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OS No.143/2024

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C AT
SHIGGAON**

Present: Ashwinichandrakanth
B.Sc., LL.B.
Civil Judge and J.M.F.C.,
Shiggaon.

DATED 20th DAY OF DECEMBER, 2024

ORIGINAL SUIT NO.143/2024

1. Sri.Fakkirappa S/o. Shivappa Dharennanavar,
Age: 76 years, Occ: Cooli,
R/o: Kalakatti, Tq: Shiggaon, Dist.Haveri.

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

.....PLAINTIFF:

V/s.

1. The Panchayath Development Officers,
Grama Panchayath, Chandapur,
Tq: Shiggaon and others.

**(Sri.A.A.P., Advocate for D1 to D3)
(Sri.A.G.P., Advocate for D4 & D5)**

.... DEFENDANTS:

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PARTIES TO THE IA NO.I

1. Sri.Fakkirappa S/o. Shivappa Dharennanavar
.... Applicant/Plaintiff

V/s.

1. The Panchayath Development Officers
and others.
.... Opponents/Defendants

ORDER ON IA.NO.I

The plaintiff has filed application under Order XXXIX Rule 1 and 2, by seeking prayer to grant ad-interim injunction against the Defendants No.1, 3 and 4 not to pass any bill for the construction of the suit schedule property till disposal of suit.

2. In support of the application Plaintiff has duly sworn affidavit and annexed the same along with the

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application and stated that, RS No.5/A measuring 0.11 acres 07 guntas out of that towards Eastern side 03 acres 0.20 guntas which is styled as suit schedule property. In the middle portion of the suit schedule property I have constructed new house 36 ft. towards East - West and 21 ft. towards North - South and prays to grant permanent injunction against Defendants No.1, 3 and 4 has not to pass any bill for the construction. Plaintiff further submitted that, he is peaceful possession by illegally cultivating the land and illegally constructing house in the that land. The suit schedule property is situated at Kalakatti village Bankapur Hobli Shiggaon Taluk in RS No.5/A measuring 0.11 acres 07 guntas out of which towards Eastern side 03 acres 0.20 guntas, in the middle of 03 acres 0.20 guntas there is

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constructed house. The same is shown as in the hand sketch annexed with plaint. Further submitted that, he is in illegal possession over the suit property for 30 to 35 years along with his wife, daughter and their husband. The suit schedule property measuring 03 acres 0.20 guntas is bounded by towards East - Remaining portion of 05 guntas of RS No.5/A, West - Yallamma Temple and water tank, North - Anganwadi and South - Property of Mugalikatti Desai.

3. The Plaintiff further submitted that, he is the permanent resident of Kalakatti village and Chandapur Grama Panchayat Shiggaon. Plaintiff is the old age person, belong to backward community and weaker section. Hence, the Plaintiff is cultivating and residing at suit schedule property illegally for the period of 30 to

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35 years. Plaintiff has approached the government to consider his illegal possession over the suit schedule property as legally. The suit schedule property is stands in the name of Forest Department. Hence, Forest Department is made as a party to this suit and in addition to that he planted voluntarily Sandal Wood, Neem and other valuable trees. Under such circumstances Forest Officers and people of Kalakatti village colluded together and tress passed the schedule property in order to cause damage. Therefore, the Plaintiff has lodged the criminal case and also civil case on the file of OS No.13/2022 which is pending before this Court. Plaintiff further submitted that, In RS No.5A towards Eastern side having 0.3 acres 0.20 guntas and towards Northern side remain 03 acres of extent is

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bifurcated by way of podi. On 17.12.2021 Grama Panchyath Chandapur passed resolution and allotted 2, 3, 4, 5 guntas of site for weaker section people and declared the remaining 3 acres as gomala land. 50 ft. towards Northern side there was a Anganwadi building which is now deteriorated in the same building is not reconstructed. Plaintiff constructing house in the suit schedule property whereas Defendants is trying to portrays the said house as Anaganawadi building and trying to release the bill for construction of the said alleged Anganawadi building. Hence, the Plaintiff prays to this court to allow this application.

4. On service of summons Defendants No.4 and 5 have appeared before this court and filed objections for IA No.I and stating that, the reasons assigned in the

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affidavit are all false and further submitted that, Plaintiff has not shown the correct measurement of suit schedule property and fail to produce any documents that he is in possession of the suit property since from 32 to 35 years illegally. Hence, for this reasons Defendants prays to this court to dismiss this application with costs.

5. Heard, the arguments adduced by the both counsels, in view of the material placed before me and the rival contention raised by the parties.

