

KADW400005922022



IN THE COURT OF CIVIL JUDGE & JMFC KUNDAGOL

PRESENT

**Smt. Gayatri., B.Com., LL.M. (IPR)
Civil Judge & JMFC., Kundgol.**

DATED 07TH DAY OF OCTOBER 2023

O.S. No.29/2022

PLAINTIFFS : Fakkirappa Doddahonnappa Badiger
(Sutar) and another.

-V/s-

DEFENDANTS : Prakashgouda Shivanagouda Patil
and others.

IN I.A. No. I

APPLICANT/

PLAINTIFFS: 1. Fakkirappa Doddahonnappa Badiger
(Sutar)
2. Doddahonnappa Fakkirappa Badiger
(Sutar).

-V/s-

RESPONDENTS/ 1. Prakashgouda Shivanagouda Patil
DEFENDANTS: 2. Shankrappa Kalaveerappa Katagi.
3. Jayappa Basavantappa Katagi.
4. Channappa Irappa Katagi.
5. Maharudrappa Shivappa Katagi.
6. Basavaraj Gurappa Kali.

7. Mahantesh Veerbhadrappa
Nagalingannavar.

ORDER ON IA NO.1

The Applicant/ Plaintiffs have filed present application U/O. 39 R-1 and 2 R/w. Sec.151 of C.P.C, seeking Temporary Injunction order against respondent/defendant for restraining them from interfering into their peaceful possession and enjoyment over the application schedule property in the interest of justice and equity.

2. Per contra, learned counsel for Respondents/ Defendants has filed memo for considering the written statement along with counter claim has objections to IA. no.1 and prayed for dismissal of said application with exemplary costs.

3. Heard and perused.

4. The following points arise for this court's consideration.

1) Whether the applicant/plaintiffs proves that they has got a prima-facie case on hand ?

2) Whether the applicant/plaintiffs further proves that the balance of convenience lies in their favour ?

3) Whether the applicant/plaintiffs further proves that, it will cause untold hardship and irreparable damages to them, if the present application is not allowed ?

4) What order ?

5. This court findings on the above points for consideration are as under:

Point No.1 : In the **Affirmative**

Point No.2 : In the **Affirmative**

Point No.3 : In the **Affirmative**

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

REASONS

6. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

The present suit has been filed by the applicant/plaintiffs against defendants for the relief of Permanent Injunction restraining the defendants from interfering into their peaceful possession and enjoyment over the suit schedule property. along with Court costs.

7. The present application has been filed by the applicant/plaintiff against respondents for the relief of Temporary Injunction to restrain the respondents from interfering in to their peaceful possession and enjoyment over the application schedule property. It is the specific allegations of the applicant/plaintiff that they are th absolute owners in possession of the

suit schedule property bearing R. Sy. No.7/11 measuring 01 acre, 02 guntas, situated at Pashupatihal village, Kundgol taluk by carrying out agricultural activities on the said property. The defendants in spite of having no right title and interest over the suit schedule property are causing interference to the applicant/ plaintiff peaceful possession and enjoyment over the suit schedule property under the instigation of persons who are not in good terms with these plaintiffs. They have come forward to prayed road over the suit schedule property without having any right and interest over the said property. They have threatened the applicant of forming road over the suit schedule property. The applicant/ plaintiff along with the elders of the village has condemned to illegal act of defendants. Defendants have not heard and have not stopped the illegal acts of causing interference to plaintiffs peaceful possession and enjoyment over the application schedule property. Such being the act of defendants, applicant/ plaintiffs left with no other option has filed the present suit against the defendants and by virtue of present application have prayed for grant temporary injunction to restrained the defendants from interfering in to their peaceful possession and enjoyment of the application schedule property till disposal of the suit.

8. Per Contra, learned counsel for respondent /defendants have filed memo for considering the written statement along with counter claim filed by them as objections to the present

application. It is the contention of the defendants that, though the plaintiffs are the absolute owners in possession of the application schedule property, likewise the defendant No.1 is the absolute owner in possession of land bearing R. Sy. No.20 and 20/1 situated at Pasupatihah village, Kundgol taluka, Likewise, defendant No.2 to 6 are also the absolute owners of the in possession of the land bearing R. Sy. No.19/2, R. Sy. No.19/8, R. Sy. No.19/4, R. Sy. No.19/9 and R. Sy. No.21/3 respectively. Such being the factual aspects the defendants in order to reach the respective piece of lands starting from their respective homes through Laxmeshwar-Hubballi road thereby turning towards right i.e., North turn there comes the lands belonging to plaintiff i.e., Fakkirappa Doddahonnappa Badiger and Doddhonnappa Fakkirappa Badiger and from their towards the Eastern side approximately there comes 8 feet road and thereby they through the said 8 feet wide road are reaching there respective lands along with agricultural equipments and to better explain the said facts have submitted a hand sketch along with their written statement and and counter claim. The said counter claim schedule property has been shown as ABCD. The counter claim schedule property so shown as ABCD is utilized by them from their ancestors time from passed 60 years without any obstruction from any person. Such being the factual aspects plaintiff by concealing the true facts has filed the present suit against the defendants claiming alleged relief.

9. On careful perusal of the application averments with those of the written statement and counter claim the suit of the plaintiff is for the relief of Bare Permanent Injunction and the written statement and counter claim filed by that defendants is for the relief of easementary right. The contention those taken by the defendants through their counter claim needs to be proved by them. However, after the defendants filing their counter claim they have not filed an application seeking temporary injunction against the plaintiff. But in respect of present suit plaintiff has filed an application seeking the relief of temporary injunction against the defendants to restrain them from interfering in to their peaceful possession and enjoyment over the application schedule property, at this juncture it is upon the applicant/ plaintiff to prove there exists the prima-facie case on hand, the balance of in-convenience lies in their favour and it is the applicant/ plaintiffs who are going to suffer un told hardship, if the present application is dismissed.

10. On perusal of the documents produced by the applicant/ plaintiff it reveals the fact of plaintiff holding possession of the suit schedule property, which is the essential ingredients to be looked in to for granting for temporary injunction. However, it is the counter claim is set up by the defendants claiming easementary right over the suit schedule property. It is upon the defendants to prove the fact that, there exists a road to reach their respective lands as alleged by them in their written

statement and counter claim. Presently, the matter is yet in its initial stage. The matter is premature and this Court does not find sufficient grounds and reasons to discuss about the merits of the case. Applicant/ plaintiff has made out grounds for granting the temporary injunction by convening this Court as to he having a prima-facie case on hand. It is the applicant/ plaintiff who is going to suffer untold hardship if the present application is not allowed. However, no loss or damages will be caused to other side, if at all the present application is allowed. Hence, without further discussion proceeds to answer these points accordingly.

11. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A. No.1 filed by applicant/plaintiff U/O. 39 R-1 and 2 R/w. Sec.151 of C.P.C. is hereby allowed with costs.

Further, respondents/defendants are hereby an order of Temporary Injunction is temporarily restrained from interfering into applicant/plaintiffs peaceful possession and

enjoyment over the application schedule
property, till disposal of the suit.

[Dictated to the Steno, directly on computer, corrected and then pronounced by
me in the Open Court on this the 07th day of October 2023]

(Gayatri)
Civil Judge & JMFC.,
Kundagol.