

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT JEWARGI**

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)  
Senior Civil Judge & J.M.F.C.,  
Jewargi.

Dated This the 19<sup>th</sup> Day of July-2024

**ORIGINAL SUIT NO.11/2024**

**PLAINTIFF** : Siddanna  
S/o Malkajappa Yelameli,  
Age: 52 years, Occ: Agriculture,  
R/o Bilawar, Tq. Yadrami,  
Dist. Kalaburagi.

.....(By. Sri.J.V.H., Advocate)

**V/s.**

**DEFENDANTS:** 1. Shivalingappa  
S/o Ayyanna Padashetty,  
Age: 46 years, Occ: Agriculture.

2. Gurupadappa  
S/o Sharabayya Yelameli,  
Age: 72 years, Occ: Agriculture,

Both are R/o Bilawar, Tq: Yadrami,  
Dist: Kalaburagi.

.....(By. Sri.B.B.B., Advocate)

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**PARTIES TO I.A. NO.I**

**APPLICANT/** : Siddanna  
**PLAINTIFF**

V/S

**OPPONENT/** : Shivalingappa and Another  
**DEFENDANTS**

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	18-01-2024
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	13-06-2024
vi.	The date on which the orders were passed on the said application	19-07-2024

**ORDER ON I.A No.I FILED BY THE PLAINTIFF**

**U/O.39 RULE 1 & 2 R/w Sec.151 of C.P.C.**

1. The plaintiff has filed I.A.No. I U/o. 39 Rule 1 and 2 R/w Sec.151 of CPC seeking temporary injunction against defendants restraining them from interfering into his possession and enjoyment over suit property and to further restrain them from demolishing/removing existing bund situated in between the suit property and property of defendants, till disposal of the suit.

2. The plaintiff sworn to the affidavit stating that plaint Para's may be considered as part and parcel of the affidavit.

3. According to the plaintiff, he is the absolute owner and in possession of agriculture land bearing old Sy.No.94/D measuring 12 Acres 33 guntas and now it numbered as Sy.No.94 measuring 12 acres 33 guntas including 5 guntas phot kharab and out of it extent of 1 Acre 29 guntas acquired by KBJNL. Initially, suit schedule property was allotted to the father of plaintiff namely Malkajappa S/o Siddappa and his name was entered in the record of rights as owner and in possession and thereafter name of plaintiff was mutated to the record of rights of suit property. There is a bund towards East and West of suit property having 6 feet height and 6 feet width which was laid by his father about 50 to 60 years back. The said bund is demarcating line in between the land of plaintiff and defendants. The plaintiff and his father have been in possession and enjoyment of suit property up to the Western bund, whereas defendants and their vendor have been in possession and enjoyment of their property up to the Eastern bund. The defendant No.1 purchased land bearing Sy.No.94/A measuring 6 Acres and Sy.No.94/B measuring 3 Acres without survey measurement and his vendor put him in possession of said land up to the Eastern bund.

4. The defendants without having any right, title or interest denied the title of plaintiff over suit property and tries to interfere with the possession of plaintiff over suit property by creating false and deceptive records in their name and also tries to demolish and remove the existing bund running from North to South direction situated in between suit property and property of defendants. The plaintiff with great effort resisted the illegal interference of defendants with the help of neighbors but under

apprehension that defendants may once again interfere with his possession. Therefore, plaintiff constrained to file this suit.

5. The plaintiff sworn to the affidavit and stated that he has made out a prima-facie case and balance of convenience lies in his favour. If an order of temporary injunction is not granted in favour of plaintiff, he will be put to irreparable loss and hardship and it will leads to multiplicity of proceedings and greater hardship. On the other hand, defendants will not suffer any hardship. Hence, plaintiff prayed to allow the application.

6. In pursuance of suit summons, defendants appeared through their counsel and resisted the claim of plaintiff by filing written statement and also filed memo to consider written statement contents as objection to IA No.1.

