

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	05.09.2023
iv	Number of the application	IA.No.I
v	The date on which the objection is filed by opponent	07.03.2024
vi	The date on which the order was passed on the said application	19.11.2024

The IA No.I has been filed by the plaintiff against the defendant U/O XXXIX Rules 1 & 2 of CPC praying to restrain the defendant from interfering with the possession of the plaintiff over the suit schedule A property till the disposal of this suit.

2. The defendant has filed the written statement and the same was adopted as objection to IA no.I.

3. In order to decide this IA no.I, 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?

4. I have perused all the available materials on record and I have heard both the sides at length. 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

5. **Point Nos.1 to 3**:- Since these points are interconnected to each other, in order to repetition of facts and findings, they are taken up together for common discussion at one stretch.

The plaintiff claims that A schedule property was granted to her by the Government, which is measuring East West 15 feet and South North 25 feet. The defendant has

encroached 8 feet x 8 feet area and has put up the small shop and he is interfering with the possession of the plaintiff over the suit schedule A property. As per the plaint the B schedule property is shown as the encroached area i.e., 8 feet x 8 feet and the B schedule property is the part and parcel of A schedule property. The plaintiff has produced the photocopy of the grant deed, the property extracts and few photographs along with a video in the DVD. Upon perusal of these documents, it is evident that the plaintiff was infact granted with suit schedule A property and it prima-faciely appears that the defendant has encroached the same. Upon perusal of the videos and DVD of both the sides, the adjacent shop is much on the front side compared to the shop of the defendant which is in the B schedule property. Absolutely there is no space for the defendant to set up the shop, it prima-faciely appears that he has set up his shop on the property of the plaintiff. On the other hand the defendant has produced license to run the shop and tax paid receipt. Further RTC of Sy. No.2 has been produced to show that 3 acre 9 guntas of land is the Government karab. The defendant is not claiming any title over the B schedule property and the documents produced by the plaintiff i.e., the title deed (grant deed) certainly leans in favour of the plaintiff. The videos furnished by both the sides clearly reveal that there is a daily quarrel between the parties and it is alleged by the plaintiff that the defendant is even interfering with the possession of the plaintiff over A schedule property excluding B schedule property also. The

documents available on record prima-faciely shows that the suit schedule A property measuring 15 feet x 25 feet was granted to plaintiff and as mentioned above it prima-faciely appears that the defendant has encroached 8 feet x 8 feet and he is in illegal possession of the same. Hence certainly the plaintiff has made out an arguable case to put for trial which is popularly called as prima-facie case. Coming to balance of convenience and irreparable damages, it prima-faciely appears that the defendant is already in illegal possession of B schedule property by setting up the shop and if he further encroaches the property of the plaintiff, the plaintiff will be put to untold misery. In the written statement the defendant claims that he has set up the shop on the public road, by looking into the shop in the DVDs, it appears that the shop is not on the public road rather it is in the property of the plaintiff. Hence balance of convenience in favour of the plaintiff. If T.I is not granted and if the defendant further interfere with the possession of the plaintiff over the remaining property of A schedule property excluding B schedule property, certainly the plaintiff will be put to irreparable loss and hardship which cannot be compensated in terms of money. For all these reasons, I answer **Point Nos.1 to 3 in the Affirmative.**

6. Point No.4:- In light of the detailed reasoning mentioned above, I proceed to pass the following:-

ORDER

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

The defendant, his agents, servants, family members or anybody acting on his behalf are hereby restrained by way of temporary injunction from interfering with the possession of the plaintiff over the suit schedule A property excluding the B schedule property which measures 8 feet x 8 feet.

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

Issues have been framed and read over in the open Court. For P/E by 20.12.2024

19.11.2024
**The Civil Judge & JMFC.,
Yelandur.**