



IN THE COURT OF THE CIVIL JUDGE AND
JMFC , AT: BYADGI

Present: **Sri Suresh Wagganavar,**
MA. LL.B., (Spl)

Civil Judge & JMFC,Byadgi.

Dated this the 02nd day of December, 2024

Original Suit NO.139/2021

1. Sri.Sannatammanagouda S/o Shankaragouda
Kenchanagoudra and another one.

(By Sri.S.H.G., Advocate)

.....PLAINTIFFS:

V/S

1. Sri.Ramappa S/o Basavanneppa Masanagi
and others.

(By Sri.M.B.H.,Advocate for D-1 & 2)
(By Sri.M.M.M.,Advocate for D-3 & 4)

.... DEFENDANTS:



PARTIES TO THE IA NO.I

1. Sri.Sannatammanagouda S/o Shankaragouda
Kenchanagoudra, Age: 44 years, Occ: Agriculture,
R/o: Bannihatti, Tq: Byadgi, Dist: Haveri.
2. Smt.Annapurna W/o Sannatammanagouda
Kenchanagoudra, Age: 42 years,
Occ: Household work, R/o: Bannihatti,
Tq: Byadgi, Dist: Haveri.

.... Applicants/Plaintiffs

VS

1. Sri.Ramappa S/o Basavanneppa Masanagi
Age: 60 years, Occ: Agriculture,
R/o: Bannihatti, Tq: Byadgi, Dist: Haveri.
2. Smt.Jayavva W/o Chandrappa Masanagi
Age: 55 years, Occ: Household work,
R/o: Bannihatti, Tq: Byadgi, Dist: Haveri.
3. Sri.Ramanagouda S/o Shankaragouda
Kenchanagoudra, Age: 58 years, Occ: Agriculture,
R/o: Bannihatti, Tq: Byadgi, Dist: Haveri.
4. Sri.Bharamagouda S/o Ramanagouda
Kenchanagoudra, Age: 32 years, Occ: Agriculture,
R/o: Bannihatti, Tq: Byadgi, Dist: Haveri.

.... Opponents/Defendants



ORDER ON IA.NO.I

1. The plaintiffs have filed application U/o XXXIX Rule 1 and 2 R/w Sec.151 of CPC., by seeking prayer to grant T.I restraining the defendants from not to interfering 'Q.T.L.J' hand sketch map over the suit property and not to install stone and fencing wire till disposal of the suit.

2. In the accompanying affidavit of the interim application, plaintiff No.2 has averred that, the suit schedule property is belongs to Bannihatti Gram Panchayat property and old number is No.48 and new number is 285. The plaintiff No.1 and his another brother Ramanagouda S/o Shankaragouda Kenchanagoudra are jointly cultivating the suit schedule property. The 'K.L.M' is the suit schedule property. The defendant No.3 is colluding with defendant No.1 and 2 and he has constructed the



house as per old Panchayat No.49 and new No.286. This being the fact, the defendant No.3 has trying to fencing wire on the suit property. Hence, the IA.

3. Per contra, the defendant No.1 and 2 have appeared through their counsel and filed written statement. Wherein it is contended that the suit of the plaintiffs is not maintainable under law or on facts. The hand sketch map produced by the plaintiffs is not correct. The plaintiffs and defendants are use and enjoyment over the ancestral property on eastern side. The suit property and other properties are use and enjoyment by the plaintiffs and defendants. The defendants have use and enjoyment over 'C.I.E' property since 15-20 years and they have fenced wire. Hence, prays to reject the application.



4. Arguments not canvased, in view of the material placed before me and the rival contention raised by the parties. The following points have arisen for my consideration;

P O I N T S

1. Whether the applicants/plaintiffs have made out a prima-facie case for the grant of the TI as prayed?

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

3. Whether irreparable loss would be caused to the applicants/plaintiffs. If the instant interlocutory application is not allowed?

4. What order ?

5. My answer to the above points are as under;

Point No1 : In Negative,

Point No.2: In Negative,



Point No.3: In Negative and

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

R E A S O N S

6. Point No.1 to 3: These points are taken together for common discussions and to avoid the repetition of facts.

It is made clear that, at this stage, only whatever observation made below and opinion expressed are only for the purpose of disposal of this IA. These observations shall not carry any weigh in the final disposal of this case.

7. The plaintiffs have contended that, the suit properties are use and enjoyment by the plaintiffs. The defendants are trying the fencing the wire and trying to interfere peaceful possession of plaintiffs. To prove the prima facie case, the plaintiffs have produced property tax



register, declaration certificate and tax paid receipt. On perusal of above said documents, it reveals that the suit property Panchayat No.285 is standing in the name of Basanagouda, Ramanagouda, Kantanagouda, Sannatammanagouda S/o Shankaragouda Kenchanagoudra. On perusal of plaint cause title, it reveals that the plaintiffs have not made the Basanagouda and Kantanagouda in this suit. The suit property is jointly standing in the name of Basanagouda, Ramanagouda, Kantanagouda, Sannatammanagouda S/o Shankaragouda Kenchanagoudra. Therefore, the plaintiffs have not claimed injunction against co-owner. The interim application No.1 is not maintainable against co-owner. The plaintiffs have produced photographs, it reveals that already stone and wire are fencing in the suit property.



Hence, the application filed by the plaintiffs is not maintainable.

8. The materials available before this court, at this stage, is imperative on this court to hold that the plaintiffs have not made out a prima-facie case which is suffice to grant the discretionary relief of temporary injunction. As per the settled principle of law that, one who seeks discretionary relief of injunction must come to the court with clean hands.

9. In so far as the hardship is concerned, from the facts and circumstances of the case on hand, it appears that, the defendants will be put to greater hardship, if the TI is granted. This is because the defendants are co-owner with the plaintiffs. Apart from this the injunctive order if any that may be granted against the defendants will certainly



postpone for an indefinite period. On the other hand if the relief of injunction is refused no hardship will be caused to the plaintiffs. In case the plaintiffs succeeds in their claim, they definitely entitled for the relief as prayed in the plaint. Hence looking into any angle the comparative hardship is more on the defendants rather than the plaintiffs. Like wise the balance of convenience also lies in favor of defendants.

10. From the above discussions, it is quite obvious that, the plaintiffs have failed to make out prima-facie case for the grant of TI as prayed and also failed to prove other two statutory ingredients. Accordingly, this court answered the **point No.1 to 3 in the negative.**

11. Point No.4: Since the plaintiffs have failed to make out a prima-facie case and failed to proved hardship and



the balance of convenience, they are not entitled to discretionary and equitable relief of TI as payed. Hence, for the aforesaid reasons, I proceeds to pass the following;

ORDER

IA.No.I filed by the plaintiffs U/o 39
Rule 1 and 2 R/w Sec. 151 of CPC., is hereby
rejected.

No order as to costs.

(Dictated to the stenographer, directly typed by her, corrected, and then pronounced by me in the open court On this the **02nd December, 2024**)

(SURESH WAGGANAVAR)
Civil Judge & JMFC,
Byadgi.