



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

SAKALESH PURA

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,

Civil Judge & JMFC., Sakaleshpura.

Dated this the 10th day of September, 2025

O.S. No.325/2023

PLAINTIFFS : Smt. Julaika and others
V/s.

DEFENDANT : Sri. Suresh

I.A. No. II

Plaintiffs/Applicants : Smt. Julaika and others
V/s.

Defendant/Opponent : Sri. Suresh

**ORDERS ON APPLICATION FILED BY THE PLAINTIFFS
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C**

The plaintiffs have filed this application under order XXXIX Rule 1 and 2 of CPC praying this court to pass an order of an ad-interim temporary injunction restraining the



defendant, his agents, henchmen or anybody claiming on his behalf from interfering with the possession and cause damage to the coffee and fence in the suit schedule property till the disposal of the suit.

2. In the affidavit annexed along with the application, plaintiff No.1 has averred that they have filed the present suit for the relief of permanent injunction against the defendant. The suit schedule property was granted in the name of her husband Sri. T.A. Mohammad. Accordingly, the revenue records got mutated in his name. After his demise the same were got mutated in the name of plaintiffs. Thus they are in possession and enjoyment of suit schedule property by growing coffee, pepper and other jungle kind trees. Upon the survey report they came to know that possession of the land to an extent of 10 guntas has been reduced. Hence, they have filed the present suit to an extent of 1 acre 30 guntas.



3. She has further contended that, the defendant having no any right, title or interest over the suit schedule property, tried to encroach the property towards southern side and causing interference by removing the fence. They have also tried to damage the coffee plants. Inspite of approaching jurisdictional police, went in vain. The plaintiffs have got prima-facie case and balance of convenience in their favour. If the application is not allowed, they will be put to irreparable loss and injury. Hence prayed to allow the application.

4. Upon the service of summons, the defendant has appeared before the court and filed written statement, objections to the application. It is the contention of defendant that the property of defendant is situated towards southern side of the suit schedule property after the village road. The land of Kumara Vijay is not situated towards western side of the suit schedule property, but the property bearing Sy No.



620 is situated and thereafter property of Kumara Vijaya is situated. The plaintiff has given wrong boundaries and filed this suit. The plaintiffs have created the revenue records. The grand father of defendant by name Manjegowda was granted the land bearing Sy No.348 and after phodi the same was renumbered as Sy No.620. Sy No.348 and property of defendant is situated towards eastern side of Sy No. 620. The National High Way is situated towards southern side, the property bearing Sy No.36 is situated towards western side and property of Kumara Vijaya is situated towards northern side. The revenue records of Sy No.620 are existing in the name of defendant. He has also constructed a house in Sy No.620 the plaintiffs have tried to interfere and damaged the fence towards eastern side of Sy No.620. In spite of approaching jurisdictional police, went in vain. A village road and thereafter Sy No. 348 is situated towards southern side of Sy No.620. The plaintiffs have given wrong boundaries and



filed the present suit and applications. Accordingly, prayed to dismiss the application.

5. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiffs have made out prima- facie case in their favour?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?

4. What order?

6. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

7. My finding on above 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::

8. **Point No.1 to 3:** Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.

9. The plaintiffs have filed the present suit for the relief of permanent injunction against the defendant. It is the contention of the plaintiffs that the suit schedule property was granted in favour of husband of plaintiff No.1. The plaintiffs have produced copy of grant certificate and also sketch of suit schedule property. On perusal of the sketch, it appears on prima-facie that graveyard is situated towards eastern side of the suit schedule property. Whereas the plaintiff has shown remaining property in Sy No. 348 and thereafter graveyard.



10. Further at the time of arguments, the learned counsel for defendant has produced the copy of commissioner report filed in OS No. 257/2022. On perusal of the same, it appears on prima-facie that Sy No. 348 is situated towards Eastern side of Sy No.620 of Heggade village. As per RTC Sy No.620 appears in the name of the defendant. Whereas, the plaintiff has shown as property of defendant is situated towards southern side of the suit schedule property. But as per the Commissioner Report it appears on prima-facie a road is in existence. Hence, at this stage, there is cloud as to boundaries of the suit schedule property. On perusal of all the records produced by both the parties, it appears there is dispute as to identification of the properties.

11. It is to note here that in a decision reported in ***ILR 2005 KAR 884 (T.L.Nagendra Babu v/s Manohar Rao Pawar)*** the Hon'ble High Court of Karnataka held that without identification of the property, the temporary



injunction cannot be granted. From the above decision, it is clear that in the absence of the materials with respect to identification of the property, the injunction cannot be granted. The said aspect has to be determined after full fledged trial. Hence, at this stage, the plaintiffs have failed to make out prima-facie case and the balance of convenience much more in comparison with the defendant.

12. The plaintiffs have filed this application to restrain the defendant from removing fence and causing interference with the possession. The main relief is also the same. The final relief cannot be granted at the interlocutory application. The very crux of the issue with respect to identification. Hence, the same has to be determined after full fledged trial. As such, by considering the above facts and circumstances at this stage, it is the plaintiffs have failed to show that they would put to irreparable loss and injury if the application is not allowed. Accordingly Point No.1 to 3 are answered in the ***Negative.***



13. **Point No.4::** For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

IA No.II filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby dismissed.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 10th day of September, 2025]

[Lakshmi Narasimha R.V,
Civil Judge and JMFC,
Sakaleshpura.