

KAKB320017302022

O.S.No.111/2022



**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 18th day of February-2026

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PLAINTIFFS: Saibanna S/o Bheemsha Talawar,
Age: 64 years, Occ: Coolie,
R/o Ankalaga village, Tq. Afzalpur
Dist. Kalaburagi.
Since deceased by Lrs.

1(a) Smt. Laxmibai W/o Late Saibanna,
Age:60 years, Occ: Household,
R/o Ankalaga village, Tq. Afzalpur
Dist. Kalaburagi.

(By Sri. S.S.P. Advocate)

V/s

DEFENDANTS: 1) Smt. Danamma W/o Late Jagannath
Talawar, Age: 46 years, Occ: Coolie,
R/o Ankalaga village, Tq. Afzalpur
Dist. Kalaburagi.

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2) Arjun S/o Late Jagannath Talwar,
Age: 26 years, Occ: Private work,
R/o Ankalaga village, Tq. Afzalpur
Dist. Kalaburagi.

(By Sri. S.S.B. Advocate)

PARTIES IN I.A.NO. I

APPLICANT: Saibanna S/o Bheemsha Talawar,

V/s

OPPONENTS: Smt. Danamma & another

ORDER ON I.A.NO.I

This is a suit of the plaintiffs against the defendant for declaration and Injunction and filed the present IA No.I for restraining the defendant, their agents, servants or any person claiming through and under them from further construction towards South- Eastern in the the suit schedule property bearing No.2/60 totally measuring 12 feet East-West, 60 feet North-South situated at Ankalaga village in Afzalpur taluka until the disposal of the suit.

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2. In support of above said application the plaintiff N.1 has filed affidavit stated that he is owner and possessor of the suit property, the defendants are owner of the properties situated towards South-Eastern side of the suit property. The plaintiff was constructed house towards Northern side in the suit property, towards Southern side kept open space for his use. When he was out of station the defendants trying to encroach his property, when he requested to them not make encroachment, they stopped and again encroached the suit property and constructed upto basement level, when he conducted the survey of the suit property he came to know that the defendants have encroached his property to the extent of the 2 feet. The plaintiff requested to dismantle that construction but they are not ready to heed his request. Hence filed this present suit and IA No.I. if the defendants are succeed in the further construction it will cause irreparable loss to the plaintiff. Hence filed the present for restrain the defendants from not further construction over the suit property until disposal of the suit. The plaintiffs have made prima facie case, balance of convenience in favour of them, if the IA is not allowed it put to great hardship and multiplicity of litigation, hence prayed for allow the IA No.I.

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3. On the other side, the Defendants have filed written statement along with filed memo for treat the W.S as Objection to I.A. No. I. Defendant denied the all the averments of the plaint and Further specifically contended that, the defendant No.1 is sister in law and defendant No.2 is nephew of the plaintiff. One Siabanna is grand father of plaintiff and father in law of defendant No.1 and grand father of the defendant No.2. He had four sons, among them one Bhimasha had no issue hence had adopted the plaintiff. One Hanamanth and this Bhimasha had two properties bearing No.2/60 to the extent 30x40 and 2/61 to the extent 30x40 jointly, latterly they have partitioned in these properties and property bearing 2/60 fallen to the share of the Bhimasha, the plaintiff is in possession of the property, he had constructed house in entire property 30x40. There is no remaining land of the plaintiff as he contended, hence he has no right, title over the defendants property, there is a 20 feet distance between the defendant under taking construction and plaintiff house and the plaintiff has filed false suit against the defendants,hence prayed for the reject the IA No.I.

4. Heard both sides arguments, peruse documents available on record.

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

1. Whether, at this stage the plaintiffs have made out a prima-facie case lies in his favour?
2. Whether the plaintiffs prove the balance of convenience lies in his favour?
3. Whether the plaintiffs prove that in event of not allowing I.A.No.I, he will be put to irreparable loss and injury?
4. What Order?

6. 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

7. **POINT NO.1 TO 3:-** Since these points are inter alia, hence they are taken together for common discussion. It is well settled principles of law that, in order to decide the

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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.

8. So far as the prima facie case, balance of convenience and irreparable loss are concerned, firstly the plaintiff has to establish the prima-facie case, the plaintiff contended that he is owner and possessor of the suit property and the defendants without having any right, title over the suit property encroached to the extend of 2 feet and constructed house. At this stage the plaintiff has produced the documents property extract of property bearing No.2/60, tax paid receipts and two photographs of under taken construction. It is pertinent to note that the defendants are not denying his ownership of property bearing No.2/60 measuring 30x40, but defendants contended that the plaintiff already constructed house in his property and he has no remaining land to encroach by the defendants. At this stage plaintiff not produced any documents to show the measurement of his property and construction house measurement, remaining land of him, further in the photographs are not showing the gap between the his house and defendants constructing house. The plaintiff has not produced any map or specific

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boundaries of the his property. Therefore at this stage the plaintiff is failed to show the there is prima facie case that the defendant encroached his property to the extent of 2 feet towards South- Eastern side. The plaintiff and defendants being owners of their respective properties bearing No.2/60 and 2/61. Therefore, under these circumstances, if an injunction order not granted no harm will be going to cause to the plaintiff rather than defendats, the balance of convenience not tilt in favor of the plaintiff. So far as the irreparable loss is concerned, as above said supra the plaintiffs not established prima facie case and balance convenience in his favour. As per the assertion of the plaintiff, definitely at this stage, no irreparable loss will cause to plaintiff. Therefore, this court is of opinion that, refusing the injunction order will be going to cause no loss and damage to the plaintiff. Therefore as the plaintiff has not made out prima-facie case and balance of convenience in his favour, for the above made observation this court is answered the points No.1 to 3 are in the negative.

9. POINT NO.4:- For the foregoing reasons, I proceed to pass the following:

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**:- O R D E R :-**

The I.A.No.I filed U/O XXXIX Rule 1 & 2 of CPC filed by the plaintiffs is hereby rejected.

No order as to cost.

(Corrected and revised and then pronounced in the open court on this 18th day of February-2026)

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

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