

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

Dated: 04th Day of December 2024

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.**
OS No.118-2024

BETWEEN :

Smt. Manjula

...Plaintiff

AND

Smt. Deepa and others

...Defendants

I.A. No. I

BETWEEN :

Smt. Manjula

...Applicants/Original plaintiff

AND

Smt. Deepa and others

...Opponent/Original defendants

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	:	05.04.2024
4.	Number of the application	:	IA.No.I

5.	Date on which the objections are filed by different opponents:	:	27.07.2024
6.	The date on which the orders is passed:		04-12-2024

Date: 04-12-2024
Place: Channagiri.

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

ORDER ON No.I

The plaintiff filed the instant application seeking the relief of temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property as well not to put up any construction in the suit 'B' schedule property till disposal of the suit.

2. In support of the application, the plaintiff has sworn an affidavit contending that, she has filed the present suit seeking the relief of declaration of her title with respect to suit 'A' and 'B' schedule property and consequential relief of permanent injunction and mandatory injunction against the defendants with respect to 'B' schedule property to vacate the constructions on put forth by them on their own cost. She asserted that the plaint 'A' and 'B' schedule properties stands in the name of her father-in-law by name Topanna Kudurappa which is granted by the government through Doddabbigere Village Panchayath. As per the said grant the katha of the suit properties were changed into her father-in-law's name. After the death of her father-in-law the said property were subjected to oral partition between her husband and his brothers. Accordingly, the katha of the

properties were mutated into her name. Accordingly, the plaint and application schedule property was fallen to her share by virtue of oral partition. Thereafter she has constructed house by living East-West:14 feet and North-South: 50 feet vacant space in the suit property. The said property was not sold by the plaintiff to any one and she is enjoying the suit property by paying regular taxes. The plaintiff further stated that, the defendants have constructing their house in the suit 'B' schedule property alleging that the same is their property without having any title deeds in their names. The defendants are constructing their house by encroaching her suit schedule property which is left by her towards Western side 13 feet area. When the plaintiff demanded with the defendants to vacate the same but, the defendants have not heard the words of the plaintiff and also abused on her by using filthy language.

3. The plaintiff further submitted that, her husband also approached the PDO, Doddabbigere Village Pachayath to conduct survey of the property but the PDO has not taken any steps and directed to approach the Executive Officer, Taluk Panchayath. Accordingly, the husband of plaintiff made representation on 13.12.2023 to the Taluk Panchayath. The Executive Officer has gave direction to the PDO to take necessary steps to resolve the issue. But PDO has not taken any steps according to the direction. The Officers of the Village Panchayath also granted grants of the Government to construct house to the defendants. The said grant was objected by the plaintiff's husband but the concerned authorities have not taken any steps. The defendants are in hurry to finish their construction work in the encroached suit schedule property with

out obtaining licenses. Hence, the cause of action arisen to file this present suit is on February last week of 2024. When the plaintiff questioned the illegal construction in the suit 'B' schedule property, the defendants put life threats to her. The plaintiff also approached police station but the police have directed to approach Civil Court to get proper relief. The defendants having more politically influential persons. Thus, without the assistance of this court it is not possible for her to restrain the defendants from constructions which alleged to be encroached by them. If this application is not allowed she will be put to irreparable loss and legal injury which cannot be compensated in terms of money. The prima-facie case is also in her favour.. Thus, prays to allow the application.

4. In response to the suit summons the defendants appeared and filed objection to IA No.1 contending that, the plaintiff though claimed her ownership to the 'A' and 'B' schedule property, she had not produced any title deeds, even after issuing the notice to produce the same. So it goes to show the prima-facie no documents are there to evidence her ownership to the plaintiff schedule property. The defendants have got the rights in the 'B' schedule property and also in the property situated to the West of the suit 'B' schedule property in which they are putting their house construction. In between the house of plaintiff and house of Kariyappa, the defendants are having their property in which they are constructing their houses. The defendants have removed their old houses situated to the West of the residential use of plaintiff and now they are residing by putting a shed in a government place and as such if the house construction is not continued and completed by the defendants. They will be put to

irreparable loss and injustice. Thus, the balance of convenience lies in favour of the defendant. Hence he prays to reject the application.

