

**IN THE COURT OF II ADDL CIVIL JUDGE AND
JMFC AT PANDAVAPURA**

Dated this the 10th day of January 2025

Present:-

Smt. PADMA.M, B.A., L.L.B.,
II Addl Civil Judge and J.M.F.C,
Pandavapura.

O.S.No.323/2023

Plaintiff : K.Jalendra
(By Sri.NBG, Adv.)

v/s

Defendant : Jayaramu
(By Sri.ALS, Adv.)

I.A.No.I

Applicant : K.Jalendra Plaintiff

v/s

Opponent : Jayaramu Defendant

: ORDERS ON I.A.No.I:

The applicants/plaintiffs have filed **IA No.I** under Order 39 Rule 1 & 2 of CPC restraining the defendants not to interfere the suit schedule property till disposal of the suit.

House property bearing khatha No.57:46:3 measuring East-West: 40 feet, North-South : 37 feet situated at Hosakannambadi village, Chinakurali Hobli, Pandavapura Taluk, Mandya District bounded on:-

East : Vacant site of Hanumantha Shetty
West : Road
North : Conservancy and house of Sannaswamy
South : House and vacant site of Ramaswamy

2. In support of the said I.A, the plaintiff has filed affidavit and stated that, the plaintiff has filed a suit against the defendant for permanent injunction over the suit schedule property. The plaintiff is the absolute owner in possession of the suit schedule property. The suit schedule property is the ancestral property of the plaintiff. The same was fallen to his share through a palu-patti dated 06.02.2012. Further he stated that, the defendant has not having any right, title, muchless possession in or over the suit schedule property is trying to interfere over the suit schedule property and further trying to demolish the toilet constructed in the suit schedule property. If the application is not allowed, it will be put to great hardship, inconvenient and irreparable injury which cannot be compensated in terms of money and the very purpose of filing the suit will be defeated. If the application is allowed, no hardship as such caused to the other side. The plaintiff's case is a prima-facie case and balance of convenience lies in his favour. The plaintiff is entitle for the order of temporary injunction. Hence, prayed to allow the I.A.

3. On the other hand, the defendant has filed a written statement alongwith memo and submitted that same written statement will be consider as objection to I.A.No.1. The defendant has submits that, this suit is not maintainable either in law or on facts. The defendant categorically denied all the averments of the plaint. The defeated is specifically denied that the plaintiff is the owner of suit schedule property and he is the purchaser of the suit schedule property. The defeated does not admit and denied that the suit schedule property belongs to the plaintiff and the plaintiff is in possession of the suit schedule property in where as the public road over the suit schedule property. The defeated further states that why the plaintiff never challenged the revenue entries

and mutation in competent authority as per Karnataka Land Revenue Act, itself shows it is created one to harass the defendant. The defendant further states that he does not admit and denied that suit schedule property is illegal entry done by colluding the revenue or panchayath officials. The plaintiff has encroached the public road and illegal constructed toilet. Then the defendant was made a complaint to the Katteri grama panchayath regarding the said illegal encroachment, but due to political influence they encroached the road nearly 8 feet and made a illegal construction, defendant through grant from the panchayath and since the defendant's family is enjoying the suit schedule property till today, the suit schedule property nowhere in any manner the plaintiff is in possession over the suit schedule property. Prima facily without seeking the declaration the consequential of relief of permanent injunction is not maintainable.

4. The plaintiff by colluding panchayath officers created a document, if though it is not binding on the defendant because due to objection rises in the subsequent transactions are void and the same is violational of law, hence same may be not binding on the defendant in the above case nor defeat the rights over the suit schedule property. The measurement of the schedule property was created ambiguity because as per records 30 x 40 feet was measured in the name of Kalegowda S/o Late Swamygowda as per M.R.No.67/2021-22 who is none other than the father of plaintiff, but after his demise created the further measurement as 37 x 37 feet by fraudulent method and now in the suit filed seek 40 x 37 feet. This shows his fraudulent entries in the schedule properties. Hence, prayed to dismissed suit.

5. Heard arguments from the both side.

6. The following points that would arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and injury, if the TI is refused?
4. What order?

7. My answers to the above 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 my final order
for the following reasons

REASONS

8. **Point No.1:-** The plaintiff has submits that he is in possession Suit sechedule property, he has acquired the said property by way of panchayath palu-patti dated 06.02.2012. Since date of partition, he is in possession of the suit schedule property and said sit property in northern side exciting in conservancy galli, in said the plaintiff has constructed the toilet. The defendant has not having any right over the suit schedule property. He has trying to demolish the toilet room which is existing in northern side of the suit schedule property. All the tax paid receipts and khatha of the suit schedule property are stands in the name of plaintiff. The defendant not having any right over the suit schedule property. The plaintiff case is a prima-facie case. If not restrain the defendant, he has trying to demolish the toilet which is existing in northern side of the suit

schedule property, it will be caused irreparable loss and also balance of convenience lies in favour of the plaintiff. Hence, prayed to allow the I.A.