6. The following points have arisen for my consideration;

P O I N T S

1. Whether the prima-facie case lies infavour of Plaintiff?



2. whether the balance of convenience lies infavor of Plaintiff?
3. whether irreparable loss would be caused to the plaintiff. If the instant interlocutory application is not allowed?
4. What order ?
7. My answer to the above points are as under;

Point No1 : In Negative

Point No.2: In Negative

Point No.3: In Negatives and

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

R E A S O N S

8. **Point No.1:** The Plaintiff seeking for relief of injunction against Defendants not to release the bill till disposal of the suit with respect to suit schedule property.



9. At this stage without going to the merits of the case holding mini trial, this Court has considered the aspect of prima-facie case. At this stage this court makes it clear this court it looking forward prima-facie case not prima-facie title. It is settled principle of law that, at the time of disposing temporary injunction application the court cannot go into the prima-facie case title and only to consider whether the Plaintiff has made out prima-facie case for granting interim relief. The primary purpose of granting interim relief is preservation of things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words the object of making order regarding interim relief is to evolve a workable formula to the extent called for the demands of situation,



keeping in mind the pros and cons of the matter and striking a delicate balance between to conflicting interest i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused and injury and prejudice likely to be caused to the Defendants if relief is granted. The underlining object of granting Permanent Injunction is to maintain and preserve status-quo at the time of institution of proceedings and to prevent change in it until final determination of suit. It is in the nature of protective belief granted infavour of party to prevent future possible injuries.

10. The power to grant temporary injunction is at the discretion of the court. This discretion however should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly

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granted as it adversely affects the other side. The first rule is that application must make out prima-facie in support of right claimed by him. The court must be satisfied that there is a bonafied dispute raised by the applicant, that there is a strong case for trial which needs to be investigation and a decision on merits and facts before the court there is a probability of the applicant being entitled to the relief claimed by the Plaintiff. The existence of prima-facie right and infraction of such right is a condition precedent for grant of temporary injunction.

11. The Plaintiff in support of the case produced RTC, Notice, Postal receipts, Postal tracking, Aadhar card, Plaint of OS No.13/2022, Photographs, Electricity bill, VPC extract and Ration card. On the other-hand in

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support of the case Defendant have not produced any documents.

12. On perusal of the pleadings of the Plaintiff and objections filed by the Defendants No.4 and 5 and in addition to that documents placed before this court. The suit schedule property bearing RS No.5A which stands in the name of Forest Department. Plaintiff claiming that, in RS No.5A measuring 0.11 acres 0.7 guntas out of which towards Eastern side 03 acres 0.20 guntas which belongs to him. Further, Plaintiff submitted that, he is in possession over the suit schedule property for more than 32 to 35 years by cultivating the land and constructing the house. Such being a case Defendant No.1 claiming that, the said building is Anganawadi building and trying to pass the

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bill for further construction of Anganwadi building. Whereas the said building does not belongs to Anganwadi same is constructed by the present Plaintiff. Defendants submits that, the suit schedule property belongs to the Forest Department and denied that, the Plaintiff's possession. Without going to merits of the case on perusal of the documents produced by the Plaintiff at this juncture the documents shows that, the suit schedule property stands in the name of Forest Department and Plaintiff himself admitted that, he is in illegal possession. At this juncture the passing of bill can not be resisted by granting injunction. Under such being a case in order to ascertain whether the alleged building is belongs to Anganawadi or Plaintiff which requires full fledged trial. Hence, Plaintiff has not made



out prima-facie case Plaintiff is not entitle for discretionary relief of temporary injunction.

Accordingly, this court answered the point No.1 is in the Negative.

13. **Point No.2 and 3:** The second condition for granting interim injunction is that balance of convenience must be infavour of the Plaintiffs in other words the court must be satisfied that, the comparative mischief, hardship or inconvenience which is likely to be caused to the Plaintiffs by refusing the injunction will be grater than that which is likely to be caused to opposite party by granting it. On weighing the pleadings as well as documents of the Plaintiff and Defendants the balance of convenience does not lieu

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infavour Plaintiff. **Accordingly, this court answered the point Nos.2 and 3 are in the Negative.**

14. **Point No.4:** For the aforesaid discussion on Point No.1 to 3 this court proceeds to pass the following;

ORDER

IA No.I filed by the Plaintiff under Order XXXIX 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 **20th day of December 2024**).

Sd/-
(ASHWINICHANDRAKANTH)
Civil Judge & JMFC,
Shiggaon.