



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. SRINIVASA. S. N,**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.NO.118 / 2024

Dated this 12th day of June, 2026

PLAINTIFFS: **Bharamappa S/o Fakkirappa
Aniyavar and others**

Vs

DEFENDANTS: **Malleshappa S/o Rangappa Alur and
another**

IA No.I

Applicant: **Bharamappa S/o Fakkirappa
(Plaintiffs) Aniyavar and others**

Vs

Opponent: **Malleshappa S/o Rangappa Alur and
(Defendants) another**

i	Provision under which the application is filed	U/O.XXXIX Rules 1 and 2 read with Section 151 of CPC
ii	Relief sought for	Temporary injunction restraining the defendants, their agents or anybody.



iii	The date on which the application is filed	10-04-2024
iv	The date on which the objection is filed by different opponents	On 09-07-2024 defendants' counsel filed memo to treat the written statement as their objections to the present application.
v	The date on which the order was passed on the said application	12-06-2026

ORDER ON I.A. NO.I

The plaintiffs have filed I.A. No.I under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking an order of temporary injunction restraining the defendants, their agents or anybody claiming through them from putting up any construction by encroaching upon the suit property pending disposal of the suit, in the interest of justice and equity.

2. The plaintiff no.1 has sworn in an affidavit accompanying with IA No.I, wherein he stated that the suit property is a public road measuring East-West 15 feet and that the plaintiffs and other residents have been using the said road for ingress and egress to their houses and backyard lands. According to the plaintiffs, the defendants have illegally



encroached upon a portion of the public road and commenced construction of a building by laying foundation over the road. It is contended that there is no alternative access available to the plaintiffs and if the construction is permitted to continue, their right of passage would be seriously affected. Hence they have filed this suit along with this interim application. The plaintiffs have made out prima-facie case, balance of convenience lies in their favour. The plaintiffs have produced photographs and a hand sketch map in support of their contention. Hence, prays to allow the application.

3. The defendants have appeared and filed their written statement and filed memo to treat the same as their objections to the present application. They contended that the application is not maintainable either in law or on facts. They have denied the allegations of encroachment and contended that the property in question belongs to the father of defendant No.1. It is their specific case that the Karnataka Slum Development Board has identified defendant No.1 as a beneficiary and the construction is being undertaken under a government scheme. According to them, the plaintiffs have instituted the suit only to harass the defendants. It is further



contended that the concerned authorities such as the Chief Officer of TMC, Tahsildar, Assistant Commissioner, Survey Department and Karnataka Slum Development Board have not been made parties to the suit though they are necessary parties for adjudication of the dispute. The defendants have also contended that inspection was conducted by the TMC authorities pursuant to a complaint made by the plaintiffs, wherein no encroachment was reportedly noticed. The present suit and application are filed only to harass the defendants. Hence, they pray for rejection of said application with costs.

4. The following points arise for my consideration:

1. ***Whether the applicants/plaintiffs have made out a prima facie case?***
2. ***Whether the balance of convenience lies in their favour?***
3. ***Whether irreparable loss will be caused to them if Temporary Injunction is not granted?***
4. ***What order ?***

5. My answers to the 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 final order for the following;



:-REASONS:-

6. Point No. 1 to 3:- The plaintiffs have filed the present suit seeking the relief of permanent injunction restraining the defendants from encroaching upon and making construction over the suit schedule property, which is alleged to be a public road, and from causing obstruction to the plaintiffs and other villagers in the use of the said road.

7. Along with the suit, the plaintiffs have filed I.A.No.1 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking an order of temporary injunction restraining the defendants, their agents or anybody claiming through them from putting up any construction by encroaching upon the suit property pending disposal of the suit, in the interest of justice and equity.

8. In order to grant temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of CPC, it is a well-settled principle that the applicant must first establish a prima facie case in her favour.

9. Upon careful observation of the pleadings, submissions and the documents placed on record, the specific case of the



plaintiffs is that the suit property is a public road measuring East-West 15 feet and that the defendants have encroached upon a portion thereof and commenced construction. To substantiate their contention, the plaintiffs have produced certain photographs and a hand sketch map.

10. On the other hand, the defendants have categorically denied the allegation of encroachment and contend that the construction is being undertaken within their own property. According to them, the property belongs to the father of defendant No.1 and the construction is being carried out pursuant to a scheme implemented by the Karnataka Slum Development Board.

