

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL

PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Civil Judge & J.M.F.C.,
Hangal.

O.S.No.171 of 2024

DATED THIS THE 12th DAY OF AUGUST 2024

Plaintiff: Rudramma W/o Dayanand Adaviswamimath

(By Sri.M.M.Mulla – Adv.)

V/s.

Defendant: Gram Panchayat Committee, Balambeed

(By Sri.K.B.Doddamani – Adv.)

PARTIES TO I.A.No.I

Applicant/

Plaintiff:

Rudramma W/o Dayanand Adaviswamimath
Age: 35 years, Occ: Home Maker
R/o: Channapur village, Tq: Hangal,
Dist: Haveri.

- V/s -

Opponent/

Defendant:

Gram Panchayat Committee, Balambeed,
Reptd., by its Panchayat Development Officer,
Gram Panchayat Committee, Balambeed,
Tq: Hangal, Dist: Haveri.

I	Provision under which the application is filed	U/o.XXXIX Rule 1 & 2 of C.P.C.,
II	Relief sought for	Temporary injunction to restrain the defendant from encroachment of suit schedule property and raising any kind of structure thereon and further restrain him from interfering in peaceful possession and enjoyment of the suit schedule property.
III	Date on which the application is filed	13-06-2024
IV	Number of application	I.A.No.I
V	The date of which objections filed by the different opponents	29-07-2024/ through a memo prayed to treat contents of written statement as objections to I.A.No.I
VI	Date on which the orders were passed on said application	12-08-2024

(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.

ORDERS ON I.A.No.I FILED U/O XXXIX RULE 1 AND 2
OF C.P.C

The applicant/plaintiff has filed this application U/o.XXXIX Rule 1 & 2 of C.P.C., by seeking to restrain the defendant from encroachment of suit schedule property and raising any kind of structure thereon and further restrain him from interfering in peaceful possession and enjoyment of the suit schedule property by way of ad-interim temporary injunction till disposal of the suit.

2. In affidavit annexed to the application by reiterating the smiler set of facts in the plaint, the applicant/plaintiff deposed to the facts that suit schedule property situated at Channapura village and suit schedule property along with must of other properties of Channapura village belonging to ownership of Sri.G.R.Desai and as he dies long back and his family members not residing in the said village, the suit schedule property was in settled possession of husband of herself and his ancestors. The suit schedule property originally part and parcel of property in V.P.C.No.528 consist of house and open space. As per amicable partition between husband of herself and family members of husband, said property was fallen to the share of her husband's brother one Sri.Kumaraswami and subsequently, fallen to the

share of herself. As a result of said partition, property in V.P.C.No.528 are divided into two parts and consequently assigned with property in V.P.C.No.528 and V.P.C.No.528A and as such, suit schedule property has been in possession and enjoyment of herself. To the contrary, based on created and concocted documents, suit schedule property claiming as property of the defendant in V.P.C.No.529/1 and same is an "Sarvajanika Garadi Mani", the defendant illegally and high handedly removed zink shed situated in the suit schedule property on 04-03-2024 and trying to construct Anganavadi building thereon. The suit schedule property is in settled possession of herself ever since time of her husband's ancestors and as such, the defendant has no authority to remove zink shed belonging to plaintiff and construct Anganavadi building thereon. When the defendant made attempts to encroach the suit schedule property on 23-05-2024 and dig a foundation thereon for the purpose of construction Anganavadi building, due to timely intervention of herself and general public at large, same came to be desisted. The defendant at any point of time encroach the suit schedule property and construct building thereon and if the defendant succeeds in said attempt same would cause great hardship and inconvenience to herself. It is further contended that, the documents produced with the suit establish prima facie

case and unless temporary injunction as sought for is granted, she would be put to great hardship and inconvenience. On said grounds, it is prayed to allow the application.

3. In response to suit summons, the defendant has appeared through his counsel and resisted the suit by filing written statement. In addition, the counsel for the defendant filed a separate memo dated 29-07-2024, wherein prayed to treat contents of written statement as objections to present application.

4. In the written statement the defendant contended that suit is based on false and fictitious facts and therefore, neither maintainable under law and facts and thereby denied each and every averments of plaint as false and called upon strict proof of the same. In addition, the defendant has independently asserted the facts to the effect that boundaries of the suit schedule properties are false and baseless and in order to grab the property of the Gram Panchayat in V.P.C.No.429/1 therein Anganavadi is running, the plaintiff has filed false suit. In fact, due to damage sustained to said Anganavadi shed on account of heavy rain in the year 2019, same was demolished and kept vacant and subsequently, the Gram Panchayat

resolved to put up new Anganavadi building thereon upon grant allotted by the Government and therefore, presently Anganavadi is running in a rented building and as such construction of new building for benefit of village children is need of an hour. Moreover, property in V.P.C.No.528 actually bounded east by property belonging to Sri.Narayana Tippaji More, west by Government road, north by property of Sri.G.R.Desai (Bogatedar Radha Parashuram Badad) and south by property belongs to G.R.Desai (Bogatedar Rudravva Dayanand Adavaisamimath) and same is occupation of the plaintiff and on the other hand, property in V.P.C.No.582/A actually bounded east by property belongs to G.R.Desai (Bogatedar Rudravva Dayanand Adaviswamimath), west by Government road, north by property belongs to Sri.G.R.Desai (Bogatedar Kumaraswami, Mallaiah, Jagadev Adaviswamimath) and south by Anganavadi Kendra, Channapur, wherein the defendant intent to construct Anganavadi center out of Rs.16,00,000/- already allotted by the Government. Even otherwise, aforesaid property in V.P.C.No.528 and 528/A there are no vacant spaces towards west of their front road and as such, the plaintiff intending to grab the property in V.P.C.No.529/1 belongs to panchayat. Prior to Anganavadi center, there was a village Garadimani therein and as such, the Gram

