

KAKL200010332020



**IN THE COURT OF THE II ADDL., CIVIL JUDGE &  
JUDICIAL MAGISTRATE FIRST CLASS AT  
BANGARPET.**

:PRESENT:

**SRI.CHANDRASHEKAR ALABUR,**  
B.A., LL.B.,

**C/c II ADDL., CIVIL JUDGE & JMFC., BANGARPET.**

**O.S./173/2020**

**DATED THIS 17<sup>TH</sup> DAY OF OCTOBER 2025**

**PLAINTIFF/S:**           **M.Yelliyappa.,**  
(Rep by Sri.**N.S.**, Advocate)

**-V/S-**

**DEFENDANT/S:**       **State of Karnataka Vidhana  
Soudha Bangaluru Rep. by its  
Chief Secretary & others.,**  
  
(D1 to 3,5 Rep by Sri.**A.G.P.**,  
D6 Rep by Sri.**P.R.**, Advocates,  
D4 **Exparte**)

**PARTIES TO I.A.No.VI**

Applicant               :       **Vishwanath.,**

**-V/S-**

Opponent               :       **Yeliyappa.,**

|      |                                                                  |                                         |
|------|------------------------------------------------------------------|-----------------------------------------|
| i.   | Provision under which the application is filed                   | U/O 39 Rule 1, 2 & 3 R/w Sec.151 of CPC |
| ii.  | Relief sought for                                                | Declaration & Injunction                |
| iii. | The date on which the application is filed                       | 25.09.2024                              |
| iv.  | Number of the application                                        | I.A. No.VI                              |
| v.   | The date on which the objection is filed by different opponents  | 05.11.2024                              |
| vi.  | The date on which the orders were passed on the said application | 17.10.2025                              |

### **ORDERS ON I.A. NO.VI**

Defendant No.6 has filed this application under Order XXXIX Rules 1, 2 & 3 r/w Section 151 CPC praying for an ad-interim order of injunction restraining the plaintiff, his agents, servants, family members and persons claiming under him from surveying, measuring or changing the character of the suit-schedule property by using JCB/earth-moving equipment, pendente lite.

**2. Brief facts of the case of the plaintiff:-**

In the supporting affidavit he states, in substance, the plaintiff has no right or interest over the schedule property and has allegedly misused his position as Head Master of the 5th-defendant school. On 24-09-2024, some aides and orderlies of the plaintiff came near the property and started measurement with an intention to change its nature with the help of JCB and other machines, unless restrained, the applicant will suffer irreparable loss; he also claims that a prima facie case and balance of convenience are in his favour. No title or possession documents are filed with the application; reliance is essentially on the affidavit assertions.

**3.** Plaintiff's in his objections contended that the application is not maintainable; what is sought is an injunction not to conduct survey/measurement, which is within the exclusive statutory domain of the revenue/survey authorities under the Karnataka Land Revenue Act, 1964 (KLR Act). A civil court cannot

interdict the lawful discharge of statutory duties by such authorities at the instance of a private party. Defendant No.6 asserts no independent right and has laid no foundation in pleadings or proof; hence he cannot seek temporary injunction against the plaintiff. The allegations in paragraphs 3 to 5 of the affidavit are false and denied; there is neither prima facie case nor balance of convenience nor threat of irreparable injury. The application, moved at the stage of further cross of PW-1, is vexatious and intended to delay the trial. On these grounds, dismissal is sought.

**4.** From the above pleadings the following points arise for my consideration.

1. Whether Defendant No.6 has established a prima facie legal right and a corresponding violation so as to warrant a temporary injunction as prayed?
2. Whether the balance of convenience tilts in favour of the applicant and whether he would suffer irreparable injury if injunction is refused?

3. Whether, in the facts pleaded, an injunction restraining survey/measurement can at all be granted by this Court against the plaintiff?

4. What Order ?

**5.** Heard the argument of both the parties. Perused the material available on record. My answer to the above framed points are as under:-

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.

**: R E A S O N S :**

**6. POINT NO.1:-** The suit is one for declaration and consequential permanent injunction in respect of the property described in the schedule. Evidence of PW-1 has commenced and the matter stood posted for further cross-examination of PW-1 when the present I.A. came to be filed.

