

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 29th Day of May 2024

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.**

OS No.26-2024

BETWEEN :

Manjamma

...Plaintiff

AND

Lakshamamma

...Defendants

I.A. No. I

BETWEEN :

Manjamma

...Applicants/Original Plaintiff

AND

Lakshamamma

...Opponent/Original Defendant

1.	Provision under which the application is filed:	:	39 rule 1 and 2 of CPC., and Sec 151 of CPC
2.	Relief sought for	:	Interim Temporary Injunction and police protection
3.	Date on which the application is filed	:	27-01-2024 and 20-04-2024

4.	Number of the application	:	IA.No.I & II
5.	Date on which the objections are filed by different opponents:	:	27-04-2024
6.	The date on which the orders is passed:		29-05-2024

Date: 29-05-2024
Place: Channagiri.

(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON No.I and II

The plaintiff filed application U/o 39 rule 1 and 2 of CPC., seeking the add interim temporary injunction against the defendant restraining her from not to demolish the wall situated in the suit schedule property.

2. BRIEF FACTS OF THE AFFIDAVIT AS UNDER:-

In support of the application the plalintiff sworn an affidavit, stated that, she has filed this suit against the defendants seeking the relief of permanent injunction. The suit schedule property originally granted to her husband by name Somashekarappa from Doddabigere Village Panchayath. Since from the date of grant she and her husband living in the suit property, by constructing shed till date. On the basis of grant the katha of the suit property is also entered in her husband's name. The village panchyath, also granted grants to construct residential house to her. On the basis of consent of her husband the katha of the suit property is mutated in to her name. Accordingly the plaintiff has become the owner in possession of suit schedule

property and constructed one red tiled house and having its possession.

3. The plaintiff further stated that, she had built the house towards east of the property after measurement when the Nagamma W/o Kudurappa had constructed their house. The defendant had purchased the property with conducting any survey and measuring the property and also made allegations on the plaintiff that she had made encroachment into the defendant property and caused obstruction to her. The said Nagamma who is the resident of eastern side of the suit property of the plaintiff had sold the property to the defendant measuring 18 X 15 feet through registered sale deed. Hence, the defendant making allegation on her that she had encroached the property of defendant and constructed house. Hence, tried to demolish the wall which belongs to her. The defendant is politically and financially powerful person in the locality and having an intention to harass the plaintiff, making hectic efforts to demolish the wall which belongs to her. The said illegal acts of the defendant resisted by her. Therefore, the plaintiff approached this court by filling this present suit. Hence, if this application is not allowed she will be put to great hardship and injustice would caused to her. If this application as prayed is granted no hardship would caused to other side. Therefore, prays to allow this application by passing order of restraining defendants from not to demolish the wall situated in the suit property.

4. The plaintiff also filed IA.No.II on 20-04-2024, seeking police protection with respect to suit property and sworn an affidavit contending that she intended to cover up the vacant

mould from red tiles. Due to which the defendants caused obstructions on 18-04-2024 to cover up the same which belongs to plaintiff. She also approached the Santhebenuru Police seeking police protection. but the police have expressed their inability to give protection with out order from the court. Therefore, prays to allow the application by providing police protection which is necessary in this case.

5. The defendant filed written statement as well memo to treat the same as objections to IA No.I. Wherein she denied the entire averments of the plaint as well as the application and specifically contended that, she is the absolute owner of the wall. She had purchased the property from Nagamma W/o Kudurappa on 24-11-2022 through registered sale deed, which is towards eastern side of the plaintiff's property and at the time of sale, e-swathu of the property is also registered in the name of vendor bearing No.PR0880001556802. Soon after the said sale transaction, E-swathu also registered in her name as PR No.0880001829773 consisting East - West 4.57 mts, North - South 5.48 mts. When the vendor of the defendant constructed the house in their property they have made measurements of their property, as admitted by the plaintiff in her pleadings. The plaintiff is not residing at Doddabbigere village. She is living in a rented house at Santhebennuru Village. The plaintiff has not pleaded any thing about how the suit property was transferred into her name, as well as she has not produced any resolution passed by village panchayath, Doddabbigere by granting the suit property in the name of Somashekarappa/husband of plaintiff to show her title on the suit property. Therefore, the plaintiff is not the absolute owner of the entire suit property. Hence, the E-