7. The defendants denied the entire plaint averments in toto and called upon the plaintiff to prove the same with strict proof. The defendants denied the description and boundaries of suit land. The plaintiff intentionally and wrongly showed the boundaries towards East and West 6 feet's bunds and then land of defendant No.1 and 2 only in order to claim property which belongs to the defendants. Their land situated towards Northern side of plaintiff land and there is a bund in the land of defendants but same doesn't demarcate the line in between the land of plaintiff and defendants. The Northern side bund is situated in the land of defendants and they are in possession of respective lands. Even after the bund as such plaintiff is no way concerned to the same. The plaintiff by showing alleged bunds as boundary claiming land which belongs to the defendants. The defendants are in possession and enjoyment of land even after

the alleged bund but plaintiff taking advantage of said bund trying to claim land more than his extent. The defendants are ready to measure the land of plaintiff and their lands to know the actual measurement of land up to the bund which will reveal the actual truth. The existence of bund in the land of defendants is not in dispute but said bund doesn't demarcate the line but it was laid to save the erosion and ruining of soil of defendants land. The plaintiff is not the owner of land since it belongs to Government as it was acquired by KBGNL including phot kharab. The plaintiff did not stated anywhere that his land measures only to the extent of 10 Acres 39 guntas after deduction of acquired land of 1 Acre 29 guntas by KBJNL. The record of rights discloses another extent of 37 guntas was acquired by KBGNL in the same survey number which is suppressed by plaintiff.

8. The defendants specifically contended that defendant No.1 purchased land bearing Sy.No.94/A measuring 6 acres through registered sale deed dated 08-04-1988, whereas defendant No.2 is the owner and in possession of land bearing Sy.No.94/B measuring 3 Acres. The sale deeds indicate that defendant No.2 was put in possession of 6 Acres up to the land of plaintiff. The defendant No.1 after verifying records pertaining to title and possession of his vendor purchased the same and has been in lawful possession and enjoyment of same but it is plaintiff who is trying to land up to the bund which actually measures more than the extent of land belongs to him. The approach of plaintiff can be tested by measuring the land up to the alleged bund by appointing court commissioner. There is no reason for demolishing or removal of bund as it is in the land of

defendants. There is no prima-facie material regarding alleged attempt for demolition of alleged bund in fact it is the plaintiff who wants to encroach and restrain defendants from enjoying their respective lands even after bund by way of getting interim relief. The plaintiff wants more extent of land by way of showing bunds as boundaries of his land. The defendants have applied for survey their respective land for preparation of form No.10 and on the guise of interim relief granted by the Hon'ble court with regard to maintaining status-quo regarding bunds the survey authorities stopped the survey work of defendants' land which caused great hardship to the defendants. The cause of action is imaginary and there was no piece of document to show that defendant No.1 and 2 have tried to demolish/remove the existed bund.

9. The land bearing Sy.No.94 totally measures 24 Acres 33 guntas and out of it 1 Acres 29 guntas and another 37 guntas was acquired by KBGNL as such 10 Acres 39 guntas of land remains with the plaintiff. The defendants are in possession of 8 acres 3 guntas. Thus no dispute arose relating to demolition or removal of bund. The plaintiff is now claiming land more than the extent i.e., 10 Acres 39 guntas for which neither he is owner or possessor but now trying to claim land of defendants. Therefore, plaintiff is not entitled for any reliefs since he suppressed material facts and did not approach the court with clean hands. On all these grounds defendants prayed to reject IA No.I.

10. On considering I.A No.I, affidavits and objections to I.A.No.I, the points that would arise for my consideration are as under:

**POINTS**

1. Whether the plaintiff/applicant has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiff/applicant?
3. Whether the irreparable loss and injury would be caused to the plaintiff /applicants if the temporary injunction is refused?
4. What order?

