

**IN THE COURT OF THE PRL.,CIVIL JUDGE & JMFC.,
AT GUNDLUPET**

Dated on this the 6th day of July, 2022.

:PRESENT:

**SRI. SHIVAKUMARA G.J.,
B.A.L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet**

O.S. No. 225/2021

PLAINTIFFS:- 1. **Sri. S.C. Maribasappa**
S/o Channabasappa,
Aged about 58 years,
2. **Sri. S.M. Nagarjunakumar**
S/o S.C. Maribasappa,,
Aged about 31 years,
Both are R/at Shivapura Village,
Hangala Hobli,
Gundlupet Taluk.

V/s

RESPONDENTS:- 1. **Sri. Shivakumar**
S/o Basavarajappa,
Aged about 62 years,
2. **Sri. Ankarajappa**
S/o Basavarajappa,
Aged about 58 years,

3. Sri. Subbappa

S/o Basavarajappa,
Aged about 55 years,

Defendant Nos.1 to 3 are
R/at Shivapura Village,
Hangala Hobli, Gundlupet Taluk.

**4. Panchayath Development
Officer**

Shivapura Gramapanchayath
Shivapura Village,
Hangala Hobli, Gundlupet Taluk.

Parties to I.A No.I

Applicant : Sri. S.C. Maribasappa
- 1st plaintiff

(By Sri. G.S.M., Advocate)

V/S

Opponents : Sri. Shivakumar and others
- Defendants

(By Sri. G.R., Advocate)

**ORDERS ON I.A NO. I FILED U/O XXXIX RULE 1 AND
2 OF C.P.C**

The plaintiffs have filed the application U/o. XXXIX
Rule 1 & 2 of CPC seeking temporary injunction to restrain

the defendants from not to interfering the peaceful possession of the plaintiffs by restraining the defendants, their agents, their neighbors and their family members or anybody on their behalf from interfering in any manner of the plaint schedule property till the disposal of the suit.

2. The brief case of the plaintiff is as under:

The plaintiffs have pleaded that the plaintiffs are the absolute owners and in possession and enjoyment of the suit schedule properties. The suit schedule properties is the ancestral properties of the plaintiffs and their family members are enjoying the suit schedule properties. The Plaintiffs got the suit properties under the registered partition deed between the plaintiffs and their father on 16.08.1991, the suit properties khatha No.88, 85 and 92 are situated at Shivapura Village, after the partition the plaintiffs are enjoying the suit properties without any hindrance and they have enjoying lawful possession of suit properties. After the partition, all the revenue records are transferred into name of the plaintiffs, the plaintiffs were in possession and enjoyment of suit properties till today without anybodies disturbance. The defendants are the

stranger to the suit schedule properties the defendants are not having any right over the suit schedule properties and no way concerned to the suit schedule properties. The defendants and their agents on 05.10.2021 trying to interfering with the possession of the suit properties by digging the suit properties with an intention of making a road in the suit properties without any authority of the suit properties. They have also stated that, they have made out prima-facie case and balance of convenience lies in their favour and if Temporary Injunction order is not granted, they will be put to irreparable loss. Therefore, the plaintiffs have filed the suit and sought for temporary injunction till disposal of this suit.

3. The defendants have filed the objection to the IA No.I. In the objections defendant denied the entire contents of the plaint and prayed for dismissal of the application.

4. Heard the both side. Perused the records.

5. The following points arise for the consideration of this court:-

P O I N T S

1. Whether the plaintiffs have made out a prima-facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiffs are entitled for the relief of Injunction as prayed for?
5. What order ?

6. My answer to the above points is as under :-

Points No.1 to 4 : **Partly Affirmative**

Point No.5 : As per final order
for the following:-

R E A S O N S

7. POINTS No.1 to 4:- The plaintiffs filed the suit for prohibitory injunction against the defendants that they are the absolute owners and in possession and enjoyment of the properties. Further, the plaintiffs claiming that the defendants are interfering with the schedule properties.

