



IN THE COURT OF C/C THE CIVIL JUDGE & JMFC.,
SAKALESH PURA

-.PRESENT:-

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

C/c. Civil Judge & JMFC., Sakaleshpura.

Dated this the 15th day of April, 2025

O.S. NO. 317/2024

PLAINTIFFS : **Sri. Raju and others**

V/s.

DEFENDANTS : **Smt. Kanaka and another**

I.A. No.II

Plaintiffs/Applicants : **Sri. Raju and others**

V/s.

Defendants/Opponents : **Smt. Kanaka and another**



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 defendants their agents, men or anybody claiming through them from interfering with the possession of 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, the suit schedule property is the ancestral property of the plaintiffs, originally belonging to their father by name Malaiah S/o Gondigaiah by virtue of Exchange deed. The plaintiffs are in possession of the suit schedule property by growing crops thereon. The defendants have no any right, title or interest over the suit schedule property, tried to interfere with the possession by harvesting the crops. In spite of approaching the 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.

3. Upon the service of the summons, the defendants have appeared before the court through their counsel and filed written statement cum objections. It is their contention that the land bearing Sy No. 83 got phoded and renumbered as several survey numbers. Originally land bearing Sy No.83 of Belluru village is the government land. The defendants are in lawful possession of the land to extent of 10 guntas since 30 years by growing coffee and other trees and also constructed the house bearing khata No.116. The defendant are residing in the said house along with family members. They have also given Form No.53 for regularization of unauthorized cultivation. The plaintiffs came to the property of the defendants and tried to interfere with their possession by



making quarrel. Inspite of approaching the jurisdictional police, went in vain. The plaintiffs have filed this suit only with an intention to grab the property of the defendant. Accordingly, prayed to dismiss the application.

4. 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?

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



6. 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::

7. **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.

8. The plaintiffs have filed the present suit for the relief of permanent injunction in respect of suit schedule property. They have mainly contended that the suit schedule property was originally belonged to their father Mallaiah acquired by way of Exchange deed. The plaintiffs have also produced the copy of Exchange deed dated 13.01.2015 executed



between Chaitra and the said Mallaiah and RTC extracts. On perusal of the same, it appears on prima-facie that the suit schedule property has fallen to the said Mallaiah. On the other hand, the defendants have also contended that they are in possession of 10 guntas of land in Sy No.83 and they have also submitted Form No.53 in the year 2012. Further, it appears on prima-facie that the defendants have also constructed house bearing khata No.116. The financial Aid is also sanctioned in favour of the defendants for construction of house. Further, it appears on prima-facie that the defendants have also lodged complaint against the plaintiffs for having removed the fence and cutting the silver trees. Hence, at this stage it appears that there is a dispute as to boundaries of the suit schedule property.

9. It is to note here that the learned counsel for defendants has relied upon 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. As stated supra, it appears on prima facie that there is a dispute as to boundaries of the property of plaintiffs and defendants. Hence, at this stage, the plaintiffs have failed to prove the prima-facie case and balance of convenience in their favour.

10. The plaintiffs have contended that the defendants are trying to interfere with the possession of suit schedule property. On the other hand, the defendants have lodged complaint before the police on the ground that the plaintiffs are interfering with the possession of property of defendants. Hence by considering the above facts and circumstances at this stage, the plaintiffs have failed to prove prima-facie case and balance of consideration in his favour and also irreparable



loss and injury if the application is not allowed. Accordingly

Point No.1 to 3 are answered in the ***Negative.***

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

::ORDER::

Application 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 15th day of April, 2025]

[Lakshmi Narasimha R.V,]
C/c. Civil Judge and JMFC,
Sakaleshpura.