11. On perusal of the photographs produced by the plaintiffs, it appears that construction activity is in progress. The photographs further indicate that substantial construction has already been completed and the building has reached an advanced stage. The plaintiffs have also produced a xerox copy of the notice allegedly issued by the Town Municipal Council to defendant No.1, wherein the municipal authority appears to have called upon defendant No.1 to produce documents relating to the construction. The



plaintiffs have also produced a copy of the notice issued by the Town Municipal Council to defendant No.1. Though the said document is only a photocopy and its evidentiary value will have to be determined during trial, it prima facie indicates that the municipal authorities had questioned the construction and called upon defendant No.1 to produce documents relating to the property and construction.

12. At the same time, the plaintiffs have not produced any authoritative public record such as survey sketch, municipal map or official survey report establishing that the portion shown in the hand sketch map as "EFGH" forms part of a public road. The hand sketch produced by the plaintiffs is only a self-serving document and by itself cannot conclusively establish encroachment.

13. The defendants have denied the encroachment and claim ownership over the property. The defendants contend that the construction is being undertaken on property standing in the name of the father of defendant No.1. However, no clear survey records or authenticated documents have been placed before the Court at this stage showing the precise boundaries of the property under construction.



14. On perusal of the photographs produced by the plaintiffs themselves discloses that the construction has already progressed to an advanced stage. The photographs clearly indicate that the first-floor moulding/slab has been completed and substantial construction has already been carried out. Thus, the material produced by the plaintiffs itself reveals that the construction sought to be restrained has already been substantially completed.

15. The relief sought in the present application is to restrain the defendants from putting up construction. Temporary injunction is a preventive relief intended to prevent a threatened or continuing act. Such relief cannot ordinarily be granted in respect of an act which has already been completed. When the construction has already been completed or substantially completed, the question of restraining the defendants from undertaking the very same construction does not arise.

16. Though the plaintiffs have produced a copy of the notice allegedly issued by the Town Municipal Council to defendant No.1 regarding construction, the same by itself does not establish that the defendants have encroached upon a public



road. The question whether there is any encroachment and whether the construction is within the defendants property or over a public road are matters which require detailed evidence and adjudication during trial.

17. In view of the photographs produced by the plaintiffs showing completion of substantial construction, this Court is of the considered opinion that the plaintiffs have failed to establish a prima facie case for grant of the relief sought in the application. Therefore, this Court has answered ***point No.1 in the Negative.***

18. POINT NO.2 AND 3:- Before granting of the temporary injunction, the following considerations are required to be satisfied:

- (i) There is a prima facie case in favour of the plaintiff and against the defendant.
- (ii) That irreparable injury is likely to be caused to the plaintiff which cannot be compensated for in terms of money.
- (iii) That the balance of convenience lies in favour of the plaintiff and against the defendant.

19. To grant temporary injunction, it is not sufficient that the plaintiff has made out a prima facie case. The Court must also examine whether the balance of convenience lies in



favour of the plaintiffs and whether refusal of injunction would cause irreparable injury to them.

20. In support of this view this Court is relied on the decision of our ***Hon'ble High Court of Karnataka reported in ILR 1989 Kar. Page No.1701 (Shri Gowrishankara Swamigalu VS Sri Siddhaganga Mutt), held at para No. 25 which is extracted as under:-***

“25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself, But if there was a prima facie case then other considerations governing the grant of injunction” would come into play and will also have to be evaluated before granting or refusing the injunction.



21. In the present case, there is a dispute regarding the alleged encroachment of a public road by the defendants. Further, when the construction has already been substantially completed, the balance of convenience does not lie in granting an injunction restraining construction. The rights of the parties regarding title, possession, existence of road and alleged encroachment can be adjudicated after recording evidence during the course of trial.

22. Likewise, the plaintiffs have failed to demonstrate that refusal of temporary injunction at this stage would result in irreparable injury. The question whether the defendants have raised construction by encroaching upon a public road is a matter to be decided after full-fledged trial on the basis of evidence. If the plaintiffs ultimately succeed in proving that the construction has been made upon a public road or public property, they would be entitled to seek appropriate reliefs in accordance with law, subject to the final adjudication of the suit. At this stage, the plaintiff has failed to establish the essential ingredients required for grant of temporary injunction. Accordingly, ***Point No.2 and 3 are answered in the Negative.***



23. Point No.4:- For the foregoing reasons, this court proceed to pass the following;

ORDER

**I.A. No.I filed under Order XXXIX
Rules 1 and 2 r/w Section 151 of
CPC by the plaintiffs is hereby
rejected.**

**Any observations made above
will not be having bearing on the
main matter.**

*(Dictated to the stenographer on computer, corrected, signed and then pronounced
by me in the Open Court on this the 12th day of June, 2026)*

(SRINIVASA S.N.)
CJ & JMFC., Savanur.