

ORDER ON IA. No. I

As per Circular No.RJ No.163/2023 of The Hon'ble High Court of Karnataka dated 24.08.2023, the following details have been mentioned:-

i	Provision under which the application is filed	U/O XXXIX Rules 1 & 2 of CPC
ii	Reliefs sought for	Temporary injunction.
iii	The date on which the application is filed	13.02.2023
iv	Number of the application	IA.No.I
v	The date on which the objection are filed by opponent	Objection not filed
vi	The date on which the order was passed on the said application	21.03.2024

This application has been filed by the plaintiff against the defendants U/O XXXIX Rules 1 & 2 of CPC praying to restrain the defendants from causing obstruction and interference to the plaintiff in constructing the fence over the suit schedule property.

2. Despite of granting sufficient opportunity, the defendants have neither filed the objection nor they have filed the written statement.

3. It is the case of the plaintiff that the plaintiff is the absolute owner in possession of the suit schedule property bearing Sy.No.68/8 measuring 1 acre 31 guntas. The defendants are the owners of the neighboring land situated towards the northern side of suit schedule property. It is pleaded in the plaint as well as deposed in the affidavit annexed to IA. No.I that the plaintiff has filed application to the survey department to measure the suit property and to fix the boundary, as such on 19.04.2022 the officials of survey department have conducted the survey, fixed the boundary by erecting the stone and also have prepared the sketch. However, the defendants have removed the stone erected by the survey officials. On 21.04.2022 the plaintiff has given complaint to Santhemarahalli Police regarding this issue. When the Police have summoned the defendants, the defendants have given their statements and admitted that they have removed the stone erected by the survey department officials and further given undertaking that they will not repeat their action. The defendants have given a request letter to the survey department to measure there property, on 05.07.2022 the officials of survey department

have measured the property of the defendants, marked the boundaries, erected the stone and also have prepared this sketch. After, two months of time the defendants have again changed the location of the boundary stone concerned the suit schedule property, so the plaintiff has again approached the Santhemarahalli Police on 16.08.2022, however, police have not taken any action in this regard. On 05.09.2022 the plaintiff has given another request letter to the Tahasildar of Chamarajanagar to re-measure the suit schedule property, as per the direction of the learned Tahasildar, again the officials of the survey department measured the suit schedule property, fixed the boundaries erected the stone and have prepared the sketch.

4. This being the case, in order to protect the crops grown in the suit schedule property the plaintiff went on to put up the fence on 05.02.2023, at that point of time the defendants have caused obstruction in putting the fence and have abused the plaintiff. Again the plaintiff has approached the Police station, however the Police have not given any protection.

5. In order to decide this IA the following points arise for the consideration of this Court:-

POINTS

1. Whether the plaintiff has made out the prima-facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss or hardship if TI is not granted?
4. What order?

6. I have perused all the available materials on record and I have heard the learned counsel for the plaintiff, despite of granting sufficient opportunity, the learned counsel for the defendant did not argue the matter.

7. Having done so my answers to the aforesaid points are as hereunder:-

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

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

REASONS

8. **Point Nos.1 to 3**:- Since these points are interconnected to each other, in order to avoid the repetition of facts and findings, these points are taken up together for common discussion at one stretch. I have already narrated the facts in detail, therefore in order to avoid repetition, I refrain myself from re-narrating the facts.

9. As per the case of the plaintiff is the absolute owner in possession of the suit schedule property measuring 1 acre 31 guntas. According to plaintiff survey wise conducted wise, despite of erecting the stone for fixing the boundary by the survey department, the defendants are removing the same and they are changing the position of the stone. The document furnished by the plaintiff such as RTC bearing Sy.No.68/8, patta Book and tax paid receipts prima-faciely reveals that the plaintiff is in possession of the suit schedule property. Further, the plaintiff has produce the photo copies of the survey sketches pertaining to suit schedule property dated 09.04.2022 and 18.01.2023 and the photo copy of the survey sketch pertaining to the land of the defendants dated 05.07.2022. Upon perusal of these documents it is prima-faciely evident that the case of the plaintiff is true. Therefore in the absence of any objections at all I hold that the plaintiff has made out and arguable case which is popularly called as prima-facie case. Further, the photo copy of the Police complaint dated 21.04.2022 reveals that the defendants are in fact obstructing the plaintiff as alleged by him. Hence, balance of convenience lies in favour of the plaintiff. If TI is not granted and if the plaintiff is prevented by the defendants in putting up of the fence over the suit schedule property, there are every chances that the crops grown in the suit schedule property will be destroyed/damaged. Hence, I am of the firm opinion that if TI is not granted the plaintiff will be put to irreparable loss or hardship. For these reasons I answer **point Nos.1 to 3 in the Affirmative.**

10. Point No.4:- For the detailed reasonings given at Point Nos. 1 to 3 , I proceed to pass the following:-

ORDER

The IA.No.I filed by the plaintiff U/O XXXIX Rules 1 & 2 of CPC is hereby allowed.

The defendants, their agents, servants or anybody acting on their behalf are hereby restrained by way of Temporary Injunction from interfering with the possession of the plaintiff more particularly from causing obstruction for putting up of fencing by the plaintiff over the suit schedule property. For plaintiff evidence by 27.06.2024.

NOTE: Any observations made in this order is purely confined only for the purpose of deciding this applications. Neither the parties can take the advantages of the observations made in this order during the course of trial or otherwise.

21.03.2024
**The Civil Judge & JMFC.,
Yelandur.**