9. In support of said I.A., the plaintiff has furnished the Form No.9 and 11A khatha. On perusal of the khatha certificate, it is disclosed that property No.46/3 stands in the name of plaintiff. Said site total extent 127.18 sq.mtr. The plaintiff has constructed the house for extent 107.40 sq.mtr., boundaries at East : galli and Hanumanthashetty's house, West : road, North : galli and Sannaswamy property and South K.Ramaswamy's house. On perusal of letter issued by the Panchayath Development Officer, Katteri grama panchayath with regarding to the change the property khatha in the name of plaintiff in respect of East-West : 40 feet North-South : 37 feet. The plaintiff has produced unregistered panchayath palu-patti dated 08.02.2012. On perusal of the said panchayath palu-patti, it is disclosed that Jayamma and her children Ramaswamy, Jalendra/plaintiff and Anand. They are divided their family properties as per panchayath palu-patti, the suit schedule property allotted to the share of the plaintiff.

10. On the other hand, the defendant taken serious contention that the plaintiff has categorically denied the entire plaint averments. Further he has taken serious contention that, property No.46/3 extent 30 x 40 feet, khatha was stands in the name of father Kalegowda but No.46/3 extent 30 x 40 feet, but property extent 40 x 37 feet property khatha was changed in the name of plaintiff. Further he submits that, plaintiff is colluded with PDO and Secretary of the Katteri grama panchayath, changed the additional property khatha in the name of plaintiff. The plaintiff has encroached the public road and constructed the toilet room. Hence the plaintiff has not encroached with clean hand.

11. In support of said evidence, the defendant has produced Form No.9 khatha in the year of 2013 - 14. On perusal of the khatha, it disclosed that property No.46/3 extent 30 x 40 feet stands in the name of Kalegowda S/o Swamygowda who is the father of the plaintiff. Said property boundaries at East : Shetty's house, West : road North : galli and Sannaswamy's house, South : Ramaswamy's house. Thereafter said property khatha extent mentioned as 37 x 37 feet changed in the name of plaintiff. The plaintiff has not produced any single document to prove how he acquired the additional property 7 feet. The plaintiff has filed the suit for extent East-West 40 feet, North-South 37 feet. On perusal of the Form No.9 khatha in the year of 2013-14, it is disclosed that property khatha No.46/3 extent 30 x 40 feet stands in the name of Kalegowda S/o Swamygowda who is the father of the plaintiff. The plaintiff alleged that he acquired the property under panchayath palu-patti. But the plaintiff has not produced any document to show that the suit schedule property is the joint family property. On perusal of the old khatha and new khatha of the suit schedule property, it clearly appears that 7 feet extent of the property is different between the old khatha and new khatha of the property. In this regarding, the plaintiff has not given any explanation and also not produced any single document in respect of additional 7 feet. And also the plaintiff not produced any building licence and other document to prove existing of the building over the suit schedule property. Therefore the document produced by the plaintiff, it clearly shows that, this suit is not a prima-facie case with regarding to the additional properties. Such being the case, at this stage, the plaintiff's documents not disclosed the prima-facie case. Hence, this court answered **point No.1 in the Negative.**

12. **Point No. 2 & 3:-** Since these points are inter-connected with each other, hence in order to avoid repetition of facts, they are taken up together for common discussion. In view of findings on point No.1 the plaintiff has failed to prove a prima facie case. Where a party has failed to

prove a prima facie case, injunction cannot be granted even. When there is no prima facie case, question of considering the balance of convenience and irreparable loss and injury that would be caused to the plaintiff if temporary injunction is refused does not arise. Therefore, considering all these aspects, this court is of the considered view that, if the injunction is refused no irreparable loss and injury would be caused to the plaintiff.

13. The plaintiff has not made out prima facie case for grant of temporary injunction and balance of convenience does not lies in his favour and no injury will be caused to the plaintiff if the application is rejected. Hence, this court answered **point No. 2 & 3 in the Negative.**

14. **Point No.4:-** In view of my findings and discussions to the above points, the court proceed to pass the following:

ORDER

**The application filed by the plaintiff/
applicant under order 39 Rules 1 and 2 of
CPC-IA No.I is hereby rejected.**

**In the facts and circumstances of the
case, I pass no order as to cost.**

(Dictated to the Stenographer, transcribed and computerized by her, revised and corrected by me, then pronounced in the open court on 10th day of January 2025)

**[PADMA.M.]
II Addl. Civil Judge & JMFC,
Pandavapura.**

Orders pronounced in the open court
(vide separate Orders)

ORDER

The application filed by the plaintiff/
applicant under order 39 Rules 1 and 2 of CPC-
IA No.I is hereby rejected.

In the facts and circumstances of the case,
I pass no order as to cost.

II ACJ & JMFC,
Pandavapura.