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**IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.**

Present: Smt. Savita Rudragouda
Chikkanagoudar., *B.A., LL.B.*,
II Addl. Civil Judge & JMFC.,
Kanakapura.

Dated: This 21st day of February 2025

O.S. No.71/2024

Plaintiff : Smt. Prema W/o Late. Kempegowda,
Aged about 48 years,
R/at: Joga Mana Hosahalli,
Kasaba Hobli, Kanakapura Taluk,
Ramangara District.

(By Sri. Ramesh., Adv.)

-V/S-

Defendant: Smt. Pramila W/o Venkatesh,
Aged about 50 years,
R/at: T. Bekuppe Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. K.V.M., Adv.)

PARTIES TO IA No.I**Applicant/
plaintiff:**

Smt. Prema

Vs.**Opponent/
Defendant :**

Smt. Pramila

PARTIES TO IA No. II**Applicant/
Defendant :**

Smt. Pramila

Vs.**Opponent/
Plaintiff:**

Smt. Prema

**COMMON ORDER ON I.A. NO.I AND II UNDER ORDER XXXIX
RULE 1 AND 2 R/w Sec. 151 OF CPC AND ORDER 39 RULE 4
R/W SEC.151 OF CPC**

The present I.A No.1 is filed by the plaintiff U/o XXXIX Rule 1 and 2 R/w Sec.151 of CPC seeking an order of temporary injunction to restrain the defendant, her agents, legal heirs, workers, labours, henchmen or anybody claiming through her from in any way putting up any further construction over the suit schedule property pending disposal of the suit and defendant has filed I.A No.II U/o 39 Rule 4 r/w Sec.151 of CPC to vacate the ad-interim order of temporary injunction passed against her.

2. In the affidavit accompanying the application, the plaintiff has stated to read the plaint as part and parcel of the affidavit and when we read the affidavit along with plaint. It is the specific contention of the plaintiff that, she has filed the present suit against defendant for declaration of her ownership as to suit schedule property and mandatory injunction. According to plaintiff herself and her sister namely Jayalakshamma are the joint and absolute owners of the land measuring 14 guntas in Sy No.64/5 of Bekuppe village and originally the said property belonged to one late Munisiddegowda @ Shivasiddegowda and late Kempegowda, who are the brothers and it was their ancestral property and fell to their share in a family division and subsequent to such division they were in possession and enjoyment of said property as its absolute owners and katha also stood in their joint names. The plaintiff further states that, she was married to late Kempegowda and her sister was married to late Munisiddegowda @ Shivasiddegowda and subsequent to death of their husbands, being their wives herself and her sister allegedly inherited the said property and got the katha mutated in their joint names as per MR. No. 47/2017-18 and continued to be in possession and enjoyment of suit schedule

property by cultivating and growing Ragi, Jowar, groundnuts and other cereal crops without any interference from anybody.

3. The plaintiff also contends that defendant who is on the eastern side of suit property, having her land in Sy No. 159/2, has allegedly encroached 2 guntas out of 14 guntas of land towards the eastern side of suit property, even though she has no manner of any right title interest or possession whatsoever over the encroached portion of 2 guntas. The plaintiff also states that defendant has trespassed into the suit schedule property and trying to put up illegal construction in the said property which belongs to plaintiff, with oblique motive to grab 2 guntas of land by falsely claiming title over the same and defendant along with her henchmen came over the suit property and illegally obstructing plaintiff's peaceful possession and enjoyment of suit property by putting up illegal construction over the same. In that regard plaintiff made several requests to defendant not to do illegal acts but it went in vain and even the complaint was filed before the Kanakapura Rural Police on 26.01.2023 against the defendant to stop putting up construction work in the suit

property but it became futile. Defendant taking advantage of weakness of plaintiff allegedly with the help of goonda elements encroached the suit property and started putting up illegal construction, if defendant is not immediately stopped from putting up the said construction over the suit property it will lead to much complication and cause undue hardship and irreparable loss and injury to plaintiff. She further states that documents produced by her prima facie establish case in her favour and hence prays to pass an order temporary injunction restraining the defendant, her heirs, agents, labours, workers or anybody claiming through her from in any way putting up further illegal construction over the suit schedule property pending disposal of the suit.

