

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI**

<b>PRESENT:</b>	<b>Sri. Rahul Shettigar, B.Com (Hons.), LL.B Civil Judge &amp; J.M.F.C, Sringeri</b>
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**DATED THIS THE 10<sup>th</sup> DAY OF JUNE 2024****ORIGINAL SUIT No. 37/2023****BETWEEN:**

Smt. Sharada B,  
W/o Venkataramana Bhat,  
Aged 61 years,  
R/at Kalkatte, Menase,  
Sringeri Taluk,  
Chickmagalur District.

**PLAINTIFF****(By Sri. Charan K C, Advocate)****-AND-**

Sri. Naveen,  
S/o Jhony,  
Aged 28 years,  
R/at Kalkatte,  
Menase Post,  
Sringeri Taluk

**DEFENDANT****(By Sri. Pradeep K, Advocate)****IN I.A.NO.I**

Smt. Sharada B

**APPLICANT/ PLAINTIFF****-AND-**

Sri. Naveen

**OPPONENT/ DEFENDANT**



**PARTICULARS**

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Order of T.I</i>
<i>ii</i>	<i>The date on which the application is filed</i>	<i>28.07.2023</i>
<i>i</i>	<i>Number of the application</i>	<i>I.A.No.1</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>20.02.2024</i>
<i>v</i>	<i>The date on which the orders were passed on the said application</i>	<i>10.06.2024</i>

**ORDERS ON I.A. NO. I**

1. Applicant/ Plaintiff has filed the instant application under Order XXXIX Rules 1 & 2 of C.P.C praying to pass an order of temporary injunction restraining the Defendant, his agents, servants or any other persons claiming through the Defendant from interfering with her peaceful possession and enjoyment of the suit schedule property by cutting the fence and encroaching the property wherein she has cultivated arecanut, coffee and pepper or in any other manner, pending disposal of the suit.
2. In the affidavit appended to the application, Applicant/ Plaintiff has contended that she is the owner and in possession of the suit schedule property having lawfully purchased the same



from one M L Upendra by way of registered sale deed; she is also cultivating 2-26 Acres of land in Sy.No.181 of Menase Village through *Bagar Hukkum* and has submitted representation to the competent authority in prescribed form seeking its regularisation; she being a lady and senior citizen is unable to keep tab on the entire property all the time and hence has set-up fence surrounding the property; the Defendant is her neighbour on the northern side of the suit schedule property, having no property of his own but he is notorious and influential, has on several occasions tried to cut the fence set-up by the Plaintiff and has tried to encroach the suit schedule property; he is also troubling her labourers; on 25.07.2023 at around 11:45 AM, the Defendant has again attempted to cut the fence and encroach the suit schedule property with the help of some goonda elements which was resisted by her with great difficulty and she later approached the Sringeri Police who directed her to approach the Court citing reason of civil dispute; the Defendant has also threatened her that he would cut the fence and forcefully acquire the suit schedule property and he is capable of translating his threat into action; if Defendant is not restrained of his illegal acts, great loss and hardship would be caused to



the Plaintiff and hence, with contention that she has a prima-facie case, balance of convenience lies in her favour and that if temporary injunction is refused, he would suffer irreparable injury, the Applicant/ Plaintiff seeks allowing the application.

3. *Per contra*, Opponent/ Defendant has filed a memo seeking to adopt the written statement he filed as objections to the instant application. In the written statement, the Defendant apart from denying the allegations made against him in the Plaint, has contended that Plaintiff does not hold any property through *Bagar Hukkum* in Sy.No.181 of Menase Village; though the suit schedule property falls under three different survey numbers, the Plaintiff has shown them under one schedule describing them as falling under same boundaries which is impermissible; on the northern side of the suit schedule property there exists Sringeri-Thekkuru road and above such road, there is Government *Soppinabetta* land in which, the Defendant has constructed his house and hence, the suit schedule property and the house of the Defendant do not share any boundaries; the Defendant's family has constructed and residing at their house in Sy.No.181 of Menase Village since 20-25 years; electricity connection is also obtained to the said house in his mother's name; the



entire extent of area being 107 acres 15 guntas of land in Sy.No.181 of Meanse Village which includes Government *Soppinabetta* land and land belonging to other individuals including the 36 guntas of land belonging to the Plaintiff is still not demarcated and no specific boundaries are fixed; the house of the Defendant also falls within the Government *Soppinabetta* land and by taking advantage of the same and to trouble the Defendant, this false suit is filed. Hence, with these contentions, the Defendant prays for dismissal of the application.

