

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J M F C.  
AFZALPUR.

Present : Shri Vinayak Mayannavar,  
B.A.,LL.B  
Senior Civil Judge & JMFC, Afzalpur.

Dated: This, the 14<sup>th</sup> Day of August - 2025

O.S No-06/2025.

Plaintiff: Dundappa S/o Late Kallappa Kumbar.

[By Shri S.S.P. Advocate]

-V/s -

Defendants : Siddappa S/o Huleppa Gobbur  
& 9 others.

[By Shri S.V.P. Advocate]

ORDER ON IA NO-3 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiff has filed the present application praying for a temporary injunction order restraining the defendants from putting up construction or structures over the suit property pending disposal of the suit.

2. The applicant/plaintiff has contended that, the plaintiff is the absolute owner and in possession of the suit property bearing survey number 73/2 measuring 1 acre of land. The suit property is the ancestral property of the plaintiff. The suit property was earlier totally measuring 3 acre 10 gunta of land and was standing in the name of the grandfather of the plaintiff by name Gurappa. In the year 1988 on death of the grandfather of the plaintiff the suit property was mutated in the name of the father of the plaintiff by name Kallappa. The plaintiff inherited the suit property from his father. Out of 3 acre 10 gunta of land 1 acre was acquired by the Government for Ashraya Scheme. After that the 2 acre 10 gunta of land is standing in the name of the plaintiff from the year 1992. The defendants are not having any right in the suit property. The defendants have illegally encroached over the suit property

and installed their temporary structures over the suit property. On request of the plaintiff for handing over the possession of the suit property the defendants have denied the title of the plaintiff to the suit property. The defendants by illegally mutating their names in the panchayat records are now trying to alienate the suit property. The defendants are also trying to install the structures over the suit property. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendants have filed their written statement by denying the case of the plaintiff. The defendants have contended that, the plaintiff and his brother Sharanappa have sold the suit property to the defendants about 20 years back. The defendants are in possession of the suit property from last 20 years. On the said material grounds the defendants have prayed for rejection of the present application.

4. On considering the case of both the side and on perusal of the records, the following points arise for my consideration for proper adjudication of the present application:

POINTS

- 1] Whether the applicant/plaintiff has made out a prima-facie case in his favour?
- 2] Whether the balance of convenience leans in favour of the applicant/plaintiff?
- 3] Whether the applicant/plaintiff suffer irreparable loss and damage, if the temporary injunction as sought for is not granted ?
- 4] What order ?

5. Having heard the arguments on the above application and also after considering the pleadings and materials

available on record, my answer to the above points are as below:

Point No-1: In the affirmative.

Point No-2: In the affirmative.

Point No-3: In the affirmative.

Point No-4: As per the final order for

the following

### REASONS

6. Point No-1 to 3: Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

7. On perusal of the materials on record it appears that, the plaintiff is claiming his ownership over the suit property. The plaintiff has contended that, the defendants illegally erected the structures over the suit property. The defendants have contended that, the plaintiff and his brother have sold the suit property to them. The plaintiff at this stage has produced

the RTCs of the survey number 73 land. From the said documents it appears that, the suit land was earlier measuring 3 acre 10 gunta and the same was standing in the name of the grandfather of the plaintiff by name Gurappa. The name of the father of the plaintiff was mutated in the year 1988. The 1 acre of land out of 3 acre 10 gunta was acquired by the Government. The 2 acre 10 gunta of land was standing in the name of the plaintiff from the year 1997. The survey number 73/2 measuring 1 acre of suit land is now in the year 2024-2025 is standing in the name of the plaintiff.

8. The defendants at this stage have not produced any materials in support of their case. The plaintiff has produced the RTC which is standing in the name of the plaintiff for the suit land. Considering the case of both the side it appears that, both the parties are required to be given an opportunity to put forth their case on merits. On considering the materials on record it appears that, the plaintiff has filed the present suit for the relief of declaration of his ownership. The plaintiff has also prayed for the relief of possession of the suit

property. The plaintiff has also prayed the relief of dismantle of the structures over the suit property. The plaintiff in the present application is praying that the defendants are required to be restrained from putting up construction and installing structures over the suit property. Hence, considering the materials on record and nature of the suit filed by the plaintiff I am of the opinion that, if any further structures are made over the suit property it will cause more hardship on the plaintiff. The plaintiff has produced the materials in support of his case. The defendants at this stage have not produced any materials in support of their case. Hence it appears that the plaintiff has made out a case for trial. Hence I am of the opinion that the the plaintiff has made out a prima-facie case in his favour. Hence, I answered point No-1 in the affirmative.

9. The plaintiff is claiming his rights over the suit property. The plaintiff is not in possession of the suit property. The plaintiff is claiming the relief of possession from the defendants by removing the structures over the suit property.

Hence, considering the case of the parties and materials on record if an injunction as prayed by the plaintiff is granted then no any harm will be going to cause to the defendants.

10. From the available materials if an injunction is granted as claimed by the plaintiff it may not affect the rights of the defendants and it will avoid multiplicity of proceedings. If an injunction is refused to the plaintiff it will affect the rights of the plaintiff in the suit property. The defendants at this stage have not produced any materials in support of their case. If the defendants have put up any further structures on the suit property then it will cause more hardship on the plaintiff. Hence I am of the opinion that the plaintiff has made out a case in his favour with regard to point of balance of convenience and irreparable loss. Hence I answered point No-2 and 3 in the affirmative.

11. Point No. 4: In view of my findings on the above point No-1 to 3 and also considering the materials on record at this stage, I proceed to pass the following:

ORDER

I.A. No-3 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from illegally putting up further construction or structures over the suit property illegally till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to co-operate for the early disposal of the present case, failing which the injunction order granted in favour of the plaintiff will be vacated automatically.

Senior Civil Judge & JMFC.,  
Afzalpur.

[Order pronounced in the open court vide separate sheets]

ORDER

I.A. No-3 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from illegally putting up further construction or structures over the suit property illegally till further orders or till disposal of the present suit whichever is earlier.

The plaintiff is hereby directed to co-operate for the early disposal of the present case, failing which the injunction order granted in favour of the plaintiff will be vacated automatically.

Senior Civil Judge & JMFC.,  
Afzalpur.