11. The plaintiff counsel argued that the plaintiff has made out prima facie case and balance of convenience lies in favour of plaintiff. If temporary injunction is not granted the plaintiff would be put to irreparable loss which cannot be compensated in terms of money. The defendants are trying to interfere with the possession of plaintiff over suit schedule property and also trying to remove and demolish the bund existed in between the suit property and property of defendants. The acts of defendants is opposed to law, the defendants does not have any manner of right, title and interest over suit schedule property but any how wanted to grab the suit schedule property from the hands of plaintiff. Therefore, he prayed to allow the application.

12. Per-contra, learned counsel for defendants argued that plaintiff has not made out a prima-facie case and balance of convenience does not lie in favour of plaintiff. He further argued that plaintiff is trying to claim property which is more than his extent and claiming that his land comes up to the

bund but the said bund situates in the land of defendants and even the defendants have property after the bund but plaintiff by claiming his property up to the bund. The plaintiff has mislead and suppressed material facts before this Court. The plaintiff failed to prove possession over entire extent of land, the injunction cannot be granted against defendants. Therefore, he requested to dismiss the application.

13. My answer to the above points are as under ;

Point No.1 : In the Affirmative.

Point No.2 : Balance of convenience lies in favour both parties.

Point No.3 : Hardship will cause to both side.

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

### **REASONS**

14. **Point No.1:-** I have already narrated in brief as to what the case of plaintiff and defendants is.

15. It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the

court will be satisfied about the prima facie case in favour of the party seeking the order. At the same time the court cannot conduct a mini trial nor can court express its opinion regarding merits of the case while dealing with the applications of this nature. Only function of the court at this interlocutory stage is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. It is useful to refer decision of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy**, reported in **AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

*"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction is granted.*

16. It is also necessary to mention here that "Prima facie case" not to be confused with "prima facie title" which has to be established on evidence at the trial. Prima facie case is a substantial question raises bona fide which needs investigation and a decision on merits.

17. Now keeping in mind the aforesaid aspects let us consider the present application in hand. In order to substantiate his case, plaintiff produced record of rights of suit property as well as property of defendants bearing Sy.No.94/A and Sy.No.94/B and also produced mutation entries, record of rights, Aadhar card and photographs and Pen drive. On the other hand, defendants have produced the copy of sale deed dated 18-07-1994.

18. It is noteworthy to mention here that party who seeks the relief of temporary injunction has to come to the Court with clean hands and has to place all the material facts before this Court. Further, at the time of dealing with this kind of applications, Court cannot conduct a mini trial and come to a definite conclusion. Even Court cannot express its findings upon merits of the case. Further it is not the function of the court at this stage of litigation to try to resolve difficult question of facts of law which requires elaborate evidences to be recorded in the trial. The only function of the Court at this stage of the proceedings is to see whether plaintiff has made out a prima-facie case and balance of convenience lies in whose favour and in case if temporary injunction is granted who will be put to much irreparable loss and injury compared to the other side. By keeping in mind the above principles of law. Now let us consider the present application in hand.

19. I have considered documents produced by the plaintiff and defendants. On perusal of pleadings and documents produced by either parties, it discloses that plaintiff claiming ownership over suit property bearing Sy.No.94/D measuring 12 acres 33 guntas which is now renumbered as Sy.No.94

measuring 12 acres 33 guntas including phot Kharab and 1 acres 29 guntas acquired by KBJNL authority, whereas defendants claims that defendant No.1 is the owner of land bearing Sy.No.94/A measuring 6 acres, whereas defendant No.2 is in possession and owner of land bearing Sy.No.94/B measuring 3 acres. The plaintiff contends that his property comes up to the western side bund and said bund demarcates the boundary between suit property and property of defendants whereas defendants contends that said bunds exists in their land and their property comes even after the bund till the land of plaintiff. even it is the specific case of defendants that KBJNL has acquired 1 Acre 29 guntas and another 37 Guntas of land in the land of plaintiff as such land remains with the plaintiff is only 10 Acre 39 Guntas but he is claiming more than his extent. Thus considering pleadings and also documents produced by the either side at this stage of the proceedings, it is clear that the defendants have denied the title and possession of plaintiff over the extent and measurement as claimed by the plaintiff and even they have denied that the property of plaintiff comes up to the bund and infact said bund situates in their lands as such plaintiff by showing bund as boundary trying to claim portion of defendants property.

