

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC AT
MULBAGAL.**

Dated this the 28th day of September 2018.

OS.NO. 245/2017

Present :

Sri. H.P.Mohan Kumar, B.Sc,LLB,
Addl. Civil Judge & JMFC
Mulbagal

Plaintiffs: Sri. Amaranarayana Raju & others

V/s

Defendants: Sri. Srinivas & others

Parties to I.A.No.3

Applicants:
Plaintiffs:

1. Sri. Amaranarayana Raju,
S/o late Chikka Munivenkataraju
Aged about 38 years,

2. Sri. Venkatesh Raju,
S/o Munishami Raju,
Aged about 39 years,

3. Sri. Munivenkatappa,
S/o Annaiah,
Aged about 67 years,

4. Sri. Errappa,
S/o Venkatappa,
Aged about 52 years,

5. Sri. Munivenkata Raju,
S/o Muddu Raju,
Aged about 39 years,
All are agriculturists and
R/of: Nagasandra Village,
Oorukunte Mitturu Post,
Mulbagal Taluk.

(By **Sri. S.B.A** –Advocate)

V/s

Opponents:
Defendants:

1. Sri. Srinivas,
S/o late Bisappa,
Aged about 38 years,

2. Sri. Narayanappa,
S/o Munishamy Gowda,
Aged about 55 years,

3. Sri. Jayanna,
S/o Munishamy Gowda,
Aged about 45 years,
All are agriculturists,
R/o: Nagasandra Village,
Oorukunte Mittur Post,
Mulbagal Taluk.

(By **Sri. K.R.R** - Advocate)

ORDERS ON I.A.NO.3 FILED U/O 39 RULE 1 and 2 of CPC

IA No.3 filed by the Plaintiff U/O 39 Rule 1 and 2 R/w Sec. 151 of CPC for seeking the grant of Temporary Injunction in favour of Plaintiffs and thereby temporarily restrained the Defendants, their agents, P.A. Holders, any person or persons claiming through them from illegally undertaken the construction in the suit schedule properties till the disposal of the suit.

2. In the Affidavit the 1st Plaintiff has stated that the averments of plaint may be treated as part and parcel of the

affidavit. He further stated that the present suit filed by the Plaintiffs under representative capacity to protect, preserve and safeguard the suit schedule properties belong to Gopalaswamy Temple, Nagasandra Village, Mulbagal Taluk. He also stated that the plaint schedule properties are exclusively belongs to Gopalaswamy Temple and not belong to Defendants. Such being the case with the help of concocted documents the Defendants are making hectic efforts to trespass into the suit schedule properties for the purpose of digging trenches and to construct houses. He also stated that the Plaintiffs were put efforts to protect and safeguard the suit schedule properties. He also stated that the Defendants are politically powerful persons. Hence the Plaintiffs have filed the present suit. He also stated that they have a prima-facie case, balance of convenience in their favour and if the injunction is not granted the Plaintiffs will be put to great hardship.

3. On the other hand the Defendants appeared through their counsel and filed their written statement and also filed memo to adopt the written statement filed by the Defendants as objection statement to the application filed by the Plaintiffs Under Order 39 Rule 1 and 2. The Defendants have denied

the entire case of the Plaintiffs and interalia contended that the sedubhavi is still existing in the middle of the Nagasandra Village and the same comes within the land belongs to Panchayath and as such sedubhavi is not belong to temple. He further contended that the property bearing Sy.No.79/2 to an extent of 0.09 guntas, Sy.No.79/3 to an extent of 1 acre 29 guntas, Sy.No.79/4 to an extent of 1 acre, Sy.No.79/5 to an extent of 18 guntas and Sy.No.79/7 to an extent of 4 guntas in total 3 acre 15 guntas of land belong to the Defendants and same was acquired through their ancestors. The said items are commonly bounded as East by: Papanna and Venkatesh and properties of Annaiah, West by: Gopalaswamy temple and land of temple inamthi, North by: Road, South by: Gopalaswamy temple. He also contended that the brother in law of 1st Plaintiff obstructed the possession of Defendants during the year 1991 and at that point of time the father of 1st Defendant and mother of 2nd and 3rd Defendants have had filed a suit in OS No.306/1991 against Muniraju S/o Paparaju. The said suit was decreed in favour of Nanjamma and Bisappa and also the said persons got possession through the court. The present suit filed by the Plaintiffs based on the

