

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE &  
JMFC., AT HEGGADADEVANAKOTE.**

**PRESENT** : **SRI. SURESHA.S.N** B.A., L.L.B.  
Addl. Civil Judge & JMFC  
Heggadadevanakote

**Dated:- 12<sup>th</sup> day of September 2024**

**O. S. No.366/2023**

**BETWEEN:** Sri. P.B. Rajanna and others

//VERSUS//

**AND** : Sri. Nanjappa and others

**I. A. No.I**

APPLICANT/S: Sri. Basavanna P  
.....(Plaintiff No.3)

V/s

OPPONENT/S: Sri. Nanjappa and others  
..... (Defendants)

i.	Provision under which the application is filed	Under order XXXIX Rule I & II of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	14.09.2023
iv.	Number of the application	I.A. No.I
v.	The date on which the objections are filed by different opponents	27.10.2023
vi.	The date on which the orders	

	were passed on the said application	12.09.2024
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**ORDERS ON I.A. No.I UNDER ORDER 39 RULE  
1 AND 2 OF C.P.C.**

The Applicant/plaintiff No.3 has filed Application under Order 39 Rule 1 & 2 of CPC seeking for an order of temporary injunction against the defendants restraining the defendants from interfering with the peaceful possession of plaintiff over the suit schedule property till disposal of the suit.

2. This application is supported by the affidavit of plaintiff No.3. In the affidavit, it is averred that the plaintiffs have filed this suit against the defendants seeking relief of Permanent injunction in respect of suit schedule property. The suit property bearing Property No.93 measuring 48 x 72 feet situated at Pura village, Hampapura Hobli, H.D. Kote Taluk, is originally belongs to the plaintiffs' grand father by name late Basappa S/o Basappa @ Basavaiah. The said Basappa S/o Basappa @ Basavaiah is having three sons namely Basappa (1<sup>st</sup> plaintiff's father), Devappa (2<sup>nd</sup> plaintiff's father), and H.B. Puttaswamy (3<sup>rd</sup> plaintiff's father). After death of said Basappa S/o Basappa @ Basavaiah, the suit property came to the plaintiffs and they are in joint possession of

the same as ancestral property. During the lifetime of Basappa S/o Basappa @ Basavaiah he has constructed a house in the suit property, after his death the khatha of the suit property changed into the name of his elder son i.e., father of 1<sup>st</sup> plaintiff. After death of Basappa S/o Basappa @ Basavaiah the plaintiffs have divided the suit property orally among themselves and separately residing with their families. They are paying revenue tax in respect of the suit property every year and are in joint possession of the same. Towards the southern side of the house in the suit property cattle shed is constructed, and are storing fire wood etc., There is a vacant space of 7 ½ x 72 feet left to proceed to the said cattle shed.

3. Further it is contended that, the defendants have no manner of right, title or interest over the suit property, they are the neighbors on the western side of the suit property. That on 15.12.2022 at about 5.30 p.m., when the plaintiffs were went to tie to the cattle on the shed, the defendants caused obstruction. This applicant/plaintiff No.3 along with plaintiff No.2 lodged complaint before the H.D. Kote police dated 16.12.2022, the police have called upon the defendants and the defendant No.3, 4, 6 & 8 have given joint statement and further undertakes not to cause any obstruction to the plaintiff in the suit property. But

again on 01.09.2023 the defendants caused interference over the peaceful possession of plaintiffs in the suit property. Again on 08.09.2023 the plaintiffs went to lodge police complaint, but the police advised them to approach the Court as the matter is civil in nature. The defendants well aware that the suit property is the ancestral property of plaintiffs and they are in possession of the same, but inspite of that they are causing interference with an intention to grab the suit property and also to harass the defendants. On the said grounds, the plaintiffs claiming the injunction over the suit schedule property.

4. On the other hand, the defendants have filed objections to IA No.I wherein it is contended that, the application filed by the plaintiffs is not maintainable either in law or on facts and it is liable to be dismissed. The averments made in the application are far from truth, and they are not binding on the defendants, the plaintiffs have to prove the same before the court. It is denied that the defendants have no right over the suit property. The defendants are the neighboring landowners of suit property. The plaintiffs have filed this suit with an intention to grab the path used by the defendants in order to proceed to their land and house. The defendants have not made any galata against the plaintiffs. But the plaintiffs are making galata with the defendants

and in this regard panchayath has also been held in the village wherein the elders of the village have advised the plaintiffs not to obstruct the defendants. The defendants have not made any illegal interference. There is no vacant path situated near the land bearing Sy. No.93 on the western side as mentioned in the application. But there is a path of 9 feet on the east side of the property No.100 belonging to the defendants. The said path is being used by the defendants since from their ancestors. The house of plaintiffs are situated near the said path. The plaintiffs have filed false documents in order to grab the said 9 feet path situated on the Property No.100 belonging to the defendants. The plaintiffs have filed false affidavit before this Court. The suit property belongs to the defendants and plaintiffs have no right over the same. The plaintiffs are falsely making allegations against the defendants and lodged police complaint, and the police have advised the plaintiffs not to disturb the defendants.

