

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

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

Dated this the 14th Day of October, 2024.

O.S. No.99/2020

Plaintiff : Smt.Rathnamma

-V/s-

Defendant : Smt. Danakshamma

I.A No.V

Applicants : Smt. Danakshamma -- (Defendant)

-V/s-

Opponent : Smt.Rathnamma -- (Plaintiff)

**Orders on IA No.V filed under Order XIV Rule 5 R/w
Section 151 of CPC.,**

when the case is posted for cross examination of PW.1,
The defendant filed this application seeking the court to frame
additional issue as “Whether the plaintiff proves that the suit
for bare injunction in the absence of the relief of declaration is
not maintainable” in the present suit.

2. As per the affidavit of the defendant, there is no
scope under any provision of law to seek the relief of permanent

injunction without seeking the declaration as to the alleged exclusive right and title of the plaintiff over the suit schedule properties hostile and adverse to her right and possession. Hence, the suit in the absence of relief of declaration of the alleged exclusive right of the plaintiff over the suit schedule properties is not maintainable. As such the suit is liable to be dismissed on the ground itself as the plaintiff has no exclusive possession over the suit schedule property in any capacity at any point of time. She is not entitled for the relief of permanent injunction as sought. Hence, prays to frame an additional issue as sought in the annexed application.

3. The opponent/plaintiff filed statement of objection stating that the additional issue sought by the defendant is not arises for consideration in the present case. The defence of the defendant with regard to the maintainable of the suit pleadings the suit for bare injunction without claim of the relief of declaration is not maintainable. Therefore, the burden of proving this assertion is on their shoulder. They cannot shift their burden on the plaintiff. As the suit is one for bare injunction, the issues which are already framed in the present case by the court are sufficient to adjudicate the matter in dispute judiciously. Thus, prays to reject the application.

4. Heard from both counsel.

5. The following points arise for my determination:

- (1) *Whether the additional issue requires to be framed?*
- (2) *What order ?*

6. My findings on the above points are as under:

Point No.1 : *In the Negative*

Point No.2 : *As per final order for the following:*

REASONS

7. **Point No.1**: Admittedly the plaintiff seeking the relief of permanent injunction against the defendants with respect to suit schedule property. This court has framed issues on the basis of pleadings and documents available on record on 21.04.2021 itself. When the case is posted for cross examination of PW.1 the learned counsel for defendant had filed this application before this court on 27.10.2023 on the ground that the bare injunction in the absence of the relief of declaration is not maintainable. An perusal of the pleadings as well documents it is the plaintiff as to plead his averments in the plaint on the basis of what relies he has sought by this court. Admittedly, the plaintiff seeking permanent injunction with respect to suit schedule property against the defendant. It is well settled law that the plaintiff is the master of his case he ought to plead and prove his case. In that scenario the defendant in his written statement taken specific contention which runs through almost 9 pages on various grounds by denying the plaintiff claim. But she had not sought any counter claim in this aspect. This court cannot come to an

conclusion whether the additional issue sought by the defendant is necessary in the present suit. Moreover, the issue No.3 which is already framed as “Whether the plaintiffs is entitled for the reliefs sought in the plaint” is wide enough to discuss the matter or adjudicate the matter judiciously on the basis of pleadings and evidence and the entitlement of the reliefs of the plaintiff. Hence, the defendants not filed any documents to support her contention in the written statement. Hence, no sufficient grounds made out by the defendant to determine the application in the positive manner. In view of the above said discussion and observation this court answered the **point No.1** in the **Negative**.

8. Hence, the following:

ORDER

**IA No.V filed by the defendant under
Order XIV Rule 5 R/w Section 151 of CPC., is
hereby rejected with cost.**

For cross of PW.1.

Call on.25.10.2024

*(Dictated to the Stenographer and computerized by him, corrected, signed and
then pronounced by me in the Open Court on this the 14th day of October 2024.)*

SD/-

II Addl Civil Judge And Jmfc.

Channagiri.

