



**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT BELTHANGADY.**

Present:-

Sri. Sandesha K. MA, LLB.,

(Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 16th Day of September 2025

ORIGINAL SUIT NO.251/2024

Plaintiff: A.K. Abbas, S/o Adam Byari,
Aged about 64 years,
R/at Kodikannaje House,
Navoor village and Post,
Belthangady Taluk.

(By: Smt. M.B., Adv.)

:-V/S:-

Defendant: Harish, S/o Ammi Poojary,
Aged about 40 years,
R/at Nirdi House,
Navoor Village and Post,
Belthangayd Taluk.

(By: Sri.K.B.H,Adv.)

1.	Provision under which application filed.	Under order 39 rule 1& 2 of CPC.
2.	Relief sought	Restraining the respondent, his men, servants, agents or any person claiming through or under them from trespassing into or upon the plaint schedule property and to block the road way passing through the plaint schedule property and thereby interfering with the plaintiff peaceful possession of the suit schedule property

3.	The date on which application filed.	Along with suit.
4.	Number of application	IA No.II
5.	The date of which the objection filed by the respondent /defendant	16-10-2024
6.	The date on which the order were passed on the said application	16.09.2025

**ORDERS ON IA No.II FILED BY THE
PLAINTIFF UNDER ORDER XXXIX
RULE 1 & 2 OF CPC.**

This application filed by the plaintiff/petitioner under order XXXIX rule 1 and 2 of CPC seeking ad-interim temporary injunction restraining the respondent, his men, servants, agents or any person claiming through or under them from trespassing into or upon the plaintiff schedule property and to block the road way passing through the plaintiff schedule property and thereby interfering with the plaintiff peaceful possession of the suit schedule property till the disposal of the suit.

Case of the plaintiff in brief is as under:

2. The plaintiff has sworn an affidavit in support of the application he sworn that, in order to avoid the reputation of facts the averments made in the plaint may be read as part of this affidavit. In the plaint plaintiff stated that, plaintiff schedule property granted to the plaintiff by the Tahsildar Belthangday in NCR 84/98-99 on 03.04.2003 and Hakku Patra was issued in the name of plaintiff.

Plaintiff is in peaceful possession and enjoyment of the plaint schedule property. RTC of the plaint schedule property stands in the name of the plaintiff. The plaintiff built the house in the plaint schedule property and residing in the above said house. Expect plaintiff no one else has got any right over the suit schedule property. Defendant who is the purchaser the property near the suit schedule property and he is residing in the said locality and there is one roadway was passing the near the residential house of the plaintiff and there is one drainage is passing under the same roadway. On 10.08.2024 defendant and some other persons came to the spot and trespass the plaint schedule property and started to dig the earth to remove the drainage and they are succeeded in the their illegal and unlawful act. Defendants are block the said drainage. The rainy water was flows in the road and same was directly flows on the agricultural land of the plaintiff which is connecting the road of the plaint schedule property. On 20.08.2024 defendant and his men again came to the this spot and try to trespass the plaint schedule property and try to block the drainage. Hence this application.

3. Per contra the defendant has filed objection to IA No.II and contended that, there is no reason to trespass into the suit schedule land. The suit is filed with malafide intention to harass the defendant. Defendant neither enter into plaint schedule property nor block any drainage much less in the plaint schedule property. Allegation of the plaintiff that, he blocked the drainage and damage the

road leading to his house is false. There is no cause of action against the defendant much less the prima facie case. Therefore the balance of convenience cannot be in favour of the plaintiff. Hence pray for dismiss the application.

4. Heard on arguments of both parties and perused the pleadings and materials on record.

5. The following points that arise for the consideration of this court.

POINTS

1. **Whether the plaintiff/applicant has made out a prima-facie case?**
2. **Whether balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted as prayed?**
4. **What order?**

6. The findings on the above 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 the final order
for the following:

REASONS

7. **Point No.1:** It is the case of the plaintiff that, plaintiff schedule property was granted to the plaintiff by the

Tahasildar, Belthangady in NCR No.84/98-99 and also issued Hakkupatra in favour of plaintiff. RTC stands in the name of plaintiff with regard to the plaint schedule property. Defendant and some other persons came to the spot and trespass the plaint schedule property and started to dig earth to remove the drainage and they are succeeded in their illegal act. Rainy water was flows in the road and same was directly flows in the agricultural land of the plaintiff which is connecting the road of the plaint schedule property so entire road was damaged during the illegal act of the defendant. Defendant is political influenced persons and he us always threatened to the plaintiff and he will remove the drainage constructed in the plaint schedule property and block the road of the plaintiff which is passes through the plaint schedule property. Hence this application.