instigation of Muniraju who was the Defendant in the earlier suit. They also contended that without seeking the relief of declaration the present suit for mere injunction is not maintainable. **With these averments the Defendants prayed to reject the application.**

4. Heard the learned counsels for Plaintiffs and Defendants.
Perused the materials available on record.

5. The points for consideration of this Court in IA No.1 are as follows :

1. Whether the 1st Plaintiff/ applicant has made out a prima facie case in his favour?

2. Whether the balance of convenience lies in favour of 1st Plaintiff/Applicant?

3. Whether the applicant / 1st plaintiff will be put greater hardship if temporary injunction is not granted?

4. What Order?

6. The findings of this Court on above point are as here under :

Point No.1: In the **Negative**

Point No.2: In the **Negative**

Point No.3: In the **Negative**

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

REASONS

7. Point Nos.1 to 3:- All these points are interconnected, hence they have taken up together for common discussion to avoid repetitions.

8. Admittedly, the present suit filed by the Plaintiffs against the Defendants under representative capacity. According to the Plaintiffs the suit schedule properties belong to Gopalaswamy temple. As such to protect the property of temple they have filed the present suit. On the other hand the Defendants denied the entire case of the Plaintiffs.

9. In support of Plaintiffs contentions the Plaintiffs have produced demand register extract with respect to item No.1 of the suit schedule property, Demand register extract pertaining to property No.52, Tax assessment extract with respect to property bearing serial No.51, Demand register extract with respect to House No.96, certified copy of House Tax Assessment extract, photo copy of Trust Deed with respect to Gopalaswamy temple development trust.

10. On the other hand the Defendants have produced G.Tree, certified copy of Judgment passed in OS No.306/1991, Delivery Warrant issued by the court, Demand register extract, Tax assessment extract, tax paid receipt, photographs.

11. Admittedly, the Plaintiffs have clearly stated that the suit schedule properties are belonging to Gopalaswamy temple. The Plaintiffs have also produced trust deed wherein the Plaintiffs and Defendants also trustees of the said Gopalaswamy temple development trust. If really the Defendants are trying to construct in the property belonging to the Gopalaswamy temple, definitely the trust will take legal recourse. In the instant case though there is a registered trust with respect to Gopalaswamy temple, the trustees have not filed any suit. Though the 1st Plaintiff is one of the trustee / president of the said trust he has not filed the suit on behalf of Gopalaswamy temple. In addition to that the Plaintiffs have not stated where exactly the Defendants are putting construction because there are 3 items in the suit schedule properties. Moreover the Plaintiffs have not claimed the relief of declaration. In addition to that the Plaintiffs have not produced any documents to show how the temple acquired the

plaint schedule properties. In my considered opinion at this juncture the Plaintiffs have not made out the prima-facie case and also the Plaintiffs have not established the balance of convenience. It is relevant to note that both parties have ample opportunities to prove their case at the time of trial. Whether the plaint schedule properties are belonging to temple or not it has to be answered subsequent to the completion of full-fledged trial. In the instant case Plaintiffs have also not established what type of hardship will be caused to them if the Temporary Injunction is not granted. Hence, I answer point Nos.1 to 3 in the **Negative**.

12. Point No.4:- Having thus discussed in detail referred above, I proceed to pass the following.

ORDER

The Application filed by the Plaintiffs U/O 39

Rule 1 and 2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed by him and corrected by me, and then pronounced in the open Court on this the 28TH DAY OF SEPTEMBER 2018)

(H.P.Mohan Kumar)

Addl. Civil Judge & JMFC.,
Mulbagal.