

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

**O.S.No.25/2024**

**Dated this the 24<sup>th</sup> day of October, 2024**

**Present : Sri. Naveen F. Dsouza**

**B.B.A., L.L.B., (Spl).,**

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

Plaintiffs : Irappa S/o. Siddappa Challanaykar,  
Age: 62 years, Occ: Agriculture,  
R/o. Jadageri Oni, Annigeri,  
Tq: Annigeri, Dist: Dharwad & others.

(By Sri.VDE/NMP, Advs.)

**Versus**

Defendants : Gangavva W/o. Basappa Aralikatti,  
Age: 58 years, Occ: Agriculture,  
R/o. Horakeri Oni, Annigeri,  
Tq: Annigeri, Dist: Dharwad & another.

(D1 by Sri.PHK., D2 placed exparte)

**PARTIES TO I.A.NO.II**

Applicants : 1. Irappa S/o. Siddappa Challanaykar

**Versus**

Opponents : 1. Gangavva W/o. Basappa Aralikatti

**ORDER ON I.A.NO.II FILED BY THE PLAINTIFFS  
UNDER ORDER XXXIX RULE 1 & 2 OF CPC.**

The application is coming for disposal before this court under the provisions of Order XXXIX Rule 1 and 2 wherein the Plaintiffs have sought to restrain the Defendants from interfering with the possession of plaintiffs over suit schedule property, till the disposal of the suit.

**SYNOPSIS:**

2. The plaintiffs are before this court seeking to restrain the Defendants in perpetuity from interfering with the Plaintiffs possession and occupation of the suit schedule property.

3. The Plaintiffs have pleaded that they are the owners of the suit property and in its occupation and possession and that the Defendants are unlawfully interfering with the possession and occupation of the suit property with assistance of some unknown persons and thus under these apprehensions the plaintiffs have sought the interim relief in the application.

4. The application is being opposed by the defendants on the ground that they are the adjacent owners and in occupation of the property towards the northern direction of suit property and that the Plaintiffs have encroached upon the land of the Defendants which is reported in the cadastral survey report and hence have prayed for the dismissal of the application.

5. Upon receipt of the rival submission this court has narrowed down the dispute to definite points and has accorded answers for the underlying reasons.

<b>Sl. No.</b>	<b>Points</b>	<b>Answers</b>
1.	Whether the plaintiffs/applicant have made out prima facie case for the grant of temporary injunction?	In the <b>NEGATIVE</b> ,
2.	Whether the balance of convenience lies in favour of the plaintiffs/applicants?	In the <b>NEGATIVE</b> ,
3.	Whether the plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is not granted?	In the <b>NEGATIVE</b> ,
4.	What order?	<b>As per final order, for the following;</b>

## **REASONS**

6. **Point No.1 to 3:-** In order to avoid the repetition of the facts the key points are taken up together for evaluation. The facts germane for the consideration of this application are elaborated as follows;

7. In the accompanying affidavit annexed with the application it is pleaded that the Plaintiffs are brothers and the suit schedule property was purchased by their father in the year 1992 for valuable consideration from one Sri. Sripal Jujappa Kabbina and Smt. Gangavva Kabbina, registered before the registrar.

8. That the suit property has thereafter been partitioned between the plaintiffs wherein the Plaintiff No 1 is allotted 01-14-00 acres, Plaintiff No. 2 to 4 are allotted 01-13-00 acres each, which is witnessed in the revenue records.

9. The Plaintiffs being in their respective possession and occupation of the properties, on 15.02.2024 the Defendants have unlawfully trespassed into the land of the Plaintiffs and have caused obstructions. That upon being questioned, the Defendant claimed to have purchased the property on 05.10.2006 and has threatened to dispose of the property of the Plaintiffs as well.

10. That when the Plaintiffs reported the incident to the police the same was not heeded given the nature of dispute. That the Defendants have been interfering with the possession of the Plaintiffs and threatened them with dire consequences to dispose of the suit schedule property.

