

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

Dated: 21st Day of September 2024

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.
OS No.71-2024**

BETWEEN :

Soubhagyamma and others

...Plaintiffs

AND

V.G. Rajappa

...Defendant

I.A. No. I

BETWEEN :

Soubhagyamma and others

...Applicants/Original plaintiffs

AND

V.G. Rajappa

...Opponent/Original defendant

1.	Provision under which the application is filed:	:	U/o 39 rule 1 and 2 R/w Sec.151 of CPC.,
2.	Relief sought for	:	Interim Temporary injunction
3.	Date on which the application is filed	:	21.02.2024
4.	Number of the application	:	IA.No.I

5.	Date on which the objections are filed by different opponents:	:	21.02.2024
6.	The date on which the orders is passed:		21.09.2024

Date: 21-09-2024
Place: Channagiri.

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

ORDER On IA No.I

This is an application filed by the plaintiffs U/o 39 rule 1 and 2 of CPC., seeking interium temporary injunction against the defendant.

2. BRIEF FACTS OF THE AFFIDAVIT AS UNDER:-

The plaintiffs have given the schedule of the property at application as well in the plaint and according to it the property bearing Sy.No.89/2A measuring 0.04 guntas situated at Mudigere Village, Kasaba Hobli, Channagiri Taluk consisting with red tiled residential house and vacant place bounded by East: Vacant place and residential house of Rajappa, West: Road to A.K. colony, North: Land of Rajappa, South: House of Shashikumar.

3. The plaintiff No.1 sworn an affidavit on behalf of herself and other plaintiffs also and she has stated that the suit schedule property was inherited by her under MR No.T18/2015-16. Before that, her husband and her father-in-law purchased the application schedule property vide SR No.2181/1962-63. Since from the date of sale they were enjoying the suit property by

having peaceful possession as it's s absolute owner by constructing house measuring East-West:25 feet and North-South: 19 ½ feet area. The remaining vacant land also enjoying by them as its owner in possession. The defendant having no right, interest in the suit property interfered with the peaceful possession of plaintiffs on 25.2.2023 illegally trespassed into the suit property and caused interference with the peaceful possession of the plaintiffs possession. It is very difficult to resist the acts of the defendant without the assistance of this court. The plaintiffs with an apprehension of recurrence of such obstruction, filed this suit and also the application at hand. The plaintiffs have stated that they have got a primaface case. If this application is not allowed they will be put to great injustice and much inconveniences. The balance of convenience is also in their favour. Thus, they prays to allow the application.

4. The defendant filed written statement and memo to treat his written statement as objection to IA No.I. Wherein he denied the all the averments of application as well as plaint. He specifically disputed the existing of property with its identity and description as shown in the application schedule. He also disputed the title of the plaintiff over the suit schedule property. He had taken specific contention that though the plaintiff has averred in plaint para No.2 that the husband of plaintiff No.1 and her father-in-law had purchased the suit property under a registered sale deed but on carefull scrutiny of the alleged sale deed there is no specific boundaries mentioned therein and also not pleaded anything about on which date the said sale deed was executed in their pleadings. Hence, the plaintiffs have shown the false boundaries in the present suit as well as false cause of

action by including the land which belonging to this defendant.

5. This defendant further contented that he had filed suit against the plaintiff seeking the relief of declaration and possession bearing O.S. No.134/2020 in this court with respect to property bearing Sy.No.89/2B measuring 5 guntas and Sy.No.89/2C measuring 5 guntas situated at Mudigere village, Channagiri Taluk. Wherein he made serious allegation against the plaintiffs that they have encroached $\frac{3}{4}$ each guntas in the said Sy.No. properties. The plaintiffs have come before this court with this suit after completion of the evidence of plaintiffs and surveyor in O.S. No.134/2020. When the case is posted for defendant evidence with an apprehension that if this defendant succeeds in that suit they have to vacate and handover the possession of encroached portion. Hence, the present suit is also hit by the provisions of Order 2 Rule 2 of CPC., Though the plaintiffs have an opportunity to file the counter claim in that suit only but they approached this court with the suit after completion of 3 years which is not maintainable in the eye-of-law. His father namely V.G. Basappa had purchased the property bearing Sy.No.89/2B measuring 5 guntas (53 X12 gajas) from its earst while owner Ganeshachar on 28.04.1972 and had possession of the purchased property which is bounded towards East, North and South: Property of defendant's father, West: Road. Before purchasing the said property they have also purchased the property bearing Sy.No.89/2C(53 X 11 gajas) measuring 5 guntas on 24.04.1972 is bounded by East: Property of defendant's father, West: Road, North: Property of Ganeshachar, South: Kana property of Shivarudrappa.

