

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.  
NAVALGUND**

**O.S.No.23/2022**

**Dated this the 04<sup>th</sup> day of January, 2023**

**Present : Sri. Santhosh M.S.**

**B.A., LL.B., (Hons); LL.M.,**

**Civil Judge and JMFC., Navalgund.**

Plaintiff :1. Sri. Hanamappa  
S/o. Rangappa Doddamani,  
Age: 68 years, Occ: Agriculture,  
R/o: Shiswinahalli, Tq: Annigeri,  
Dist: Dharwad.

(By Sri.RMR/HDG., Advs.)

Defendants :1. Sri. Hanamantappa  
S/o. Dyamavva Kali,  
Age: 50 years, Occ: Coolie,  
R/o: Shiswinahalli, Tq: Annigeri,  
Dist: Dharwad and others.

(By Sri. MBV., Advocate)

**PARTIES TO I.A.**

Applicant : 1. Sri. Hanamappa  
S/o. Rangappa Doddamani,

**Versus**

Opponents : 1. Sri. Hanamantappa  
S/o. Dyamavva Kali and others.

**ORDERS ON I.A., FILED UNDER ORDER XXXIX  
RULE 1 & 2 OF CPC BY PLAINTIFF ON 23.06.2022.**

The present suit is filed seeking for the relief of decree of perpetual injunction restraining the defendants from demolishing the wall located on V.P.C.No.268 and from encroaching the said property.

2. The plaintiff has contended that the suit property bearing V.P. No.268 of Shishvinahalli village in Annigeri taluka belongs to him and on its Western side the land of defendant no.1 is situated which bears V.P.C. No.267/A. The V.P.C.No. no.268 and 267/A are divided by a wall constructed by the plaintiff on V.P.C. No.268. However, the defendant is attempting to demolish the wall and use the same for the purpose of construction by encroaching on V.P.C. No.268 which belongs to the plaintiff. Therefore, as a interim order the plaintiff has sought for exparte order of temporary injunction restraining defendants from demolishing the wall of V.P.C. No.268 or encroaching on the suit property.

3. In support of the relief sought by the plaintiff he has furnished revenue documents with respect to V.P.C. No.268 which stands in his name. He has also furnished the certified copy of the resolution passed by Shisvhinahalli Gram Panchayat with respect to suit property. Three positive photographs of the suit property and the wall located on it are also furnished.

4. After filing of this suit the defendant no.2 has filed written statement which is adopted by other defendants. In the said written statement the contentions raised by the plaintiff are all denied as false. It is contended by defendant no.2 that the plaintiff in this suit through his wife Smt. Muttavva W/o. Hanamappa Doddamani had filed a suit of similar nature before this Court against the mother of the husband of defendant no.2 i.e., Smt. Dyamavva Kali in suit bearing O.S.NO.55/2011. In the said suit the relief sought in this case was similar and it was contested by filing written statement. The said suit was dismissed. Hence, it is contended that the plaintiff is not entitled

for any relief. It is also contended that the said suit bearing O.S.No.55/2011 was filed alleging that the Dyamavva Kali was constructing a wall by encroaching on the suit property. But in the present case the plaintiff has alleged that the defendants have attempted to construct such wall on 03.02.2022. It is contended that the wall constructed by defendants is on the basis of permission granted by the authorities of Gram Panchayath. This suit is filed only to harass and hardship for the defendant by the plaintiff. Hence, it is prayed for dismissal of suit with cost.

5. Perused the application and objections and heard both sides. The following points arise for my consideration which are as under;

**POINTS**

1. Whether the plaintiffs/applicants have made out prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiffs/applicants?
3. Whether the plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is not granted?
4. What Order?

6. My findings on the above said Points are as hereunder:-

Point No.1 : In the **Negative**,

Point No.2 : In the **Negative**,

Point No.3 : In the **Negative**,

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

**REASONS**

7. **Points No.1 to 3:-** These points are interlinked with each other, to avoid repetition of facts they have been taken together for common discussion.

8. During the course of hearing learned counsel for the defendant has submitted memo with records relating to a case bearing O.S.No.399/2017 which was registered as O.S.No.55/2011 before this Court. He has also furnished copy of plaint in O.S.No.399/2017 along with the copy of permission granted to the defendant no.1 by the authorities of Shiswinahalli Gram Panchayath.

9. On perusal of these records it is noticed that the suit bearing O.S.No.55/2011 was filed by Hanamappa Doddamani against the Dyamavva Kali in relation to the suit property as described in para no.2 of this plaint which is similar to the description of suit property as described in para no.2 of the plaint in O.S.No.55/2011. The relief sought in this suit is similar to the relief sought in O.S.No.55/2011. The description of property as mentioned in para no.2 of the plaint in O.S.No.399/2017 filed by the plaintiff in this suit is similar to the description of suit property as described in para no.2 of the plaint. The relief in this suit is also similar to the relief in the said suit.

10. Having examined those documents with the documents submitted in this suit it is noticed that neither the plaint in those suits nor any records relating to it are furnished by the plaintiff in this suit. There is no pleading in the plaint with reference to O.S.No.55/2011 or O.S.No.399/2017. When the

description of suit property with this suit and the one involved in the another suit is the same as in case of this suit and O.S.No.399/2017 and the parties to the suit or the successors or relatives of a party in earlier suit as in case of this suit with that of O.S.No.55/2011, it was incumbent on the part of plaintiff in this suit to make reference about those cases and specifically plead about those litigation in the plaint filed in this suit. The absence of specific pleading relating to such suits would give raise for an inference about suppressing of material facts by the plaintiff. Consequently giving raise for an inference about the plaintiff approaching this Court without clean hands.

11. The nature of relief sought in this suit is similar to the nature of relief sought in both the suits mentioned above. Therefore, to distinguish the factor of those suits and the person, necessary details ought to have been pleaded by the plaintiff in this suit. In its absence the prima facie right of the plaintiff in the suit property not only to seek an order of temporary injunction but also to seek the relief of decree of perpetual injunction cannot be appreciated completely. In that view there is no prima facie case made out by plaintiff which makes out a case warranting trial by this Court.

12. No doubt, through order dated 11.02.2022 this Court had granted an order of temporary injunction to protect and preserve the suit property from being encroached. But such an order was passed on perusal of plaint averments and in the absence of written statement and documents filed by the defendant. After appearance of defendants considering their pleadings and the documents furnished to this Court, it is noticed that the plaintiff has not made out prima facie case in

the light of suppressing material facts relating to earlier rounds of litigation and its reliance to this case. If an order of temporary injunction is granted to plaintiff in this suit then the orders, if any, obtained by the plaintiff in other litigation would certainly cause hardship and inconvenience not only to defendant in this suit but also to other persons as described in the pleadings relating to O.S.No.55/2011 and O.S.NO.399/2017. As such balance of convenience does not lie in favour of plaintiff and no hardship or inconvenience will be caused to the plaintiff if the relief as sought for is rejected. Hence, I answer point no.1 to 3 in the **Negative**.

13. **Point No.4:-** For the reasons discussed above, I proceed to pass the following;

**ORDER**

The I.A. filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., on 23.06.2022 seeking for grant of an ad-interim order of temporary injunction is hereby **REJECTED**.

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **04.01.2023**).

(Santhosh M.S.)  
Civil Judge and J.M.F.C.,  
Navalgund.

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