5. It is further contended that, property No.100 measuring East to west - 45 feet and North to south - 113 feet situated at Pura village, Hampapura Hobli, H.D. Kote Taluk, bounded on the East by - 9 feet oni and House of Basappa of Kohalahundi village, West by - House of Ankappa Madappa and Site belongs to Siddalingappa, North by - Government road, and

south by - the hiduvali land belongs to these defendants, which originally belongs to the grand mother of defendants (mother of defendants mother) Smt. Puttananjamma, she purchased the same through sale deed. The said Puttananjamma had five grand children namely Gurumallappa (father of defendant No.1 & 3), Veerabhadrappa (father of 4<sup>th</sup> defendant), P.M. Mahadevappa (8<sup>th</sup> defendant), Shivamallappa (4<sup>th</sup> defendant), and Mallanna (11<sup>th</sup> defendant). During the lifetime of said Puttananjamma she had constructed a residential house in the said property. After death of Puttananjamma, khatha has been changed in the name of her elder daughter-in-law by name late Puttananjamma W/o Gurumallappa i.e., mother of defendant No.1 & 3. The defendants are paying revenue tax with respect to the said property. The defendants have divided the said property among themselves through oral partition, and residing separately along with family. Towards the eastern side of the said property, there is a path way of 9 feet i.e., oni used as path since from their ancestors. Adjacent to the said path the house of plaintiffs (property No.93) is situated. The said Oni belongs to the defendants and they are having exclusive right over the said path. The plaintiffs have no right, title or interest over the said 9 feet path, despite they are interfering with the peaceful possession of defendants over the

said 9 feet oni. The plaintiffs have given wrong boundaries to the suit property and filed this false suit with concocted documents. There is no mention about the path in the suit property except on the northern side. The plaintiffs have filed this suit with an intention to grab the said 9 feet oni belonging to the defendants on the eastern side of their property bearing No.100. On the said grounds, prays to dismiss the application.

6. Heard both sides.

7. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration.

1) Whether the plaintiff No.3 has established prima facie case?

2) Whether the balance of convenience lies in favour of plaintiff No.3?

3) Whether irreparable loss and hardship will be caused to the plaintiff No.3 if injunction is not granted?

4) What order?

8. My findings 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 the final order  
for the following,

**REASONS**

**9. POINT NO.1 TO 3:** Since these points are interlinked with each other they are taken up together for common discussion to avoid repetition.

10. I have heard Learned counsel and have gone through the record of the case carefully. For consideration of grant of relief of temporary injunction under Order 39 rule 1 & 2 of CPC, the Civil Courts basically considers the three well known principles. Firstly, the plaintiff has to show a prima-facie case in his favour, secondly balance of convenience is also in his favour and lastly he/she would suffer irreparable loss if interim injunction as prayed is not granted.

11. In the present application, the plaintiff No.3 has claimed temporary injunction in favour of plaintiffs and against the defendants thereby restraining them from interfering with the peaceful possession of plaintiffs over the suit schedule property.

12. The plaintiffs have filed the present suit for the relief of permanent injunction against the defendants in respect of the suit schedule property. It is stated in the application that, suit property

bearing Property No.93 measuring 48 x 72 feet situated at Pura village, Hampapura Hobli, H.D. Kote Taluk, is originally belongs to the plaintiffs' grand father by name late Basappa S/o Basappa @ Basavaiah. The said Basappa S/o Basappa @ Basavaiah is having three sons namely Basappa (1<sup>st</sup> plaintiff's father), Devappa (2<sup>nd</sup> plaintiff's father), and H.B. Puttaswamy (3<sup>rd</sup> plaintiff's father). After death of said Basappa S/o Basappa @ Basavaiah, the suit property came to the plaintiffs and they are in joint possession of the same as ancestral property. During the lifetime of Basappa S/o Basappa @ Basavaiah he has constructed a house in the suit property, after his death the khatha of the suit property changed into the name of his elder son i.e., father of 1<sup>st</sup> plaintiff. After death of Basappa S/o Basappa @ Basavaiah the plaintiffs have divided the suit property orally among themselves and separately residing with their families. They are paying revenue tax in respect of the suit property every year and are in joint possession of the same. Towards the southern side of the house in the suit property cattle shed is constructed, and are storing fire wood etc., There is a vacant space of 7 ½ x 72 feet left to proceed to the said cattle shed.