swathu is also not effected in to her name. The boundaries of suit schedule properties mentioned by the plaintiff is wrong. Infact the southern side boundary mentioned as road, but there is existence of house property of Hanumathappa who is father-in-law defendant. Therefore, the measument of the suit schedule property as mentioned by the plaintiff to an extent to 20 X 9 feet but she has not specifically pleaded the measurement of the suit property with in the boundaries. Therefore, plaint is not maintainable under law. Therefore, prays to dismiss the suit with cost.

6. Heard from Both the counsels.

7. Based on the dissenting aspects of the respective parties, the following points would emerge for my consideration:

POINTS

1. Whether the Plaintiff has made out a prima-facie case to grant TI order?
2. Whether the balance of convenience lies in favor of the plaintiff?
3. Whether the irreparable loss or injury will be caused to the plaintiff, if the application is not allowed ?
4. What order?

8. My answers to the above points are as under.

POINTS

Point No.1 to 3 : In the Negative

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

REASONS

9. Point No. 1 :

It is the case of the plaintiff that, the defendant putting efforts to demolish the wall situated in her property. The suit property originally granted to her husband by the Dodhabigere village panchyath. After the said grant, the katha of the suit property effected in the name of Somashekarappa. The plaintiff and her husband enjoying the suit property as its absolute owner in possession and enjoying the same since from 30-40 years, by constructing grass shed in the suit schedule property. The plaintiff approached the Grama panchayath for grants to construct house in the suit schedule property. The katha of the property changed into the name of plaintiff, on consent of her husband. She also obtained grants to construct the house in the schedule property. The plaintiff seriously made allegations on defendant that she had encroached into her property and trying to demolish the wall which belongs to her. Therefore, prays to temporary injunction order by this court.

10. In order to substantiate the prima facie case the plaintiff produced patta book bearing katha No.352 which does not consists any entries. To 2 positive image photographs. The 7 tax paid receipts consisting different dates. These tax paid receipts stands in the name of plaintiff and her husband and property No.352. The plaintiff also produced the certificate issued by PDO

village, panchayath Doddabbigere to establish the boundaries of suit property with respect to property No.352. The said certificate issued by PDO as per the entries of Village property servery report, during the 2004-05. The survey property of Doddabbigere village, with respect to property No.183. The copy of E-swathu/form No.9 stands in the name of Nagamma pertaining to E-swathu No.151200102500220096 Dated 01-02-2023 which depicts the boundaries of the property of the defendant as mentioned in the E-swathu document as follows, North: House of defendant, East: house of defendant, West: property of Somashekarappa, South: House of Poojar Hanumappa

11. Contrary, the defendant seriously made allegation on the plaintiff that the wall situated between the property of plaintiff and her property is belongs to her. The plaintiff trying to encroach the said wall on which she has no any title.

12. In support of her contention, she filed the copy of registered sale deed dtaed 09-11-2022. The boundaries mentioned in the suit property the said with respect to property No.96/A1 measuring 4.57 mts and north to South 4.58 mts which totally measures 25.04 sqr mts, and house property bounded by East: house of Vendor West: House of Somashekarappa, North: House of vendor, South: House of Pojara Hanumanthappa. The copy of E-swathu of defendant bearing No. 151200102500220096, the copy of grant order and copy of e-swathu pertaining to Nagamma W/o Kudrarappa with

