

KAHV700013162023



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OS.No.172/2023

**IN THE COURT OF THE CIVIL JUDGE AND**

**JMFC, SHIGGAON**

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

C/c. Civil Judge & JMFC, Shiggaon.

Dated this the 09<sup>th</sup> day of February 2024

**Original Suit NO.172/2023**

Suresh S/o Shivappa Havanagi

Age: 53 years, Occ: Agriculture, R/o: Kundur,

Tq: Shiggaon, Dist: Haveri.

**(By Sri.N.N.P., Advocate)**

**.....PLAINTIFF:**

**V/S**

1. Malatesh S/o Shankrappa Vanahalli  
Age: 35 years, Occ: Agriculture,  
R/o: Kundur, Tq: Shiggaon, Dist: Haveri  
and another.

**(By Sri.K.S.J., Advocate for D-1 & 2)**

**.... DEFENDANTS:**

**PARTIES TO THE IA NO.I**

Suresh S/o Shivappa Havanagi

.... Applicant/Plaintiff

V/s.



1. Malatesh S/o Shankrappa Vanahalli  
and anoter.

.... Opponents/Defendants

**ORDER ON IA.NO.I**

**1.** The plaintiff has filed application under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC., by seeking prayer to grant ad interim injunction against the defendants and persons claiming through them not to dig and construct anything and not to interfering with the plaintiff's peaceful possession and enjoyment of the suit property till disposal of suit.

**2.** In the accompanying affidavit of the interim application, plaintiff has averred that, he is the absolute owner in peaceful possession use and enjoyment of the suit property. The cousin brother of the plaintiff had purchased the suit property. The cousin brother Shivaputrappa out of natural love and affection towards the plaintiff and relinquished the property infavour of plaintiff. The defendants have no right title and interest over the suit



property and they have trying to dig and construct over the suit property. Hence, the IA.

**3.** Per contra the defendant No.1 and 2 have appeared through their respective counsel and filed written statement and submitted the written statement may be adopted objection to the IA.No.1. Wherein it is contended that, the allegations contended in the affidavit in support of IA are all false, incorrect and created only in order to harass and cause obstruction to the defendant No.1 and 2. The defendants are the owners of property No.440 and the said property was relinquished by Nagavva infavour defendants. Thereafter, the defendants have starting construction over the suit property. Hence, prays to reject the application.

**4.** Heard, arguments from both sides, 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 applicant/plaintiff has made out a prima-facie case for the grant of the TI as prayed?
2. whether the balance of convenience lies in favor of plaintiff?
3. whether irreparable loss would be caused to the applicant/plaintiff. If the instant interlocutory application is not allowed?
4. What order ?
5. My answer to the above points are as under;  
  
Point No1 : In Affirmative,  
  
Point No.2: In Affirmative,  
  
Point No.3: In Affirmative and  
  
Point No.4 : As per final order for  
  
the following:



**REASONS**

**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 weight in the final disposal of this case.

**7.** The plaintiff alleged that he is the owner and in possessor of suit property. The defendants have trying to construct over the suit property. To prove the prima-facie case, the plaintiff has produced the original sale deed. On perusal of above said documents, it reveals that, the suit property and other property had purchased by the Shivaputrappa Gurappa Havanagi. The plaintiff has produced the relinquishment deed. The cousin brother of plaintiff has relinquished some portion infavour of plaintiff. The plaintiff has produced the record of right of suit property. On the basis of relinquishment deed the plaintiff



had mutated his name in the panchayat records. The plaintiff has produced the photographs and C.D. The defendant has starting construction over the disputed property. The construction of the defendants is admitted. The plaintiff has produced the photographs it reveals that, the defendant No.1 and 2 have starting the construction.

**8.** It is pertinent to note here that, if any person intends to construct or re-construct a building, he shall send to the PDO., an application in writing for permission to execute the work together with a site plan of the land, ground-plan, elevations and sections of the building, a specification of the work and such other documents as may be prescribed. The construction or re-construction of a building shall not be begun unless and until the PDO., has granted permission for the execution of the work.

**9.** Therefore, the defendants have not produced any construction permission letter or renovation permission certificate before this court. In this case the plaintiff has rightly contended that, the defendants have trying to



construct the building over the suit property without any base.

**10.** It is pertinent to note here that interim injunction are equitable reliefs, a person who seeks the equitable relief of injunction have to come to the court with clean hands, as to stand on his own strength and should not depend upon the weakness in the case or the defence put-forth by opposite party. The first and foremost requirements of the person, who seeks the reliefs should be in possession of the property of enjoying the right, which must be legal one and not illegal. The plaintiff has contended that, the defendants have trying to interfere and starting the construction over the suit property. The plaintiff has produced the documents to shows that, he is in the possession of the suit property. The defendants have denied the possession and ownership and documents of the plaintiff. The above said contention is adjudicated at the time of full pledge trial and this court cannot hold mini trial.



**11.** The primary purpose of granting interim relief is the preservation of property in this suit till legal rights and conflicting claims of the parties before the court are adjudicated, in other words the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests that is injury prejudices likely to be caused to the plaintiff.

**13.** Therefore, the documents and photographs prima-facie appear that the defendants have standing construction without permission of the Competent Authority. In so far as the hardship is concerned, from the facts and circumstances of the case on hand, it appears that, the plaintiff will be put to greater hardship. On the other hand, if the relief of interim injunction is granted no hardship will be caused to the defendants. Hence looking to any angle the comparative hardship is more on the plaintiff rather than



the defendants. Likewise, the balance of convenience also lies in favor of plaintiff. From the above discussions, it is quite obvious that, the plaintiff has made out prima-facie case for the grant of TI as prayed. **Accordingly, this court answered the point No.1 to 3 in the Affirmative.**

**14. Point No.4:** Since the plaintiff has made out a prima-facie case and proved hardship and the balance of convenience, plaintiff is entitled to discretionary and equitable relief of TI as prayed. Hence, for the aforesaid reasons, 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 allowed.

Issue temporary injunction against defendants and persons claiming through them restraining them not to dig and construct anything on the suit property

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and from interfering with the plaintiff  
peaceful possession and enjoyment of the  
suit property till disposal of suit.

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 **09<sup>th</sup> day of February 2024**)

Sd/-  
**(SURESH WAGGANAVAR)**  
C/c. Civil Judge & JMFC,  
Shiggaon.