13. Further it is contended that, the defendants have no manner of right, title or interest over the suit property, they are

the neighbors on the western side of the suit property. That on 15.12.2022 at about 5.30 p.m., when the plaintiffs were went to tie to the cattle on the shed, the defendants caused obstruction. This applicant/plaintiff No.3 along with plaintiff No.2 lodged complaint before the H.D. Kote police dated 16.12.2022, the police have called upon the defendants and the defendant No.3, 4, 6 & 8 have given joint statement and further undertakes not to cause any obstruction to the plaintiff in the suit property. But again on 01.09.2023 the defendants caused interference over the peaceful possession of plaintiffs in the suit property. Again on 08.09.2023 the plaintiffs went to lodge police complaint, but the police advised them to approach the Court as the matter is civil in nature. The defendants well aware that the suit property is the ancestral property of plaintiffs and they are in possession of the same, but inspite of that they are causing interference with an intention to grab the suit property and also to harass the defendants.

14. In support of their claim at this stage the plaintiffs have furnished photos and CD. On the other hand, the defendants have furnished copies of demand register extract, Tax paid receipts, sale deed, RTC extracts, police complaint copy, acknowledgment, statements of defendants.

15. On perusal of the said documents produced by the plaintiffs and defendants it appears that there is a dispute between them in respect of the set back to the properties of the plaintiffs and defendants. In the suit it can be only know the exact thing after trial of the suit by examining the witnesses from both side. In case the plaintiffs have constructed the house to the whole extent of their property without giving any set back and claiming the rights on the property of the defendants, the real sufferer is the defendants. The plaintiffs are claiming 7.08 x 72 feet space to move on the path. But there is no records to show the existence of path except photographs. When the exact extent is measuring by the concerned authority, it can only know the thing. Therefore it is not proper to grant extra ordinary relief in favour of the plaintiffs at this stage.

16. The dispute of the parties is to be decided on full fledged trial. Hence, at this stage Court cannot grant a temporary injunction against the defendants. This Court relied the Judgment of Hon'ble High Court in ***R. Dilip Kumar v. S. Ramu*** reported in **ILR 1992 KAR 2905** has held that "It cannot be disputed that in order to entitle to a temporary injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this

extraordinary relief of temporary injunction cannot be granted to him.”

17. It is common knowledge that plaintiffs/appellants and petitioners apply for temporary injunction/stay in Courts but the Courts are generally loathed in granting injunction although the law in this regard is well settled. The Apex Court has time and again propounded triple test doctrine for the grant of temporary injunction, existence of prima facie case, balance of convenience and doctrine of irreparable injury, but more importantly all these tenets must co-exist together to enable the courts to exercise their judicial discretion in favour of the applicant. These three cardinal principles are to be applied in a proper perspective looking to the particular facts and circumstances of a case before deciding the grant of temporary injunction.

18. At the stage of passing an interlocutory orders such as on an application for the grant of ad-interim injunction under Rule 1 or 2 of Order 39 of the CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and irreparable injury – the three pillars on which rests the foundation of any order of injunction.

19. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or damage would ensue before the legal right would be established at trial and that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

20. The Apex Court in the case of **Shivakumar Chanda etc V/s. Municipal Corporation of Delhi reported in 1993 (3) SCC 161** reiterated the dictum and held thus – it has been pointed out repeatedly that a party is not entitled to an order of an injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by

an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

21. The purpose of temporary injunction is, thus to maintain the status quo. The Court grants such relief according to the legal principles, *ex debite justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case had been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

22. The Apex Court in the case of **Gujrath Bottling co. Ltd., V/s. Coco cola Co.**, reported in **AIR 1995 SC 2372** gave a landmark judgment as to the guidelines to be followed by the Court while considering applications for granting a temporary injunction. The Court held thus -

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the Court applies the following tests:

- i. Whether the plaintiff has *prima facie* case,

ii. Whether the balance of convenience is in favour of the plaintiff, and

iii. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

23. A finding on prima facie case would be a finding of fact. However, while arriving at such finding of fact the Court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.

24. However it is pertinent that it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction as held by Apex Court in S.M. Dyechem Ltd., V/s. M/s. Cadbury (India) Ltd., **AIR 2000 SC 2114**.