As per the plaintiffs, the plaintiffs acquired suit properties through partition deed dated:16.08.1991 between plaintiffs father and his brothers. Now the defendants are interfering in the schedule properties and trying to create road in the suit schedule properties. As per the plaintiffs pleadings there is no road existence near the plaintiffs suit properties, But as per the defendants, there is a 14 X 10 feet road in the middle of the plaintiffs suit properties.

8. So in this case, the plaintiff claiming a prohibitory injunction in respect of schedule properties and further claiming that the defendants have trying to encroach the plaintiffs properties to construct a new road which is not existence in the suit properties, to substantiate this facts the plaintiffs have produced one Village map with respect to the Shivapura village, on the other hand the defendants have contended that there is a existence of road, it is just adjacent to the land of the defendant No.1 Sy. No.72/3, The Sy. No. 72/3 is existence in the edge of Gramatana, Thus on careful perusal of the Village map produced by the plaintiffs in the Sy.No. 72 the Bandi Dari is existence and it is near the Gramatana. As per the pleadings of the

defendants, some of the portion in the said Sy.No.72/3 has been left by the defendants for forming the road. But no document has been produced before the court. The plaintiffs are also claiming that the road is not existence and the so called road is their absolute property, hence here in this case the boundaries of the plaintiffs properties are plays the vital role to prove the case of the plaintiffs on prima facie, but the plaintiffs have not been produced the partition deed, Whether the road is existence or not, this facts and things are the matter of evidence which requires evidence to prove those aspects. Without recording the evidence of the party this fact can not be decided on merits. In that context an order of status-quo has to be granted infavour of the both plaintiffs and as well as defendants, because, to keep the property in same state of affairs and to continue the property in the same manner these arrangements have to be made.

9. In the decision reported in **ILR 2017 Kar 3141** in this decision the Hon'ble court held that whenever a status-quo order is to be passed the court has to say about the nature of property and stage of the property and a blanket order of status-quo can not be given. But it is to be specifically

noted that whereas in this case, when the plaintiffs are claiming the right over the property (so called road) to the extent of 10 X 14 feet, the road is existence or not has to be determined. When such being the case, an order to keep the property in same state of affairs an order of status-quo with respect to the property is necessary. Since the suit properties claimed by the both parties is a vacant land.

10. Further, as per the decision reported in **AIR 1966 Mysore 74 in case of Mathew Philips -Vs- P.O.Koshy, the Hon'ble High Court of Karnataka** observed that “ To sustain an application for temporary injunction a probability of right is sufficient. But if the legal right which is alleged to have infringed is doubtful, the mere existence of doubt is enough to refuse temporary injunction”. More particularly, it is to be noted that in order to corroborate the fact that the defendants have started the road work in the property, except the photo no other material is placed on record. Mere production of photo will not ipsofacto to prove the road work made by defendants. In the course of arguments the learned counsel appearing for the plaintiff stated that the defendants have trying to formation of road

and if the order of injunction is not granted then the plaintiff will be put to greater hardship. He contended that the plaintiff has got a prima facie case in his favour. But compared with the documents produced by the defendants at this stage for disposal of IA I, In the prima facie I am of the opinion that as per the village map will establishes a right in favour of the defendants. Hence this court also seems to fit to direct to both parties to maintain status quo. On the other hand if the status quo order is granted no prejudice will be caused to the plaintiff and the defendants. Therefore, the balance of inconvenience is on both side if the status quo is not granted. Therefore, this court is of the considered view that the balance of convenience is in favour of the both side and both are will suffer irreparable. Hence, this Court answered ***point No.1 to 4 in the Partly Affirmative.***

11. Point No.4 : In view of the discussion made in point No.1 to 3, I proceed to pass the following : -

ORDERS

IA.NO. I filed by the plaintiffs under order XXXIX Rule 1 and 2 of CPC is hereby allowed in part.

Both plaintiffs and defendants are directed to maintain status-quo in respect of the suit schedule properties till the disposal of the suit.

Parties to bear their own cost.

(Typed by me and corrected and initialed by me and then pronounced by me in the open court on this 6th day of July, 2022)

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Gundlupet.