Panchayat and public at large resolved to construct Anganavadi Kendara therein for the benefit children. That apart, it is specifically claimed that present suit without claiming relief of title is not maintainable and the defendant has prima facie case and more balance of convenience in his favour rather than the plaintiff. On said grounds, it is prayed to dismiss the application with costs.

5. Heard the arguments of counsel for the plaintiff and defendants. Perused the materials made available on record at this stage by both the sides.

6. The points that would arise for the consideration of this court are as follows:-

POINTS

- 1. Whether the applicant has made out prima faice case?***
- 2. Whether balance of convenience is lies in favour of the applicant?***
- 3. Whether irreparable loss will be caused to the applicant if injunction is refused?***
- 4. What order?***

7. The findings of this court on aforesaid 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 final order for following:-

REASONS

8. **Point No.1 to 3:-** All these points are taken together for common discussions to avoid repetitions of facts and materials on record. The applicant/plaintiff has filed this suit for the relief of perpetual injunction seeking to restrain the defendant or anybody claiming under him from interfering in peaceful possession and enjoyment of the suit schedule property. Along with the suit, the plaintiff has maintained present application seeking to restrain the defendant or anybody claiming under him from encroachment of the suit schedule property and put up construction thereon and consequently interference in peaceful possession and enjoyment of the same.

9. It is settled law is that, the grant of temporary injunction is of discretionary and equatable relief and same shall be granted only when the applicant has establish prima facie case, balance of convenience as well as irreparable loss and injury caused to the applicant if the injunction is refused. It is equally settled principle of law is

that the applicant need not to establish that he has every chance of success in the suit. What is to be proved that the applicant has arguable case to go on for trial.

10. Bearing in mind said settled principle of law regarding the temporary injunction, it is necessary to analyze material facts and circumstances involved in the suit. It is specific case of the plaintiff that, originally property in V.P.C.No.528 belonging to ownership of Sri.G.R.Desai and on account of his death and as his family members not at all reside in the Channapur village from long back, husband of plaintiff's ancestors were in settled possession of the suit schedule property and initially, suit schedule property fallen to the share of brother of plaintiff's husband one Sri.Kumaraswami and later the suit schedule property fallen to share of herself. Such being the facts, the defendant based on created and concocted documents and suit schedule property claiming as property in V.P.C.No.529/1, the defendant being public servant that on 04-03-2024 high handedly removed zink shed sheet in the suit schedule property and trying to construct Anganavadi building thereon which constrained her to file this suit along with present application for temporary injunction.

11. Per contra, the defendant by denying very case of the plaintiff in toto has specifically contented that the plaintiff based on false boundaries and description of the suit schedule property and with intention to knock of the panchayat property in V.P.C.No.529/1 alleged to had filed false suit and thereby prayed to dismiss the application.

12. To prove prima facie case and substantiate plaint as well as affidavit averments, the plaintiff relied on several documents produced along with the list of documents dated 11-06-2024 filed at the time of institution of suit. The documents produced by the plaintiff are of in the nature of true copies of tax assessment extracts in respect to property in V.P.C.No.528A, V.P.C.No.528 and V.P.C.No.529/1, information given by public information officer, Gram Panchayat Balambeeda dated 26-03-2024 photographs and CD. On the other hand, the defendant produced 13 documents along with list dated 03-07-2024 in the form of report of Assistant Executive Engineer, Sub Division, Hangal, true copy of panchayat property register extract, description certificate dated 20-07-2024, application dated 10-11-2020 seeking permission for construction Anganavadi building, ture copy of panchayat resolution dated 13-09-2021, representation of public at large of Chnnapura village dated 10-09-2021, true copies of

letter correspondence made by the CDPO, Hangal and CEO Taluk panchayat, notices issued by committee of Gram Panchayat, Balamabeed to one Sri.Jagadevaiah Adavisamwimat and photographs and CD.