respect to property No. 15120010250022188, dated 07-11-2022. The copy of tax paid receipts dated 19-05-2022. The C/c of report submitted by PDO dated 14-03-2024 to the executive Officer, Taluk Panchayath Channagiri, the property survey report for the year 2004-05 of Doddabbigere Village, with respect to property No.97/A and 97/A1. Having perusal of the prima-facie documents placed by both parties either the plaintiff or the defendant not denied the title of the properties which they own. The only dispute amongst the parties is the wall which is existed between properties of the both parties. The plaintiff claiming her title over the said wall which is situated towards eastern side of the suit property as per the plaintiff. The road- southern side boundary of suit property as shown by the plaintiff, but the defendant disputing the said boundary by mentioning the property of Hanumathppa who is father-in-law of defendant. The defendants claiming that the wall which is existed between the both property of both parties. It is also essential to note here that the photographs produced by the plaintiff reveals the existence of wall in between the properties of both parties. The defendant claiming the right over the wall on the basis of sale deed and e-swathu. The E-swathu document produced by the plaintiff as well as defendant with respect to property No. 151200102500220096 as well as the sale deed consisting boundaries of the property purchased by the present defendant which is bounded by East and north :property of vendor, West: house of Somashakarappa, South: House

of Poojara Hanumappa in which the southern side boundaries mentioned by the plaintiff is also disputed by the defendant. The said sale deed and E-swathu document of defendant clearly shows the western side boundary of her property consists property of Somashekarappa who is non other than husband of present plaintiff. hence, the title of the western side boundary which is existing wall is in dispute among the both parties.

13. The plaintiffs relied upon the property survey report, issued by the PDO, Gram panchayath to show suit boundaries which is based on the record available in the village panchayat on property survey report of Doddabbigere village, pertaining to 2004-05 year, but the defendant purchased the property during the year 09-11-2022. Hence, the document produced by the plaintiff is more than 20 years old document. the boundaries as alleged by the plaintiff is not at present situation of the spot. The plaintiff also not produced any convincing document to show boundaries of suit property. The revenue records which are tax paid receipts which are stands in the name of plaintiff and her husband is only ment for revenue collection. Those document will not consist boundaries of the suit property. To dissolve the dispute between the plaintiff and defendant with respect to boundaries is concerned it needs full pledged trial. These all narration need complete set of trial and without which it absolutely pre mature stage to hold the alleged location of the suit schedule property based on

20 year old- property survey report submitted by the plaintiff.

14. Moreover, the prima facie includes the maintainability of the suit admittedly the defendants set up the defence that the wall existed between the suit property and their property is belongs to their ownership. It is need less to point out that the maintainability of same would fetches the prima importance in considering the primafacie case of application. The plaintiff much high lighted that, the boundaries of suit property mentioned by the plaintiff on the basis of property survey report during the year 2004-05 other than this document she has not produced any documents.

15. In the case on hand, the defendant set up defence by placing registered sale deed as well E-swathu document which needs more attention of this court. Under this back ground, the plaintiff has not made out primafacie case at all. Thus, **I answered point No.1 in the negative.**

16. Point No.2 and 3:These points are incumbent upon each other in view of factual backgrounds and therefore are discussed together.

The applicant has failed to prove the very existence of primafacie case on merits as well as documents. The records relayed by the applicant are not supporting the version of the plaint pleading except the photographs nothing primafcaie document is on record to conclude

those appurtenant. The balance of convenience and the irreparable injury or always in- complete upon the existence of prima-facie case. When the applicant failed to prove the basic aspect of prima-facie case in my considered opinion the aspect of balance of convenience and the irreparable injury needs no considerations. Accordingly, these points held in the Negative.

17. **Point No.4:** Accordingly, I proceed to pass the following. :-

ORDER

The IA.I filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby rejected with cost.

As discussion and observation made by this court while answering the IA. No.1, the IA.No.II filed by the Plaintiff is also dismissed.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 29th day of May 2024.

Date:29-05-2024
Place: Channagiri.

(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.
Channagiri.

(Vide separate order pronounced in the open court)

ORDER

The IA.I filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby rejected with cost.

As discussion and observation made by this court while answering the IA. No.1, the IA.No.II filed by the Plaintiff is also dismissed.

**II Addl Civil Judge And Jmfc.
Channagiri.**