



**IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.**

**PRESENT**

**Sri. ANIL AMATE**, B.A. L.LB(Hon's) .  
Civil Judge & JMFC.,  
AFZALPUR.

**Dated this the 10<sup>th</sup> day of September -2024**

**O.S.No.26/2024**

**Plaintiffs:** Megharaj & another

***(By Sri. S.G.H. Advocate)***

**V/s**

**Defendant:** Shri. Govindhat S/o Vishwanath Bhat

***(By Sri. A.D.C Advocate)***

**PARTIES IN I.A.NO.I**

**Applicants:** Megharaj & another

**V/s**

**Opponent:** Shri. Govindhat S/o Vishwanath Bhat

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**ORDER ON APPLICATION U/SEC.39 RULE-1 & 2 OF CPC**

The plaintiffs/ applicants have filed suit for perpetual injunction against the defendant and filed the above said application seeking to grant ad-interim temporary injunction order in favour of him and as against the defendants.

**2. Description of suit properties:**

**A) Land bearing Sy. No.14/1 measuring 02 acres 24 guntas**



Khata R.A. of Rs.8-30 Ps boundaries are:

EAST	:	Land of defendant
WEST	:	Land of Mallamma.
NORTH	:	Land of of Mallama.
SOUTH	:	Land of of Rajashekar property situated at Hwanur village in Afzalpur taluka.

3. In support of above said application the applicants/ plaintiffs filed affidavit stated that, the applicant/plaintiff has filed suit for perpetual injunction against the defendants in the suit property and the applicants/ plaintiffs are residing at Nandagiri village, the defendant is the owner of the land Sy. No.15/2, which was purchased by him from one Siddaling Patil, that defendant's the property is situated at eastern side of the suit property, the defendant has kept bad eye in the suit property, therefore the defendant demanded to sell the suit property to him but the guardian of plaintiffs refused the same, the defendant is politically influenced person and hence by hook-cook he is intending to grab the suit property, therefore the defendant is trying to remove the boundaries between the land of him and the plaintiff and trying to interfere in the possession of the suit property, the plaintiffs requested the defendant to not to interfere but the defendant not ready to heed the request of the plaintiff's. Hence present IA is filed for avoid the multiplicity of litigation, if the IA is allowed no harm or loss cause to the defendant, if not allowed it will cause more loss and hardship to the applicants/ plaintiffs. Furhter submitted they have got prima-facie case, balance of convenience, hence, prayed for the allow the application.



4. On the other side the defendant has filed written statements along with memo stating that written statements to be treated as objection to IA No.I and admitted that he is the owner of the Sy. No.15/Aa and he is in the possession of the property. denied the all the contention of the applicants/plaintiffs, and the the applicants / plaintiffs are filed the false suit against him for harass him ,he never tried to remove or encroach the boundary as alleged by the applicants/ plaintiffs. Hence prayed for the reject the application.

5. Heard both sides arguments, defendant No.10 filed written argument , perused documents available on record.

6. In view of above the following points that would arise for consideration on I.A.No.1 is as follows:-

1. Whether the plaintiff has made out a prima-facie case lies in her favour?
2. Whether the plaintiff proves the balance of convenience lies in her favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.1 he will be put to irreparable loss and injury?
4. What Order?

7. Answers to the above points is 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**

8. **Point No.1 to 3:-** Since these points are inter alia, same are taken together for common discussion.

9. The applicants/ plaintiffs filed the suit for declaration and injunction against the defendant, and to restrain the defendant from removing or encroaching of the bandar which is situated between the lands of applicants/ plaintiffs and of the defendant. The applicants/ plaintiffs contended that the defendant has kept bad eye in the suit property, therefore the defendant demanded to sell the suit property to him but the guardian of plaintiffs refused the same, the defendant is politically influenced person and hence by hook-cook he is intending to grab the suit property, therefore the defendant is trying to remove the boundaries between the land of him and the plaintiff and trying to interfere in the possession of the suit property, there grant the ad-interim injunction against the defendant to restrain him from the removing and encroaching the bandar of suit property until the disposal of suit. On the other hand defendant contention that admitted that he is the owner of the Sy. No.15/Aa and he is in the possession of the property. denied the all the contention of the applicants/plaintiffs, and the the applicants / plaintiffs are filed the false suit against him for harass him ,he never tried to remove or encroach the boundary as alleged by the applicants/ plaintiffs. Hence prayed for the reject the application.



10. It is well settled principles of law that, in order to decide the application filed under order XXXIX Rules 1 & 2 of CPC, the basic principles that are to be considered are prima-facie case, balance of convenience and irreparable loss shall be taken into consideration.

11. So far as the prima-facie case, balance of convenience and irreparable loss are concerned, that the as per the documents produced by applicants/plaintiff's ROR of suit schedule property which is standing in the name of one Rajashekar and defendant ,other documents like tonch map, copy of podi,copy of Form No.10, copy of saledeed these are related to the defendant property bearing Sy.15, the applicants/ plaintiffs have not shown their respective suit property documents nor as alleged encroachment property, at this stage the applicant/plaintiff have not established the prima-facie case. Under these circumstances, looking to the facts and circumstances of the case and the documents produced by the applicants/plaintiff's, the balance of convenience lies not in favour of the applicants/plaintiffs' as there is every chances of succeeding the case by the applicants/ plaintiffs' in case, required to be a full fledged trial is conducted. Under the circumstances, this court is of opinion that, the balance of convenience not in favour of the applicants/plaintiff's rather than the defendant.

12. So far as irreparable loss is concerned, it is the specific case of the applicants/plaintiffs' that, the defendant is removing and encroaching the bandar of suit property therefore, the applicants/plaintiffs at this stage not shown the threat of removal



or encroachment of defendant , If in case an injunction is granted, it will not cause any harm or prejudice to the defendant And therefore the applicants/ plaintiffs not proved the basic elements to grant ad-interim injunction. Hence, this court answer the points No.1 to 3 in the negative.

13. **Point No.4**:- In view of the findings on points No.1 to 3, this court proceed to pass the following:

**: ORDER :**

I.A.No.I filed by the applicant/plaintiff under Order XXXIX Rule-1 and 2 of C.P.C. is hereby rejected.

No order as to cost.

*(Dictated to the Stenographer, directly on computer, typed by him, corrected by me, signed and then pronounced in open court on this the 10<sup>th</sup> Day of September-2024)*

**(Sri. Anil Amate)**  
**Civil Judge & JMFC,**  
**Afzalpur.**