

KAHS310027762022



**IN THE COURT OF THE PRL.CIVIL JUDGE AND
JMFC, ARAKALGUD**

**PRESENT: CHAMPASHREE R., B.A.L., LL.B., LL.M.,
Prl.Civil Judge and JMFC.,Arakalgud.**

DATED THIS 17rd DAY OF OCTOBER, 2025

ORIGINAL SUIT NO: 408/2022

BETWEEN:

1. Smt.Suvarna
W/o Late K. Basavashetty @ Bashetty,
Aged about 80 years,
2. Suresha S/o Late K. Basavashetty @
Basheety,
Aged about 58 years,

.....Plaintiff.

Both are R/at Kotavalu village,
Ramanathpura Hobli,
Arkalgud Taluk,
Hassan District.

3. Kusuma W/o Shivalingaswamy
Aged about 62 years,
R/at No. 74 8 E cross,
Attiguppe, Bengaluru.
4. Sukanya W/o Lokesh,
Aged about 56 years,
R/at Sri. Shiddeshwar Store,
Mysuru road,
K.R Nagar Town,

K.R Nagar,
Mysuru.

5. Manjula W/o Sathish Kumar,
Aged about 52 years,
R/at Hosapete road,
Tipaturu Town, Tipaturu
Tumkur District.
6. Shantala W/o Shiddesha,
Aged about 45 years,
R/at Govindanahalli Kikkeri Hobli,
K.R Pete Taluk.

(Sri.H.P.S, Advocate for plaintiffs)

AND:

Sri. K. Chandrashekara S/o Kapinishetty
Aged about 75 years,
R/at Kotavalu village,
Ramanatha Hobli,
Arakalagud Taluk,
Hassan District.

...Defendants

(Sri. G.G.R,Advocate for Defendant)

IA.No.II

BETWEEN:

Sri. K. Chandrashekara S/o Kapinishetty
Aged about 75 years,
R/at Kotavalu village,
Ramanatha Hobli,
Arakalagud Taluk,
Hassan District.

...Applicant/ Defendant

AND:

1. Smt.Suvarna
W/o Late K. Basavashetty @ Bashetty,
Aged about 80 years, and others

.....Opponents/ Plaintiffs

1.	Provision under which application is filed	Order XXXIX Rule 1 and 2 of Code Of Civil Procedure
2.	Relief sought for	Declaration & injunction
3.	The date on which the applications are filed	02.05.2025
4.	Number of application	II
5.	The date on which the objections filed by different opponents	17.06.2025
6.	The date on which the orders were passed on the said applications.	17.10.2025

ORDERS ON I.A.No.II

Defendant filed present application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 (C.P.C for short) seeking for an ad-interim injunction order to restraining Plaintiffs or any person acting on their behalf from causing damage to the coconut, banana, jower crops grown and also to the fence towards southern side of eastern side property bearing in Sy. No.1/1A measuring 39 guntas, till disposal of suit.

2. Along with the application, Defendant filed an affidavit stating that, Plaintiff filed present suit against Defendant for the relief of Declaration, Perpetual injunction and Possession but towards the western side of the suit property i.e., in Sy. No. 1/1A measuring 39 guntas in Kottavalu village, Ramanathpura Hobli, Araklagud is Defendants ancestral property and since from many years fence was put up towards the eastern side of said property, this being the fact Plaintiffs a week ago taking disadvantage when Defendant and his family members were not in the house has

removed fence in southern side of eastern side of said property and were intended to damage coconut, banana and jower crops and irreparable loss have been caused to Defendant, though elder of the village, guided Plaintiffs they failed to mend their ways. It is stated that, if present application is not accepted irreparable loss will be caused to Defendant. Hence, present application.

3. Plaintiff's filed objections to the present application denying entire applications averments and contends that, present application is filed not with respect to suit property and Defendant has not sought any relief with respect to Sy.No.1/1A, therefore present application is not maintainable as relief in present application is not with respect to suit property. It is contended that, there is no any fence as stated by Defendant, therefore only with an intention to harass Plaintiffs present application is filed and Plaintiff has not caused any sort of interference to Defendant's possession and it is not stated in the affidavit.

4. It is contended that, Plaintiff has no any sort of rights in the property as stated by Defendant and there are no ground to allow the prayer in present suit. It is contended that, there is no any cause of action with respect to the property sought by Defendants, therefore if Defendant wishes to claim any relief on the fence, then Defendant shall filed separate suit and said relief cannot be claim in present cause of action. It is stated that, Defendant has filed suit in O.S.No. 4/2023 with respect to property bearing Sy. No. 1/1A and said suit is also pending for consideration. Hence, prays to reject the application.