20. On perusal of rival contentions of the parties, it is clear that there is a serious dispute between the parties in respect of ownership and also the extent of land and situation of the bund as to in between the land of plaintiff and in the land of defendants. The plaintiff claims that his property is up to bund and said bund demarcates the boundary of plaintiff and defendants, whereas defendants contends that the bund

situated in their property and even their property situates even after the bund. The question whether plaintiff is the absolute owner and in possession of extent and measurement as shown in the plaint and whether said bund situates in between the land of plaintiff and defendants or it situates in the land of defendants are all questions to be adjudicated which requires a full-fledged trial. At this stage of proceedings, though defendants have disputed possession of plaintiff over extent of suit schedule property but at this stage plaintiff has produced record of rights of suit property which discloses name of plaintiff as owners and cultivators column and also produced the photographs of the suit property and alleged bund and on perusal of the same it can be opined that plaintiff has made an arguable case and there is a serious question to be adjudicated during trial. Under these circumstances when there is a material worth investigating, then it can be said that there is a prima facie case. Therefore, considering pleadings and affidavit and documents placed on record, court is of the considered view that plaintiff has got an arguable case and has got prima facie case. Therefore, considering the pleadings and affidavit and documents placed on record, the court is of the considered view that plaintiff has got an arguable case and prima-facie case. **Hence, accordingly I have answered Point No. 1 in the affirmative.**

21. **Point No. 2 & 3 :-** Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that the party seeking the relief will sustain such injuries which cannot possibly and adequately remedied by way of damage and said damage would be inadequate in case of success of applicants. Considering the question of balance of

convenience court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication of dispute finally decided. The ingredients have to be established by the party who seeks injunction in his/her favour. The grant of injunction being the discretionary relief the party who seek such relief should come to court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of party seeking the order.

22. The plaintiff averred in the I.A., that defendants are trying to interfere with his possession and also trying to remove/demolish said bund which alleged to be existed in between the land of plaintiff and defendants whereas the defendants contended that the said bund situated in their land and plaintiff is not the owner of property to the extent of land which has been shown in the plaint. The plaintiff did not mentioned the acquisition of land by KBJNL authority to the extent of 1 Acres 29 guntas and also 37 guntas as such land remains with the plaintiff is less then what he is claiming. It is to be noted here that it is the plaintiff who sought temporary injunction against defendants. If the temporary injunction order is granted against defendants as sought by the plaintiff then taking advantage of the said order the chances of plaintiff altering or changing the present situation of alleged disputed bund cannot be ruled out and if the temporary injunction order is not granted to the plaintiff, chances of defendants to interfere or to remove the bund cannot be ruled out. Therefore, there is an every likelihood of changing present position and status of disputed property. Therefore, in order to avoid multiplicity of

proceedings and to keep the disputed property intact and also to protect the legitimate rights of the parties and also in weighing the risk of injustice, granting or refusing the injunction would entitle there appears to me that there is a justification in directing both the parties to maintain a status-quo in respect of the disputed bund which situates in between the land of plaintiff and defendants till disposal of suit. Hence, for all these reasons, I am of the opinion that ***balance of convenience lies in favour of both the parties and loss and injury will be caused to both the sides.***

23. **Point No.4**:- In view of my findings on Point No.1 to 3, I proceed to pass the following:

**ORDER**

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C., is hereby disposed off in the following manner:

Both the parties are directed to maintain status-quo in respect of the disputed bund situated in between the land of plaintiff and defendants till the disposal of the suit.

Parties are hereby directed to give their best endeavour to dispose off case the case as early as possible.

Cost of both the applications will follow the result of this case.

Call on for issues by 08-08-2024.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then pronounced by me in the Open Court on this 19<sup>th</sup> Day of July-2024).

**(Sandeep. A. Naik)**  
**Senior Civil Judge,**  
**Jewargi.**