8. The submission of the plaintiff counsel is, plaint schedule property granted by the Tahasildar to the plaintiff in NCR nO.84/98-99 and also Hakku patra was also issued in favour of the plaintiff and RTC stand sin the name of the plaintiff. Plaintiff has constructed a house in the plaint schedule property and there is in one road way passing near the plaint schedule property and there was one drainage passing under the same roadway. Defendant and some other persons trespass the plaint schedule property and started to dig the earth to remove the drainage and defendant blocked the said drainage. The rainy water was flows on the road and directly flows

in the agricultural land of the plaintiff. Defendant and other persons again came to the spot and trespass the plaintiff schedule property and block the drainage. Hence this application is allowed no hardship will be cause to the plaintiff. Hence pray for allow the application.

9. The submission of the defendants counsel is, defendant has not trespass the plaintiff schedule property. Suit is filed with malafide intention defendant neither entered into the plaintiff schedule property nor blocked the any drainage much less in the plaintiff schedule property the allegation made in the plaint is false. There is no cause of action to file a suit. Hence pray for dismiss the application with cost.

10. Having take note the submission made by the Ld. counsel appearing for the parties and this court has carefully perused the pleadings as well as documents produced by the plaintiff. The plaintiff has produced RTC extract in respect of plaintiff schedule property and copy of Hakku Patra, copy of eye sketch and index and copy of photos. Defendant has not produced any document.

11. At this stage, without going through the merits of the case and holding mini trial, this court has consider the aspect of prima facie case. At this stage this court makes it very clear that the court is looking towards prima facie case and not for prima facie title. It is well settled principles of law that at the time disposing the temporary injunction application this court cannot going the prima

facie title and only consider whether the plaintiff has made out prima facie case for granting of interim relief.

12. The purpose of granting interim relief is the preservation of things in dispute till legal rights and conflicting claim of the parties before the court are adjudicated. In other words the object of making an order regarding interim relief is to evolve a workable formula to the extant called for by the demand of the situation. Keeping in mind the pros and cons of the matter and striking a delicate balance between conflicting interests i.e., injury and prejudice, likely to be caused to the defendants if the relief is granted. The underlying object of granting of temporary injunction is to maintain and preserve status quo at the time of institution of proceedings and prevent any change until the final determination of the suit.

13. The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

14. The first rule is that the plaintiff must make out a prima facie case in support of the claim made by him. The court must be satisfied that there is a bonafide dispute raised by the plaintiff. That there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the

plaintiff being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for granting of temporary injunction.

15. In order to ascertain the prima facie case, this court as carefully perused the document produced by the plaintiff i.e., RTC extract which clearly depict that, plaintiff schedule property stands in the name of the plaintiff. Plaintiff has produced copy of photos which clearly depict that, there is roadway passes in the plaintiff schedule property near the house of the plaintiff and there is one drainage is passing under the said roadway. It is not disputed by the defendant that, with regard to the plaintiff schedule property and drainage passing in the roadway. Defendant contended that, he never trespass the plaintiff schedule property and blocked the drainage. If the defendant blocked the drainage plaintiff had give complaint before the competent authority but there is no such document. But if the defendant is blocked the roadway plaintiff may be put inconvenience. The photo produced by the plaintiff which clearly depict that, plaintiff has made out a prima facie case. So far as trespass the plaintiff schedule property and block the drainage is concern is the triable issue, it cannot be concerned without any evidence. At this stage the document produced by the plaintiff i.e., RTC extracts and photos which are clearly depict that plaintiff has made out a prima facie case. With these observation this court as answered point No.1 in the **Affirmative**.

16. Point No.2 and 3: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant, in other words this court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicants by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it.

17. The existence of prima facie case alone does not entitled the plaintiff for a temporary injunction. The applicant/plaintiff must further satisfied the court about the 3rd condition by showing that they will suffer irreparable injury if the injunction as prayed is not granted and there is no other remedy open to them by which they can protect themselves from the consequences of apprehended injury. The plaintiff has produced RTC extract, photos and sketch with index with regard to the plaint schedule property, said documents shows that balance of convenience lies in favour of plaintiff. If the injunction is not granted plaintiff put irreparable loss and injury. At this stage the balance of convenience lies in favour of plaintiff. In these circumstances this court is the opinion that, if IA No. II is rejected more mischief and hardship will be caused to the plaintiff when compared to the mischief and hardship which will be suffered by the defendant if IA No. II is allowed. By considering all this aspect this court is of the opinion that if the application is rejected, the plaintiff will be put to irreparable loss and

hardship and the same cannot be compensated in terms of money hence this court answered point No. 2 and 3 in the **affirmative**.

18. Point No.4: In view of the discussion, this court proceeds to pass the following:

ORDER

I.A. No.II filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendant, his men, servants, agents or any persons claiming through under them are hereby restrain from trespassing into or upon plaint schedule property and block the roadway passing through the plaint schedule property till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on the computer, corrected and signed by me and then pronounced in the Open Court on this 16th day of September 2025)

(Sandesha.K)
Prl. Civil judge & JMFC.,
Belthangady