6. The plaintiff by surprising the said material facts filed false suit with false boundaries before this court with an intention to harass and cause trouble to this defendant. Hence, the plaintiffs are liable to pay Rs.25,000/- cost as per Sec.35 A and Sec.94 of CPC., for instituting false suit against him. The plaintiffs have not produced any original documents to establish the suit schedule boundaries before the court. Hence, prays to dismissal of the application with cost.

7. Based on the rival contention raised by the both parties the following points arises for consideration.

POINTS

1. Whether the Plaintiffs have 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. Heard the learned counsels appearing for the both parties.

9. This court answers to the above points are as under.

POINTS

Point No.1to 3 : In the Negative

Point No.4 : As per the final order

for the following.,

REASONS

10. Point No. 1: In order to establish the prima facie case the plaintiffs produced the computerized copy of RTC for the year 2023-24, mutation register extract dated 08.09.2015 and computerized copy of mutation registered extract dated 10.10.2019 and C/c of registered sale deed dated 01.02.1963 and one more C/c of registered sale deed dated 16.11.1950.

11. On the other hand defendant has produced the C/c of registered sale deed dated 01.02.1963, C/c of plaint, written statement and documents filed in O.S No.134/2020, C/c of deposition of Soubhagyamma/plaintiff in the present suit.

12. Having taken note of prima facie materials placed by both parties it appears that the husband of plaintiff No.1 and her father-in-law have had purchased the suit property. To establish the prima facie case the plaintiffs also produced C/c of registered sale deed dated 01.02.1963. On careful scrutiny of that registered document which is not disclosing boundaries of the purchased property. On the other hand the defendant is seriously disputing the boundaries of suit schedule property as well he had also filed the suit for the relief of declaration and possession before this court bearing No.O.S.134/2020 which is a comprehensive suit and the evidence of plaintiffs side is already completed in that suit. When the case is posted for defendant evidence the plaintiffs have filed the present suit. These material facts

as not pleaded by the plaintiffs in this suit which are necessary. The injunctory relief is a discretionary relief of the court. Wherein the parties must have approach before this court with clean hands. In the present case the plaintiff suppressed the facts relating to proceedings pending in O.S.134/2020. It is well settled law that, where there is serious dispute with regard to specific boundaries of suit property, the injunction cannot be given. Where the maintainability of the suit is in question the interim injunction is also line with. Under such circumstance the prima facie materials placed on record or not in consonance with the claim of the plaintiffs. Whether the plaintiffs is in lawful possession in the entire extent of the suit schedule property is in question. It cannot be considered without trial the same needs to be put into box for trial. Therefore, in my considered opinion unless and until full pledge trial is concluded in the matter it is not possible to hold the existence of alleged property with its description and boundaries. Thus, in my considered opinion, at this stage the plaintiffs have not made out prima facie case to grant the ad-interim temporary injunction against the defendants. As such the **Point No.1 held in the Negative.**

13. **Point No.2 and 3:** These two points are interconnected. As such are taken at once for discussion.

The existence of prima facie case is fundamental for grant of interim temporary injunction. The plaintiffs have

to prove the said aspect at first by placing prima facie materials too. The balance of convenience and irreparable injury are always fall in line with prima facie case. In the case on hand the plaintiffs have failed to establish the very existence of prima facie case and therefore, the balance of convenience, irreparable injury would also not in favour of plaintiffs. Thus, the **point No.2 and 3** are held **in the Negative**.

14. **Point No.4:** As a result, this court proceed to pass the following:

Order

**The IA No.I filed by the plaintiff
U/o 39 Rule 1 and 2 R/w Sec.151 of
CPC is hereby rejected without cost.**

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 21st day of September 2024)

**Date:21.09.2024
Place: Channagiri.**

Sd/-
**(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.
Channagiri.**