5. The controversial statements of affidavit and the statement of objection of both plaintiffs and defendant rises the following points for determination.

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 plaintiff will be put to irreparable loss, if the order as prayed for is not granted ?

4. What order?

6. Heard the learned counsels appearing for the plaintiffs and defendant. Perused the records and on perusal of the same, my findings to said points are under;

7. 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

8. Point No. 1 to 3: In order to establish the prima facie case, the plaintiff produced the copy of adhaara card, DCB register extract, endorsement dated 20.06.2023 issued by Doddabigere Village Panchayath, Endorsement dated 17.07.2023. The representation made by the husband of plaintiff before Executive officer, Taluk panchayath dated 03.02.2024, issuing direction to the PDO to take necessary steps and 4 photos and one tax paid receipts dated 04.03.2024. Endorsement dated 04.07.2024 issued by Tahasildar Office, Channagiri and DCB register extract.

9. On the other hand the defendants to support their contentions have filed the mutation register extract bearing MR No.2012-13 and copy of sale deed, copy of property survey report of Doddabbigere village with respect to property to 194/B, copy of grants obtained by the plaintiff and 3 photos.

10. The learned counsel for plaintiff vehemently argued that the suit schedule 'A and 'B' properties are originally belongs to father-in-law of plaintiff same is granted by the government in the name of Toppanna Kadurappa. Subsequently the katha of the said property was changed in the name of the plaintiff. To establish the said fact that the suit 'A' and 'B' schedule properties are granted to the plaintiff's father-in-law, She has not placed any prima facie documents. She has only placed DCB register extracts and the tax paid receipt.

11. In contrary, the defendants as placed registered sale deed and the mutation register extract and the DCB register extract to show their possession over the property. Such being the case, the plaintiff has not made out any primaface case to grant temporary injunction with respect to suit schedule property as alleged by the plaintiff herself in her plaint pleadings.

12. The plaintiff also urged two reliefs in a single IA which is barred as per Rule 23 of the Karnataka Civil Rules of Practice which reads as follows

23. Karnataka Civil Rules of practice.

There shall be a separate application in respect of each distinct prayer. When several prayers are combined in one application, the court may direct the applicant to confine that application only to one of such prayers and to file a separate application in respect of each of the others.

13. As per the above said provisions, the plaintiff cannot seek two reliefs in a single IA. She has to prefer separate interim applications for separate relief.

14. However, the plaintiff also asserted that, the defendants are encroaching into the suit 'B' schedule property which belongs to her. The said encroachment cannot be ascertained on the basis of available records. The plaintiff also not placed any relayable documents to show the alleged encroachment area by the defendants. Moreover, the primaface materials placed on record are not establishes the boundaries of the suit schedule

property. Thus the plaintiff has made out a triable case. The plaintiff has sought declaration of her title with respect to suit schedule properties but she has not placed any title document to that effect. It is well settled law that DCB register extracts are not the title deeds. Those are maintained for fiscal purpose only. Under such circumstances, in my considered opinion unless and until the full pendency trial is concluded the possession of the suit property cannot be ascertained only on the basis of the documents which are not in any way disclosing the possession in and over the application schedule property at this prima facie stage. Therefore, the plaintiff has not made out the prima facie case. Therefore, I answered the **Point No.1 in the Negative.**

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

The existence of prima facie is fundamental for grant of ad interim temporary injunction. The plaintiff has to establish the said aspect at first by placing prima facie materials too. The balance of convenience and irreparable injuries are always fall in line with prima facie case. In the case on hand the plaintiff has failed to prove the very existence of prima facie case and therefore, the balance of convenience, irreparable injury would also not in favour of plaintiff. Thus, the **point no. 2 and 3 are held in the Negative.**

16. **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 dismissed.**

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 04th day of December 2024)

**Date:04-12-2024
Place: Channagiri.**

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

