

KACN320009802018



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT KOLLEGALA

PRESENT : SRI. M. RANJITH KUMAR B.A,L' L.L.B.
Addl. Civil Judge & JMFC., Kollegala.

Dated on this the 29th day of April - 2025

O.S. NO 117/2018

Plaintiff : Ramanayaka@ Ramannanayaka
S/o Late. Puttanayaka,
Aged about 48 years,
R/at: Sattegal Town,
Kollegal Taluk,
Chamarajanagar District.

Versus

Defendants : 1. Nanjanayaka,
S/o Medinimada @Chikkava,
Aged about 40 years,

2. Lingaraju,
S/o Medinimada @Chikkava,
Aged about 42 years,

3. Rajendrachari,
S/o Late. Puttaswamachari,
Aged about 40 years,
4. Doddasiddanayaka,
S/o Late. Sorekayi Siddayya,
Aged about 60 years,
5. Karuganayaka,
S/o Sampangi,
Aged about 70 years,
6. Ratnamma,
W/o Gavirayanayaka,
Aged about 60 years,
7. Rajanna,
S/o Kempayya,
Aged about 40 years,
8. Doddamma,
W/o Late. Kempanayaka,
Aged about 50 years,
All D1-D8 are R/At:
Sattegal Kote Village,
Kollegal Taluk,
Chamarajanagar District.

INTERIM APPLICATION NO -X

Applicant/ : Ramanayaka@ Ramannanayaka
(Plaintiff)

Versus

Opponents/ : Nanjanayaka & Others
(Defendants)

ORDER ON IA-X

1) The plaintiff has filed IA No.X under order XXXIX Rule 1 & 2 R/w Section 151 of Code of Civil Procedure, seeking ad-interim temporary injunction against the defendant No.1 to 8, to restraining them from putting up illegal construction in the suit schedule property, pending disposal of the suit, on the grounds that the defendant No.3 during pendency of this suit is illegally constructing a building in the suit schedule property and is trying to change the nature of the suit schedule property.

2) In counter the defendant No.3 has filed objection to IA No.X and contented that the application filed by the plaintiff is

not maintainable and as admitted by the plaintiff the defendant No.3 since from 30 years is residing in the said building along with his family and due to necessity he is putting up a room on the terrace and the plaintiff with malafide intention to harass defendant No.3 has filed this IA No.X. Accordingly sought for dismissal of IA No.X.

3) Heard learned counsel for the plaintiff and defendant No.3, learned counsel for defendant No.3 filed memo along with photographs of building wherein defendant No.3 is putting up a room on the roof, perused materials on record, accordingly the following points are arose for consideration of this court.

- 1. Whether the plaintiff has made out prima-facie case to allow IA No.X?*
- 2. Whether rejection of IA will cause hardship to the plaintiff ?*
- 3. Whether the balance of convenience lies in favor plaintiff?*
- 4. what Order?*

4) For the foregoing reasons this court answers the above points for consideration as hereunder :

Point No.1 – In the Affirmative.

Point No.2 – In the Negative.

Point No.3 – In the Negative.

Point No.4 – As per the final order.

REASONS

5) POINT NO.1 :

The plaintiff has filed the present suit for the relief of declaration and possession and for permanent injunction and it is the case of the plaintiff that, the schedule property totally measuring 0-93 cents is ancestral property of the plaintiff which he is enjoying since from the 4 generations and accordingly the Khata of the schedule property was entered in to the name of his father and after death of his father, the plaintiff has got transferred khata in to his name and he is in peaceful possession of the same, but the defendant No.1 to 8 without having any right, title and interest over the suit schedule property have encroached 0-30 cents out of 0-93

cents in the schedule property and have built illegal houses over it. The plaintiff along with plaint has produced certain documents such as RTC of the schedule property of the year 2017-18, wherein the khata is standing in the name of the plaintiff and Mutation Register vide which the khata of the schedule property was entered into the name of the plaintiff and hand written RTC from 1983-84 to 1995-96, wherein name of the father of the plaintiff is recited, if all the documents cited now, are taken into consideration, prima-facie, it could be observed that the schedule property does belong to the plaintiff and the very said fact would go to establish prima-facie case of the plaintiff. Accordingly this court answers **Point No.1 In the Affirmative.**

6) POINT NO.2 & 3:

It is the admitted fact by the plaintiff that the defendant No.1 to 8 by encroaching 0-30 cents out of 0-93 cents in the schedule property have built houses over them and such an admission prima-facie shows that the defendants are in the

possession of the alleged 0-30 cents of property and as argued by the learned counsel for the defendants that the defendant No.3 is in possession of the said property since from more than 30 years and he has built up house on it and now for his family necessity he is constructing room over the roof of the building. If such facts are taken into consideration, it is admitted that the defendants are in possession of the 0-30 cents property and it seems the defendants are residing in it and if by granting injunction the defendants are restrained to construct structure for their living their might be possibilities that great hardship may cause to the persons prima-facie who are residing in it and as the matter of record the plaintiff has sought for recovery of possession from the defendants and on completion of trial, if plaintiff succeeds in his suit, at such time the plaintiff at liberty to seek to demolish whatever building constructed on it, but restraining defendants at this juncture would impact their living, accordingly allowing the present IA would cause hardship to the defendants and balance of convenience lies in favor of the defendants and it is

well settled law that though the plaintiff has prima-facie case when the hardship is greater to the other party and balance of convenience is in favor of other parties, the court shall restrain itself from granting temporary injunction. Accordingly this Court answers **Point No.2 & 3 In the Negative.**

7) POINT NO.4: For the reasons stated above this court proceeds to pass the following order.

:- ORDER :-

IA No.X under order XXXIX Rule 1 & 2 R/w Section 151 of Code of Civil Procedure is hereby dismissed.

(Dictated to the stenographer, transcribed and typed by him, the same is corrected, signed and then pronounced by me in the open court on this the 29th day of April 2025).

(M. RANJITH KUMAR)
Addl.Civil Judge & JMFC.,
Kollegala.

