

KAMS410032182021



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B

Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 01ST DAY OF DECEMBER 2025

O.S./373/2021

Plaintiff : J.Somashekharashetty

-V/s-

Defendant : N.Gowdappa

I.A. No.4

Applicant : J.Somashekharashetty

--- Plaintiff

-V/s-

Opponent : N.Gowdappa

--- Defendant

Provision under which the applications are filed	U/o 39 R-1 and 2 R/w Sec. 151 of C.P.C.
Relief sought for	Injunction
The date on which the application are filed	16.12.2024
Number of the application	4
Date on which the objections are filed by the different opponents	16.04.2025
Date on which the order is passed	01.12.2025

**ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 R/W SEC. 151
OF C.P.C**

The present application is filed by the plaintiff seeking an order of temporary injunction to restrain the defendant from putting up any compound wall by encroaching upon the suit property and to maintain status quo till the disposal of the suit.

2. The plaintiff states that, he is a retired school teacher and the absolute owner in possession of the suit property, having acquired the same under a registered Will executed in his favour. According to the plaintiff, the defendant is the President of the Marikamba Temple, situated towards the western side of the suit property. The defendant, along with his supporters, is allegedly interfering with the plaintiff's peaceful possession.

3. The plaintiff contends that, the defendant has been obstructing him from putting up a compound wall within his own boundaries and measurements, and is repeatedly attempting to encroach upon the suit property. The temple is said to have its regular access from the northern side, and there is no obstruction caused by the plaintiff. The plaintiff alleges that the defendant, with an intention to grab the plaintiff's property, is causing repeated interference.

4. Further it is submitted that, several requests were made by the plaintiff to the defendant not to interfere, but the defendant allegedly did not heed the same. The plaintiff states that on 01-08-2021, the defendant again interfered, compelling the plaintiff

to file the suit and the earlier I.A. under Order 39 Rules 1 & 2 CPC.

5. The earlier injunction application filed by the plaintiff was rejected by this Court by order dated 19-11-2022, holding that the defendant had denied the plaintiff's title and boundaries, and that the plaintiff had sought declaratory relief, but had not amended the plaint accordingly at that stage. Aggrieved by this Court's order, the plaintiff preferred Miscellaneous Appeal No. MA.11/2022-2023 before the Hon'ble Senior Civil Judge, K.R.Nagara. The said appeal came to be dismissed on 08.12.2023, thereby confirming this Court's earlier order. The plaintiff alleges that, taking advantage of the dismissal of the earlier I.A. and the dismissal of the Misc. Appeal, the defendant attempted to put up a compound wall on 13-12-2024, by deploying a JCB, encroaching into the suit property.

6. The plaintiff states that, he objected to and questioned the illegal act of the defendant and requested him not to proceed with the construction until disposal of the suit. However, the defendant allegedly continued with the work. The plaintiff lodged a complaint before the jurisdictional Police Station. The police summoned the defendant and advised him not to put up any compound wall until disposal of the suit, and issued an endorsement to that effect. Despite this, the defendant allegedly did not stop the work.

7. The plaintiff submits that, if the defendant is not restrained immediately, it will cause irreparable loss, hardship, and serious injury to the plaintiff and will change the nature of the property, thereby affecting the suit itself. Therefore the plaintiff prays that, in order to protect the suit property and to prevent encroachment, the defendant be restrained by an order of temporary injunction from putting up any compound wall or carrying out any construction encroaching upon the plaintiff's property till the disposal of the suit.

8. In response to the plaintiff's application, the defendant has filed his statement of objections contending that, the defendant denies, disputes and repudiates all the averments made in the plaintiff's affidavit and application. According to the defendant, the present application is not maintainable either in law or on facts.

9. The defendant submits that, the plaintiff had earlier filed I.A. No.1, seeking similar reliefs, which was dismissed by this Court. The said order was subsequently confirmed by the Hon'ble Senior Civil Judge, K.R.Nagar, in Miscellaneous Appeal. Therefore, filing the present application seeking the same reliefs is not maintainable and is impermissible in law.

10. The defendant further contends that, the suit itself is not maintainable for non-joinder of necessary parties. According to the defendant, the other trustees and members of the

administrative body of the Marikamba Seva Trust have not been impleaded, though they are necessary parties. Hence, the suit is liable to be rejected under the principles of non-joinder of necessary parties.

11. The defendant asserts that, the Goddess Marikamba Temple has been in existence for more than 70 years, and the entire property shown in the engineer's sketch belongs to the temple. The property stands as Property No.3831, Assessment No.2661-B, measuring $(90 + 66)/2 \times (128 + 86)/2$, and was acquired by the Trust. The defendant submits that, the temple property was conveyed to the Trust under a registered Gift Deed dated 03-07-1972, executed by one Manikyam Mudaliar, son of Rangaswamy Mudaliar, along with other trustees. The khata and assessment records of the Town Municipality, K.R.Nagar, also reflect the temple as the owner. Towards the eastern side of the temple, there exists a conservancy lane/passage measuring 13 feet, connecting the main road to Vinayaka Layout, 3rd Cross. This lane is used by the public and devotees, and the temple has been developed with funds of the Trust. Residential houses for temple priests also exist within the property.