4. Heard both sides.
5. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under;

**Point No.1** : Whether the Plaintiff has made out a prima-facie case as against the Defendants?

**Point No.2** : Whether the balance of convenience lies in favour of Plaintiff?

**Point No.3** : Whether denial of temporary injunction would cause irreparable injury or hardship to the Plaintiff?

**Point No.4** : What Order?

6. Now, my finding on the above points are as follows;



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

**to 3**

**Point No.4** : As per the final order, for the following -

### **REASONS**

7. **Point No.1 to 3:** The instant suit is filed seeking relief of permanent injunction restraining the Defendant, his agents, servants or any other persons claiming through the Defendant from interfering with her peaceful possession and enjoyment of the suit schedule property by cutting the fence and encroaching the property wherein she has cultivated arecanut, coffee and pepper or in any other manner and such other ancillary reliefs. The instant application is filed seeking an order of temporary injunction with the prayer which is same as that of the main relief.
8. Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept of temporary injunction. The grant of temporary injunction is governed by Specific Relief Act of 1963 as well as the C.P.C. Section 37(1) of the Specific Relief Act of 1963 provides that the grant of temporary injunction would be regulated by C.P.C. Order XXXIX Rules 1 & 2 and Section 94 (c) of C.P.C provide circumstances under which an order of temporary injunction



can be granted. That apart, it is now settled that Sections 151 of C.P.C also can be invoked sparingly to grant an order of temporary injunction to meet the ends of justice if the circumstances are not covered either under Order XXXIX Rules 1 & 2 or Section 94 (c) of C.P.C (See **MANOHAR LAL CHOPRA VS RAI BAHADUR RAO RAJA SETH HIRALAL** reported in **AIR 1962 SC 527**). Though the above provisions provide the circumstances under which an order of temporary injunction could be granted, the principles governing grant of an order of temporary injunction is evolved by judicial pronouncements. The Hon'ble Supreme of Court of India in **GUJARAT BOTTLING CO. LTD. V. COCA COLA CO.** reported in **(1995) 5 SCC 545** has held at Para No.43 as under -

*“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by*



*violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience” lies. [See: Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial”*

9. In **GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA**

**MUTT** reported in **1989 SCC ONLINE KAR 116**, the Hon’ble

High Court of Karnataka has held at Para No.18, 25 & 26 as

under –

*(i) Grant of ad-interim injunction has to course through the following slots : (i) prima facie case; (ii) balance of convenience; (iii) irreparable injury to the plaintiff, and (iv) lastly, all injunctions being absolutely discretionary in nature whether there was any overriding consideration that supported the refusal of the injunction by the Court-below.*

*(ii) The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. 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. But if there was a prima facie case then other considerations governing the grant of*



*injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit, leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between....Even granting that the plaintiff has an invincible prima facie case, he will not be entitled ex debitaie justitiae, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case.*

10. These two celebrated judgement one of the Hon'ble Supreme Court of India and the other of the Hon'ble High Court of Karnataka beautifully encapsulate the principles underlying the grant of temporary injunction and there arises no necessity to look any further.
11. In order to be entitled for an order of temporary injunction, the Applicant has to first satisfy the court that he has a prima-facie case in his favour. Prima-facie case is the harbinger or the all clear sign to go ahead in investigating other aspects and on failure to establish it, further questions of balance of convenience and irreparable loss would fade into insignificance. Prima facie case, however, should not be confused with a case that is required to be proved to the hilt. The Court while examining if the Applicant has a prima facie case or not while deciding question of his entitlement for an



order of temporary injunction, should not examine the merits of the case closely because at that stage, it is not expected to decide the suit finally. Once prima-facie case is established, the other aspects would have to be examined first being balance of convenience which in other words mean that the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the Applicant by refusing the injunction will be greater than that which is likely to be caused to the Opposite Party by granting it. Next, the applicant must further satisfy the Court by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e., which cannot be adequately compensated by damages. Apart from these principles, the grant of temporary injunction being purely discretionary, other aspects would also factor in while considering entitlement for temporary injunction. The relief of temporary injunction may be refused on the ground of delay,



larches or acquiescence or where the Applicant has not come with the clean hands or has suppressed material facts, or where monetary compensation can be an adequate relief. Establishing prima-facie case though is harbinger in examining other aspects, even where prima-facie case is established, it would not automatically entitle the Applicant to an order of temporary injunction unless he establishes the other aspects aforesaid. With these principles in mind, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

12. The Plaintiff mainly contends that she has lawfully purchased the suit schedule property by way of a registered sale deed and is in its peaceful possession and enjoyment by growing valuable crops therein and has set up a fence around the same which is now being tried to be illegally removed by the Defendant and thereby there is unlawful interference caused by the Defendant. On the other hand, the Defendant mainly contends that the land falling under the Sy.No.181 which majorly comprises of Government *Soppinabetta* land and also lands of other individuals including that of the Plaintiff is not at all demarcated and no boundary is fixed and his family house



is situated in the Government *Soppinabetta* land and that the house of the Defendant does not share any boundary with the suit schedule property.

