. 74/2023

her son by name H.M.Shivanna for permanent injunction and the suit was decreed in favour of plaintiff. After sometime the said H.M.Shivanna has fabricated some of the documents and has submitted before the defendant authority and he has attempted to encroach the suit schedule property. After coming to know this the plaintiff has filed her objections before the town panchayath and has sought not to give permission for water connection. In spite of the objections filed by the plaintiff, the defendant authority with the labours had visited the suit schedule property and attempted to dig the trench for installing of pipeline on 24.10.2023. But the plaintiff has stopped them. In spite of the decree in O.S No. 34/2009, the defendant authority with the instance of H.M. Shivanna, the defendant therein have disobeyed the decree and attempted to interfere with the peaceful possession of the plaintiff over the suit schedule property. As such, prayed to allow the above application.

KACM500006312023



5

O.S. No. 74/2023

3. After the institution of the above suit the summons is served upon the defendant authority and the defendant has appeared before the Court and has filed the written statement in the above suit. Further, the counsel for defendant has also filed a memo seeking to adopt the written statement of the defendant as objections to I.A. No.1. In the written statement of the defendant it is pleaded that the defendant has denied the plaint averments. Further, it is contented that the plaintiff has not approached the Court with clean hands. The above suit is bad for non-joinder of necessary parties. Though in the plaint the plaintiff has made allegations against H.M. Shivanna, the said H.M. Shivanna is not impleaded as party in the above suit. Further it is contented that the defendant is a public body and is maintaining the needs of the public in its jurisdiction such as supplying of water, connectivity of road, drainage within the jurisdiction of municipal area. As such, providing of the basic civic amenities to the residents

KACM500006312023



6

O.S. No. 74/2023

within the municipality area, which is the bounden duty of the defendant. The said H.M. Shivanna and other public had filed request to provide them a public tap by the side of the road near their residence. Accordingly, the defendant has acted upon. As such, there is no prima-facie case against the defendant and sought for dismissal of the suit.

4. Heard both the counsels.

5. On the basis of the above pleadings, the following points arise for consideration are:

- 1) Whether the plaintiff has made out prima facie case against the defendant in respect of suit schedule property?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the irreparable loss and injury caused to the plaintiff if the temporary injunction is not granted?
- 4) What order?

KACM500006312023



7

O.S. No. 74/2023

6. My findings 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

7. **Point No.1** :- I have already narrated the facts stated in the affidavit annexed to the application by the plaintiff. This is the suit for the relief of permanent injunction.

8. In the above application it is stated that plaintiff is the owner in possession over the suit schedule property. It is further stated that the suit schedule property was granted in favour of the father of the plaintiff i.e. Sri.Dodda Huchchaiah and he is no more and as such the suit schedule property is devolved upon his Lrs. i.e. the plaintiff and her sister Smt. Jayamma. The plaintiff's sister Jayamma is residing at Sagara Taluk and she has no adverse interest against the plaintiff. The khata of schedule property is

KACM500006312023



8

O.S. No. 74/2023

still standing in the name of the plaintiff's father and as such she has given application for change of khata and it is pending for consideration. It is further stated that the plaintiff has made additional construction of the residential house in the suit schedule property and has put up fence for the premises. It is further stated that she had filed O.S. No. 34/2009 against her son H.M.Shivanna for the relief of permanent injunction and the said suit was decreed in favour of plaintiff. After sometime the said H.M.Shivanna has fabricated some of the documents and has submitted before the defendant authority and he has attempted to encroach the suit schedule property. After coming to know this, the plaintiff has filed her objections before the town panchayath and has sought not to give permission for water connection. In spite of the objections filed by the plaintiff, the defendant authority with the labours had visited the suit schedule property and attempted to dig the trench for installing of pipeline on

KACM500006312023



9

O.S. No. 74/2023

24.10.2023.

9. Per contra, The defendant authority has contended that above suit is bad for non-joinder of necessary parties. Though in the plaint the plaintiff has made allegations against H.M. Shivanna, the said H.M. Shivanna is not impleaded as party in the above suit. Further it is contented that the defendant is a public body and is maintaining the needs of the public in its jurisdiction such as supplying of water, connectivity of road, drainage within the jurisdiction of municipal area. As such, providing of the basic civic amenities to the residents within the municipality area which is the bounden duty of the defendant. The said H.M. Shivanna and other public had filed request to provide them a public tap by the side of the road near their residence. Accordingly, the defendant has acted upon.