13. It is not in dispute that property in V.P.C.No.528 and V.P.C.No.528/A which are suit schedule properties belonging to plaintiff and in her possession. Said admitted fact substantiate through document No.1 and 2 produced by the plaintiff along with list dated 11-06-2024 which are true copies of tax assessment extract in V.P.C.No.528/A and V.P.C.No.528. As could be pleaded in the plaint, the defendant alleged to had concocted and created the panchayat documents in respect to suit schedule property with V.P.C.No.529/1 and claiming right therein without there being any right and interest thereof. In fact, very document No.3 produced by the plaintiff is in respect to property in V.P.C.No.529/1 consist of vacant space and same is standing in the name of Anganavadi, Channapura village and same is further denoted as public property which property claimed to had been concocted by the defendant in respect to suit schedule vacant space. To the contrary, on prima facie perusal of document No.2 produced by the defendant along with list of documents dated 03-07-2024, apparently substantiate separate

existence of property in VPC.No.528, VPC.No.528A, VPC.No.529/1 and VPC.No.529/2 in the panchayat register extract itself.

14. In the context of said documents, on further consideration property extract bearing V.P.C.No.529/1, same would disclose that said property has been in existence since the year 1980 to till date. If at all, property in V.P.C.No.529/1 was not at all in existence and same has been created by the defendant, entry should not had been found in the panchayat register extract and consequently cannot be in existence since the academic year 1980. Aforesaid documents apparently falsify the case of the plaintiff that property in V.P.C.No.529/1 is a created document in respect to suit schedule property. In this regard, fact to be noted that, the plaintiff at the time of institution of suit would have produced property register extract to show that originally property in V.P.C.No.529/1 not in existence and property extract as per document No.3 in respect to V.P.C.No.529/1 has been created by the defendant so as to encroach the suit schedule property belonging to the plaintiff. In fact, entry and existence of property in V.P.C.No.529/1 both in panchayat register extract and consequent khata to that effect has not been

challenged by the plaintiff till date of filing the suit before competent authorities.

15. In addition, the plaintiff narrated description of the suit schedule property towards southern direction as existence of house property of one Smt.Laxmi Narayanappa Haveri and same is pertaining to property in V.P.C.No.529/2. In fact, property in V.P.C.No.529/2 standing in the name of said Smt.Laxmi Haveri is well depicts under tax assessment register produced by the defendant. To the contrary, the plaintiff as against boundaries certificate issued by PDO of Gram Panchayat i.e., defendant on 20-07-2024, same would depicts that the suit schedule property well located towards northern direction of the Gram Panchayat V.P.C.No.529/1 and towards southern direction the property of said Smt.Laxmidevi W/o Narayanappa Haveri i.e., property in V.P.C.No.529/1 is located. If said description certificate and panchayat property register extract produced by the defendant is considered, the plaintiff apparently merged property in V.P.C.No.529/1 within description of the suit schedule property. If said facts and documents are taken into consideration, same would depicts that suit involves serious boundaries dispute between parties to the lis. Moreover, documents relied by the both the sides not at all

discloses measurement of their respective properties and the plaintiff at the same time not at all produced any documents to substantiate correctness of boundaries of the suit schedule properties. Such being the materials on record and as the suit involves serious boundaries disputes and failure of the plaintiff to substantiate boundaries of the suit schedule property at this stage, she has failed to establish her prima facie case.

16. As indicated earlier, the plaintiff not at all challenged panchayat documents in respect to V.P.C.No.529/1 which appears to have been in existence since year 1980 and as such it is highly improbable to believe version of the plaintiff that the defendant in order to encroach suit schedule property has created panchayat documents in respect to V.P.C.No.529/1. The conduct of the plaintiff in non production of panchayat register extract which depicts existence of property in V.P.C.No.529/1 from long period shows that she has not approached the court with clean hands and thereby concealed material facts regarding aforesaid property which prima facie appears to be public property in which there was existence of Anganavadi center. In the aforesaid context, on consideration of several official correspondence took place between defendant, CDPO, Hangal and PWD department

and more specifically report of Assistant Executive Engineer, Sub -Division, Hangal, disclose the fact that the defendant with the assistance of jurisdictional police already removed alleged zink shed put up by the plaintiff by encroachment of property in V.P.C.No.529/1 which apparently standing in the name of Gram Panchayat, Channapur and therefore, the plaintiff not at all in possession of subject matter of alleged encroached suit schedule property and possession of the same already taken by defendant panchayat. Consequently, present suit filed for bare injunction without seeking relief of declaration and consequential relief of recovery of possession prima facie not maintainable. No doubt, trespasser who is settled possession of the property is entitle to protect the possession. As indicated earlier, when the plaintiff appears to had been dispossessed from alleged encroached suit schedule property by virtue of removal of zink shed put up by her, present suit without seeking relief of recovery of possession is not at all maintainable. When the plaintiff not at all sought for appropriate relief in the suit and her possession over entire suit schedule property found to be doubtful, and not approached the court with clean hands, she is not entitle for equatable relief of temporary injunction. Viewed from any angle, the plaintiff failed to establish prima facie case and balance of convenience not

lies in her favour and moreover, balance of convenience not tilt in her favour. Accordingly, point No.1 to 3 are answered in the negative.

17. **Point No.4:-** In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

***I.A.No.I filed by the plaintiff U/o
XXXIX Rule 1 & 2 of C.P.C., is hereby
dismissed.***

No order as to costs.

***Consequently, order of exparte TI
granted on 15-06-2024 is hereby
vacated.***

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 12th day of August - 2024)

***(JANARDHANA S.K)
Civil Judge and JMFC.,
Hangal.***