13. The description of suit schedule property would go on to show that it contains properties falling under three different survey numbers being Sy.No.174/1, Sy.No.176 and Sy.No.181 of Menase Village and a common boundary on all four sides is shown. The said description of the suit schedule is carried from the registered sale deed dated 14.07.1999 under which, the suit schedule property has been purchased by the Plaintiff. Noticing the pleadings placed on both sides, it could be gathered that there is absolutely no dispute in respect of the properties falling under Sy.No.174/1 and Sy.No.176 but the dispute is in respect of property falling under Sy.No.181 of Menase Village.
14. The Plaintiff has placed a copy of the registered sale deed pertaining to the suit schedule property, MR extract pertaining to the suit schedule property, RTCs pertaining to the suit schedule property and endorsement in respect of seeking regularisation. Looking at the contents of the sale deed and the MR extract that is produced, no doubt could arise as to the ownership of the Plaintiff over the suit schedule property



having lawfully purchased the same long ago, the relevant portions of the RTCs would depict the name of the Plaintiff which at this stage would definitely bear presumptive value. In respect of her claim as an unauthorised occupant through *Baggar Hukkum* towards a certain extent of land in Sy.No.181 of Menase Village, merely seeking its regularisation from the competent authority would not establish anything in a suit for injunction much less her possession over the said land. But, it is noticed that though the Plaintiff has placed pleadings that she is unauthorised cultivation of 2-20 Acres of land in Sy.No.181, she is claiming no injunction in respect of the said land and the injunction that is sought is only in respect of the land she lawfully owns by virtue of the registered sale deed. This being the case, where the Plaintiff is able to lawfully trace her title of the suit schedule property, at this stage, there is no difficulty in holding that Plaintiff has established her possession over the suit schedule property by producing necessary materials.

15. The contention of the Defendant mainly is that the large extent of property in Sy.No.181 of Menase Village is not yet bifurcated and the property of the Plaintiff, other occupants and that of the Government wherein, it is contended that the



house of the Defendant is situated are not yet demarcated. Under such circumstances, it is the apprehension of the Defendant that the Plaintiff can take unlawful advantage of the temporary injunction order and trouble the Defendant. Looking into the materials produced by both the parties, it is forthcoming that there is no bifurcation and demarcation of lands in Sy.No.181 of Menase Village. However, when the Plaintiff has produced her title document and also material documents in support of her claim of right over the suit property, it cannot be held that only on the ground that there is no bifurcation and demarcation, the Plaintiff's case is liable to be rejected summarily.

16. Whether or not the Plaintiff's claim in any manner violates the rights of the Defendant has to be ascertained in the trial but at this stage, there are sufficient materials to come to a *prima facie* finding that the Plaintiff is in possession and enjoyment of the suit schedule property. When the Plaintiff is able to show her possession, even mental apprehension of any kind of interference would be sufficient. Thus, this Court is of the considered opinion that the Plaintiff has established the existence of *prima facie* case. Accordingly, **Point No.1** which



has arisen for my consideration is answered in the ***Affirmative.***

17. **Point No.2 & 3:** The Court having already held that the Plaintiff has shown prima-face case, would now examine the other aspects. Given the facts of the case afore-narrated, if the Defendant is not restrained from his acts as alleged, comparative mischief, hardship or inconvenience that is likely to be caused in my opinion is more to the Plaintiff than that which is likely to be caused to the Defendant. The same would also cause irreparable injury to the Plaintiff, which in my opinion is material one and cannot be compensated in terms of cash or kind. Accordingly, **Point No.2 & 3** which have arisen for my consideration are also answered in the ***Affirmative.***
18. **Point No.4:** It also becomes necessary to mention that the Plaintiff has pleaded that she has set up a fence around her property but there is no clarity of the aspect as to whether such fence is set up only around the suit schedule property or also includes the 2-20 Acres of land in Sy.No.181 which she claims to be in unauthorised occupation through *Baggar Huklum*. Such being the case, the relief of temporary injunction cannot be granted in the nature as sought but given



the above observation, since the Plaintiff at least at this stage has proved her possession over the suit schedule property and the alleged interference by the Defendant, fit order which would protect her possession would suffice in taking care of the grievance set-up by the Plaintiff. With this being said, the following -

**ORDER**

*I.A No.1 filed by the Applicant/ Plaintiff under Order XXXIX Rules 1 & 2 of C.P.C is hereby allowed to the extent indicated below -*

*Defendant, his agents, servants or any other persons claiming through the Defendant are hereby restrained from interfering in any manner with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff, pending disposal of the suit.*

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 10<sup>th</sup> DAY OF JUNE, 2024)

**(Rahul Shettigar)  
Civil Judge & J.M.F.C,  
Sringeri.**