10. In support of the contention of the plaintiff, at this juncture the plaintiff has filed the copy of the decree in O.S. No.

KACM500006312023



10

O.S. No. 74/2023

34/2009 passed against H.M. Shivanna by this court and tax paid receipts and the objections filed by the plaintiff before the defendant authority/Pattana Panchayath. This court has carefully perused the said documents. In the objections submitted by the plaintiff before the defendant authority it is mentioned that the application for regularization of unauthorized occupation of land before the concerned authority under Akram-Sakram scheme is still pending said to be submitted by H.M. Shivanna. At that juncture, the said H.M. Shivanna has filed an application for providing him a water connection tap and it is opposed by the plaintiff herein.

11. On the one hand the plaintiff has claimed that the suit schedule property is the granted property in favour of her father Sri. Dodda Huchchaiah. But, no such grant certificate is placed before the Court at this juncture except the revenue documents. But, on careful perusal of the objections letter dated 01.06.2023

KACM500006312023



11

O.S. No. 74/2023

of the plaintiff herein it discloses that the said H.M. Shivanna has filed the application during the year 2013-14, 2014-15 for regularization of unauthorized occupants with respect to the site as submitted by him. But, the said application is not placed before the Court at this juncture. As such, it is difficult to come to the conclusion that the said H.M. Shivanna has filed such application pertaining to the suit schedule property in the absence of grant certificate which is said to be in favour of the father of the plaintiff. Further the plaintiff has not impleaded the said H.M. Shivanna as a defendant in the above suit though she has made voluminous allegations against the said H.M. Shivanna for the best reasons known to the plaintiff. The defendant being the local body has provided drinking water tap facility as a civic amenity. It is relevant to refer the Article 21 of Constitution of India wherein while interpreting the scope of fundamental right under Article 21 the Hon'ble Apex Court had held that, right to access

KACM500006312023



12

O.S. No. 74/2023

to drinking water would fall within the scope of the right to life. Such being the case, the defendant authority being the local body has provided the drinking water facility at the disputed site/residential house. Whether the said H.M. Shivanna has encroached the property or not has to be looked in the full fledged trial. As such, the application filed by the plaintiff is beyond the scope of the above suit filed for the relief of bare injunction. Accordingly, the plaintiff has not made out a prima facie case to have the fruits of injunction. Accordingly, the **Point No.1 is answered in the negative.**

12. **Point No. 2 and 3:** Since both these points are interlinked they are taken co-jointly for discussion to avoid the repetition. The plaintiff has failed to establish the prima facie case. In the absence of the prima facie case, can the plaintiff get injunctive relief on the basis of balance of convenience and irreparable loss and hardship. At this juncture, I feel, it would be

KACM500006312023



13

O.S. No. 74/2023

proper to rely upon the decision reported in ILR 1989 KAR 1701 between Gourishankar Swamigalu Vs Siddaganga Mutt and others, wherein the Hon'ble High Court of Karnataka has held that, if there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself.

13. So, as per the decision mentioned supra, when the plaintiff has failed to establish the prima facie case, considering of balance of convenience and irreparable loss and hardship do not arise for consideration. Even in the case on hand, the plaintiff has utterly failed to establish the prima facie case, therefore considering balance of convenience and irreparable loss and hardship do not arise for consideration. Therefore for the above said discussion this Court answer **Point No.2 and 3 are in the**

KACM500006312023



14

O.S. No. 74/2023

Negative.

14. **Point No.4:-** For the above reason, this Court proceeds to pass the following;

: O R D E R :

I.A.No. 1 filed by the plaintiff/applicant against the defendant under Order 39 Rule 1 and 2 (Proviso 3) R/w Section 151 of CPC is hereby dismissed.

Parties to bear their own costs.

(Dictated to the Stenographer directly through computer, typed by him, corrected and then pronounced by me in the open Court on this the 17th day of March 2026)

Sd/-xxx 17/3/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.