11. Thus with these apprehensions and being aggrieved the Plaintiffs are before this court and have sought the interim relief to restrain the Defendants pending disposal of the suit.

12. To the contrast the Defendants have cast their presence before this court and have submitted their defence refuting the pleas of the Plaintiffs. It is pleaded that the Defendants have purchased the northern portion of land bearing Sy No 308/3 to an extent of 04-00-00 acres from Sri. Sripad Jujjappa Kabbin for valuable consideration on 05.10.2006.

13. That post purchase the land has been mutated in the revenue records as Sy. No. 308/3A and RTC has come into existence. Thereafter upon the application of the Defendants when the cadastral survey of the land was done, the surveyor reported an encroachment of 00-10-00 by the Plaintiffs.

14. That when the Plaintiffs were requested to hand over the possession, the same was denied and the Defendants were threatened, hence the Defendants have pleaded that with the apprehension that the Plaintiffs would be constrained to go by with the encroached portion the suit is orchestrated and filed to escape the liability and have sought for the dismissal of the application.

15. The rival sides have submitted their documents. The essential ingredient which the applicant has to satisfy is the existence of a prima facie case.

16. In the present case the suit schedule property is described to be the southern portion of the land bearing Sy No 308/3 to an extent of 05-13-00 acres but in the documents submitted by the Plaintiffs, the said land is divided into 4 independent hissass.

17. The independent hissass are going in the name of the respective Plaintiffs as per their pleadings of partition. The

plaintiffs have pleaded that the suit schedule property as one unit and the grievance is that the Defendants are interfering with the possession.

18. The division of the lands and the Pleadings are not in consonance and moreover the prima facie interference is not forthcoming in the case. The plea is of interference but the prima facie documents to substantiate any sort of interference is not forthcoming.

19. To the contrast the Defendants have submitted the cadastral survey report wherein the encroachment of the area of Defendants to an extent of 00-10-00 guntas by the Plaintiffs is reported towards the northern direction of the suit property.

20. The Pleadings and the documents submitted by the Plaintiffs are not sufficient to qualify a prima facie case. Mere submission of interference would not become interference. Hence this court finds no prima facie case in the plaintiffs, and thus the first pillar for the relief of temporary injunction seems to have collapsed.

21. The prima facie case which ought to have been made by the Plaintiffs is one such that there is an immediate threat to their savouring of the property by the Defendants. But in the present case the pleadings are somewhat incomprehensible.

22. The forecast which this court has to make is the protection of the interest of the Plaintiffs by drawing an equilibrium and subsidizing it with the interest of the Defendants. Presently the position of the Plaintiffs does not sanctify for prima facia interim protection.

23. On the failure of the disintegration of the prima facie case, the determination of second and third aspect of balance of convenience and irreparable loss would not sustain. The 3 ingredients or the pillars are interconnected in such a way that if one collapses all collapse.

24. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted.

25. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

26. The plaintiffs having failed to substantiate the prima facie case has constrained this court to not to venture into the aspect of other two ingredients of irreparable loss and balance of convenience.

27. Under these circumstances the plaintiffs having failed to substantiate the ingredient of prima facie case are not entitled for the relief pending the disposal of the suit and accordingly this court has answered the point No.1 to 3 in the **Negative**.

28. **Point No.4:-** For the above discussions this court has made the following;

**ORDER**

*The application filed by the plaintiffs under Order XXXIX Rule 1 and 2 of C.P.C., is hereby **REJECTED**.*

*Heard both the sides. No chances of settlement. Hence, Issues are framed. For plaintiff evidence and furnishing of list of witnesses, call on 06.12.2024.*

(Dictated to the stenographer, transcribed and typed by her the transcript revised, corrected and then pronounced by me in the Open Court on this **24.10.2024**).

(Naveen F. Dsouza)  
Civil Judge and J.M.F.C.,  
Navalgund.

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