12. The defendant asserts that, during the month of April every year, a fair and procession is organized by the Trust, which is attended by thousands of devotees and villagers. The plaintiff is fully aware of these facts. According to the defendant, the plaintiff has filed the present suit only to obstruct the defendant

and to create false claims over the temple property. The plaintiff has not produced any document to prove his possession and has falsely alleged interference and encroachment.

13. The defendant states that, there is no property belonging to the plaintiff situated around the Marikamba Temple Trust property. The plaintiff has falsely created boundaries and fabricated claims only to deceive the Court and unlawfully grab portions of the temple property. The defendant contends that, the schedule property shown by the plaintiff does not fall within Cheernalli Main Road, nor within the precincts or vicinity of the plaintiff's alleged property. The plaintiff has no right, title, or possession over the schedule property and is attempting to encroach upon the temple land. According to the defendant, the suit has been instituted with mala-fide intention to interfere with the temple property, to unlawfully take possession, and to mislead the Court. Therefore, the defendant prays that the present application be rejected as not maintainable and liable to be dismissed.

14. Heard the learned counsel appearing for the plaintiff/applicant and the learned counsel appearing for the defendant. Perused the material propositions, pleadings, affidavits, documents, and photographs produced by both sides.

15. The following points arise for this court's consideration.

1) Whether the applicant/plaintiff has made out that, he has got a prima-facie case on hand?

2) Whether the applicant further made out that, the balance of convenience lies in his favour?

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to him, if the present application is not allowed?

4) What order?

16. This court findings on the above points for consideration 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
for the following:**

REASONS

17. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

18. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the application which is filed U/o 39 R-1 and 2 of C.P.C., the

relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

19. Further, admittedly there is no evidence on record to consider the applications on the basis of the evidence. Further, the parties to the suit are yet to lead their evidence. Accordingly, in the absence of any evidence to discuss the applications, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

20. The present application is filed by the plaintiff seeking temporary injunction to restrain the defendant from putting up any compound wall by allegedly encroaching upon the suit property and to maintain status quo till disposal of the suit. The plaintiff has reiterated that, he is the absolute owner in possession of the suit property and that the defendant, being the President of the Marikamba Temple, is attempting to interfere with his possession and is trying to put up a compound wall. The plaintiff relies upon alleged interference said to have occurred on 13-12-2024 and upon the endorsement said to have been issued by the jurisdictional police.

21. The defendant has filed detailed objections disputing the plaintiff's title, boundaries, possession, and the very existence of any property belonging to the plaintiff adjacent to the temple property. The defendant contends that the temple property has existed for more than 70 years and is recorded in the municipal records. The defendant asserts that the suit is not maintainable for non-joinder of necessary parties, and that a similar injunction application (I.A. No. 1) was earlier dismissed by this Court, which dismissal was affirmed by the Hon'ble appellate Court. Hence the present application, seeking identical reliefs, is not maintainable.

22. It is not in dispute that, an earlier injunction application filed by the plaintiff (I.A. No.1) seeking similar reliefs was dismissed by this Court by order dated 19-11-2022, and the said dismissal was confirmed by the appellate Court in M.A. No. 11/2022-23 on 08-12-2023. The earlier rejection of injunction has thus attained finality for the present stage. The plaintiff has not demonstrated any new or substantial change of circumstances that would justify reopening the identical relief which has already been declined by both courts. Merely alleging fresh interference on a later date does not alter the fundamental issues relating to title, boundaries and possession, all of which remain seriously disputed.

23. The defendant has produced material and raised contentions showing long-standing possession, municipal

assessment entries, existence of temple structures, passage, and religious activities. The plaintiff, on the other hand, has not produced new documentary evidence to establish prima-facie possession over the alleged schedule property. Where title and boundaries are seriously disputed, and where the plaintiff is unable to prima-facie prove settled possession, the Court cannot grant a temporary injunction. The matter requires full-fledged trial. Hence, the plaintiff has failed to establish a prima facie case.

24. The temple property, as per defendant's documents and municipal assessments, is in existence for several decades, and public access and temple activities are conducted regularly. The plaintiff's alleged possession is not supported by reliable documents. Interfering with long-standing temple property, structures, or access rights based on disputed and unproven claims would cause greater hardship to the defendant and the public. Thus, the balance of convenience does not favour the plaintiff.

25. The plaintiff has not shown that, he possesses clear title or established possession. Injury or inconvenience claimed by a person who has not demonstrated lawful possession cannot be considered irreparable.

26. On the contrary, granting an injunction would potentially prevent the temple from using property long recorded in its

favour and would disrupt religious and public activities, causing larger consequences. Thus, the plaintiff has not shown irreparable injury.

27. The plaintiff has failed to establish the essential ingredients for grant of temporary injunction prima-facie case, balance of convenience, and irreparable injury. Further, the relief sought in the present application is identical to the relief already rejected by this Court earlier and confirmed in appeal. Re-agitating the same relief without new circumstances is not maintainable. Hence the **point No.1 to 3 are answered in the Negative.**

28. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A No.4 filed under Order 39 Rule 1
and 2 R/w Sec.151 of C.P.C is hereby
dismissed.

No orders as to cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of December 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.