**7.** It is trite that an order of temporary injunction is discretionary and is governed by the well-settled triad of tests: prima facie case, balance of convenience and irreparable injury as held in Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276; Wander Ltd. v. Antox India, 1990 Supp SCC 727. The applicant must, at the threshold, place material indicating a right in his favour and a threatened invasion of that right.

**8.** In the present case, except a bald assertion that the plaintiff has “no right” and that the applicant would be inconvenienced if measurement is undertaken, no document evidencing the applicant’s title, lawful possession, enjoyment or even a better claim vis-à-vis the plaintiff is produced. The written statement of the defendants may deny the plaintiff’s claim; however, denial of the plaintiff’s title does not, by itself, constitute a positive legal right in favour of Defendant No.6 to be protected by an interim injunction. The pleadings in the I.A. are vague as to the exact nature of the applicant’s

possession and how exactly his legally enforceable right will be impaired by a survey/measurement.

**9.** Moreover, the relief prayed is to prevent measurement/survey and “changing character with JCB.” Measurement/survey per se is not an unlawful act; it is a procedural step to ascertain boundaries/identity of land and is, ordinarily, undertaken by authorized survey officials. Even assuming some activity occurred on 24-09-2024, the applicant has not produced any contemporaneous material such as complaint to authorities, photographs, notice, mahazar, etc. to lend credibility to his version. Thus, no prima facie right is made out for the equitable relief sought. As such **Point No.1 is answered in the Negative.**

**10. Point No.2:** The balance of convenience requires the Court to compare the mischief of granting the injunction versus refusing it. Here, the injunction sought is a blanket restraint on survey/measurement and on changing the state of land. If such an order is

granted, it would stall lawful statutory processes and impede the orderly identification of the schedule property-an aspect which can actually assist the Court at the trial. On the other hand, refusal of injunction does not visit the applicant with any prejudice which cannot be compensated or corrected; if any measurement is conducted contrary to law, the applicant is free to seek appropriate redress before the competent authority or to place such illegality before this Court. The plea of “irreparable injury” is equally unsubstantiated. No specific harm beyond a general assertion is pleaded. In any event, mere measurement does not alter proprietary rights; it only evidences physical facts. As regards the alleged use of JCB to change the character of the land, there is no credible material that any such irreversible work is imminent at the instance of the plaintiff. **As such I answer Point No.2 in the Negative.**

**11. Point No.3:-** The plaintiff’s objection on maintainability merits acceptance. Survey, demarcation

and measurement of lands are matters entrusted to revenue/survey authorities under the KLR Act. Courts consistently exercise self-restraint in granting injunctions that would interdict or paralyse statutory functions, save in exceptional cases of patent lack of jurisdiction or mala fides. The applicant has not pleaded any want of jurisdiction or mala fides of the competent survey authority. The proposed restraint is not against a named statutory functionary but against the plaintiff and persons claiming under him, which, in effect, seeks to indirectly stop any lawful survey. Granting such a prayer would amount to pre-emptively prohibiting lawful acts and would run contrary to the scheme of the KLR Act.

**12.** Further, even on the plane of civil procedure, a defendant may, in an appropriate case, seek temporary injunction; but he must found his claim on a specific legal right borne out from his pleadings and material. The present I.A., moved when the matter stood for further cross-examination of PW-1, without foundational

documents and seeking to restrain a statutory process, bears the stamp of being dilatory rather than protective. Therefore **Point No.3 is answered in the Negative**, holding that the injunction as framed is not liable to be granted.

**13. Point No.4:-** For the foregoing reasons I proceed to pass the following:-

**: O R D E R :**

I.A. No.6 filed by Defendant No.6 under Order XXXIX Rules 1, 2 & 3 r/w Section 151 CPC is hereby DISMISSED.

No orders as to Costs.

(Dictated to the stenographer directly in the computer, corrected and pronounced in the open court on this **17<sup>th</sup> day of October 2025**)

**(CHANDRASHEKAR ALABUR)**  
**C/c II Addl., Civil Judge & JMFC.,**  
**Bangarpet.**