5. On the basis of application and objections, following points arose for consideration:

: POINTS FOR CONSIDERATION :

1. **Whether Defendant has made out prima facie case to grant temporary injunction as sought?**
2. **Is balance of convenience lies in favour of Defendant?**
3. **Whether Defendant will be put to irreparable loss and injury in the event of refusal of temporary injunction which cannot be compensated in terms of money?**
4. **What Order?**

6. Heard the learned counsel for Plaintiff and Defendants. Perused materials placed on record. Findings of this Court on the above said points are as follows:

Point No.1: In the Negative .

Point No.2: In the Negative.

Point No.3: In the Negative.

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

: REASONS :

7. Point No.1: As all these points are inter-connected they are taken up together for discussion.

8. It is specific case of Plaintiff that, towards the western side of the suit property i.e., in Sy. No. 1/1A measuring 39 guntas in

Kottavalu village, Ramanathpura Hobli, Araklagud is Defendants ancestral property and since from many years fence was put up towards the eastern side of said property, this being the fact Plaintiffs a week ago taking disadvantage when Defendant and his family members were not in the house has removed fence in southern side of eastern side of said property and were intended to damage coconut, banana and jower crops and irreparable loss have been caused to Defendant, though elder of the village, guided Plaintiffs they failed to mend their ways. If present application is not accepted irreparable lose will be caused to Defendant.

9. Plaintiff's filed objections to the present application denying entire applications averments and contends that, present application is filed not with respect to suit property and Defendant has not sought any relief with respect to Sy.No.1/1A, therefore present application is not maintainable as relief in present application is not with respect to suit property. There is no any fence as stated by Defendant, therefore only with an intention to harass Plaintiffs present application is filed and Plaintiff has not caused any sort of interference to Defendant's possession and it is not stated in the affidavit. Plaintiff has no any sort of rights in the property as stated by Defendant and there are no ground to allow the prayer in present suit. There is no any cause of action with respect to the property sought by Defendants, therefore if Defendant wishes to claim any relief on the fence, then Defendant shall filed separate suit and said relief cannot be claim in present cause of action. Defendant has filed suit in O.S.No. 4/2023 with respect to property bearing Sy. No. 1/1A and said suit is also pending for consideration.

10. On going through the records it is clear that, present suit is filed for the relief of declaration, perpetual injunction and possession of suit B property. Present application is filed by Defendant under Order XXXIX Rule 1 and 2 of CPC, but defendant can file application only under Order XXXIX Rule 1(a) of CPC and not under Order XXXIX Rule 2. Under Order XXXIX Rule 1A of CPC, it is clear that where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, then under such circumstances any party to the suit can file said application for temporary injunction.

11. As discussed earlier, as per Order XXXIX Rule 1(a) of CPC, 'any property in dispute in the suit' an application can be filed, but here in present case, suit property is Sy No. 1/2, measuring 1 acre 30 guntas in Kottuvalu Village, Ramanathapura, Arakalgud Taluk,. Whereas in present application, Defendant filed seeking interim injunction under Survey No. 1/1A measuring 30 guntas i.e., present application is not filed with respect to the property in dispute, therefore present application is not maintainable. Therefore for the discussion made above it is clear that the temporary injunction sought in present application and the property in dispute in present suit are completely different, this Court opinions that present application deserves to be rejected. ***Hence, this Court proceeds to answer these Points in Negative.***

12. **Point No.4:** In view of the above discussions, this Court proceeds to pass the following.

: ORDER :

I.A.No.II filed by Defendant under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 seeking for an ad-interim injunction order to restraining Plaintiffs or any person acting on their behalf from causing damage to the coconut, Banana, jower crops grown and also to the fence in property bearing Sy. No.1/1A measuring 39 guntas in southern side of east side of suit property, till disposal of suit is hereby rejected .

No order as to costs.

(Dictated directly to the stenographer on Computer, the same is revised, edited and corrected by me and then pronounced in the Open Court on this the 17th day of October , 2025).

**(CHAMPASHREE R.)
Prl. Civil Judge and JMFC,
Arakalagud.**

(Order pronounced in open Court vide in separate order sheet)

ORDERS

I.A.No.II filed by Defendant under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 seeking for an ad-interim injunction order to restraining Plaintiffs or any person acting on their behalf from causing damage to the coconut, Banana, jower crops grown and also to the fence in property bearing Sy. No.1/1A measuring 39 guntas in southern side of east side of suit property, till disposal of suit is hereby rejected .

No order as to costs.

Prl. Civil Judge and JMFC,
Arakalagud.

For issues
Call on :

Prl. Civil Judge and JMFC,
Arakalagud.