Prima facie case:- The expression prima facie is a latin expression meaning "**at first sight or based on first impression or on the face of it**". Prima facie means that evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. The term prima facie is used in modern law to signify that upon initial examination, sufficient, corroborating evidence appears to exist to support a case. In

common law a reference to prima facie evidence denotes evidence that unless rebutted would be sufficient to prove a particular proposition or fact.

25. The Apex Court in **Gujarath Electricity Board Gandhinagar V/s Mahesh Kumar company, Ahamedabad** reported in **(1995) 5 SCC 545** elucidated the meaning of prima facie case thus prima facie case means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. Prima facie case is substantial question raised bonafide which needs investigation and a decision on merits. The Court at the initial stage cannot insist upon a full proof case warranting an eventual decree.

**Principle of irreparable injury**:- The second condition is that the applicant would suffer irreparable injury if the respondent/defendant is not injuncted. An irreparable injury is, in equity, the type of harm which no monetary compensation can cure or put conditions back the way they were. The term irreparable injury means injury which is substantial and could never be adequately remedied or atoned for by damages, injury

which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist any standard for ascertaining the actual damage likely to be caused. It is most opposite to mention here that irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, that cannot be adequately remedied or compensated by way of damages.

26. It is appropriate to refer the judgment in **Dalpath Kumar V/s. Prahlad Singh** wherein it is elucidated the doctrine of irreparable injury and its necessity besides the existence of prima facie case and observed thus :

“Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences.”

27. Thus the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the

amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of interim injunction pending the suit.

28. In **Best sellers Retail (P) Ltd., V/s. Adithya Nirla Nuvo Ltd.**, reported in **(2012) 6 SCC 792** the Hon'ble Apex Court held that – only prima facie case alone is not sufficient to grant injunction and the court held thus –

"yet the settled principle of law is that even where prima facie case is in favour of the plaintiff, the court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable."

**Balance of convenience:-** The applicant is required to prove in application for grant of temporary injunction that there is the balance of convenience is in favour of the applicant i.e., the

comparative mischief, hardship or inconvenience which is likely to be caused to the applicant if the injunction is being refused. The balance of convenience come into picture when there is doubt as to the adequate remedies in damages available either to party or both.

29. The balance of convenience does not imply that the balance would be on one side and not in favour of the other. The Court must assess balance between the parties and take into consideration whether withholding the injunction will be greater than that which is likely to arise from granting it. In applying this principle the Court has to consider the amount of substantial mischief that is likely to be done to the applicant when the injunction is refused and compared it with that which is likely to be caused to the other side if the injunction is granted.

30. The Apex Court in **Dalpath kumar V/s. Prahlad Singh (Supra)** discussed the legal connotation of the term balance of convenience and held thus -

“The third condition also is that the balance of convenience must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound

judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compared it with that it is likely to be caused to the other side if the injunction is granted.”

31. In **Kashi Math Samstan V/s. Shrimad Sudheendra Thirtha Swamy** reported in **AIR 2010 SC 296** the Hon'ble Apex Court held that – no interim injunction in the absence of prima facie case even if the other requirements are fulfilled, interim injunction U/o 39 Rule 1 & 2 of CPC cannot be granted when the party is unable to prove prima facie case in his favour even if such party makes out a case of balance of convenience and irreparable injury.

32. In **Gowrishankara Swamygalu V/s. Sri. Siddaganga Mutt ILR 1989 Kar 1701 ; 1989 (2) Kar LJ 548** the Hon'ble Karnataka High Court held with the co existence of all the three pillars for grant of temporary injunction. The Court held thus -

“It need hardly add the existence of prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction.”

33. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will have also be evaluated before granting or refusing the injunction.

34. With respect to the questions of balance of convenience and irreparable injury, since both parties are claiming right over the same subject matter, if an injunction is granted then a possibility cannot be ruled out that it may cause hardship. Hence for these reasons and in view of the law laid down by the **Hon'ble High Court in R. Dilip Kumar v. S. Ramu** (referred supra), I am of the considered opinion that at this stage it is not proper to grant the extra ordinary relief of temporary injunction. Accordingly, points No.1 to 3 are answered in the **Negative**.

**35. POINT NO.4:** In view of my answers to the above points No.1 to 3, and the reasons assigned therein, I proceed to pass the following.

**ORDER**

I.A. No.I filed by the applicant/  
plaintiff No.3 U/o 39 rule 1 & 2 is  
hereby rejected.

No order as to cost.

*(Dictated to the Stenographer directly on computer, typed by her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **12<sup>th</sup> day of September 2024**).*

**(SURESHA.S.N.)**  
**Addl. Civil Judge & JMFC**  
**H.D.Kote.**