4. On the other hand, the defendant has filed memo to consider her written statement as objection to I.A No.1 U/o 39 Rule 1 and 2 of CPC. In her written statement defendant submits that, she is the absolute owner in lawful possession and enjoyment of property bearing Sy. No. 159/2 old Sy. No. 159 measuring 7 guntas situated at Bekuppe Village, Kasaba Hobli, Kanakapura Taluk having purchased the same under registered sale deed dated

14.12.2022 from one Smt.Chikkatayamma W/o late Puttaswamy and her children and accordingly she also got katha and revenue records transferred in her name and is in peaceful possession and enjoyment of said property without any interruption. She also states that after purchasing the said land out of 7 guntas, in 2 guntas of land she has put up foundation for construction of house and put up pillars and erected half portion of wall for construction of house. She further states that, land in Sy No. 159 measuring 36 guntas originally belonged to one Lingegowda @ Puttegowda S/o Marilingegowda and after his death his legal heirs succeeded the said property and partitioned their properties as per registered partition deed dated 02.03.2021 and in the said partition land to the extent of 7 guntas in Sy No. 159 acquired by vendor of the defendant namely Chikkatayamma W/o Puttaswamy as per M.R.H 40/2021-22 and at the time of registration of partition deed the share of the vendor of the defendant was measured and survey sketch was prepared and in the said survey sketch no encroachment of land in Sy No. 64/5 appears.

5. She also states that plaintiff has no manner of any right title interest or possession of suit schedule property

and plaintiff and her sister Jayalakshamma in order to safe guard their property in Sy.No. 64/5 measuring 14 guntas have already put up stone fence surrounding their property. Therefore the suit schedule property is not a part and parcel of land in Sy No. 64/5 and its actually the part of land in Sy No. 159/2 belonging to defendant but plaintiff by colluding with surveyor has created and concocted survey sketch and haddubasth and on the basis of those documents has filed this false and frivolous application with malafide intention to knock of the defendant's property or to black mail the defendant and to make illegal gain.

6. She also states that plaintiff has furnished wrong boundaries and wrong Survey Number to the suit schedule property, the boundaries mentioned in the plaint schedule are not belonging to Sy No. 64/5 on the other hand its relating to Sy. No. 159/2 which belongs to defendant and also states that 2 guntas mentioned in the plaint schedule is the portion of property in Sy No. 159/2 and not portion of land in Sy No. 64/5. She also states that by colluding with surveyor plaintiff got created and concocted alleged sketch by wrongly mentioning that there is an encroachment of land measuring 2 guntas in Sy. No. 64/5 but neither the

defendant nor her vendor encroached any land as alleged by plaintiff hence on these grounds prays to reject the application.

7. The defendant has also filed I.A No.II to vacate the Exparte Interim order of temporary injunction passed against her. In the affidavit accompanying the application filed by the defendant, defendant reiterated the facts stated by her in her written statement and in addition to it she states that plaintiff by suppressing the true facts and by misleading the court has obtained interim order against her in respect of suit schedule property and also states that she has already put up a foundation, pillars and walls but now plaintiff by taking undue advantage of interim order passed by the court has stopped the construction work of defendant's house because of which she is suffering irreparable loss, hardship and injury and also states that if the application is allowed no hardship will be caused to plaintiff. Hence, prays to vacate the order of temporary injunction passed under I.A No.1.

8. On the other hand, plaintiff in her objection to IA No.2 filed by the defendant states that towards eastern side

of plaintiff's property defendant has her property in Sy No. 159/2 measuring 7 guntas and the plaintiff is not disputing the same but defendant as admitted by her is putting up construction and the place where defendant is putting up construction is belonging to plaintiff and its 2 guntas of land encroached by defendant. If the interim order is vacated defendant will complete the construction and in future she may claim equity. If the building is completed then automatically the defendant will occupy the possession and take all the basic amenities such as electricity water connection NOC from panchayath and then ultimately if suit is decreed then executing the decree becomes very complicated hence prays to direct both the parties to maintain status quo. She also states that if there is any irregularity done by the surveyor while fixing the haddubasth of plaintiff's property then defendant should have challenged the same before the competent authority by filing appeal before DDLR but defendant has not done so and the fact pleaded by the defendant that she is constructing building in Sy. No.159/2 is false and not supported by any cogent evidence hence submits that no grounds made out to vacate the interim order and prays to reject the application

9. Heard both the sides on I.A No.1 and 2 and perused the materials placed on record.

10. The following points arise for my consideration;

1) Whether the plaintiff has made out a prima-facie case in her favour?

2) Whether the plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted as sought for?

3) Whether the plaintiff proves that the balance of convenience lies in her favour?

4) Whether the defendant proves that ad-interim order of temporary injunction passed against her deserves to be vacated?

5) What Order?

11. My findings on the above Points are as under;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : In the Negative;

Point No.5 : As per final order

for the following:-

REASONS

12. **Point No.1:-** It is the specific contention of the plaintiff that, she has filed present suit against defendant for declaration of her ownership as to suit schedule property and mandatory injunction. According to plaintiff herself and her sister namely Jayalakshamma are the joint and absolute owners of the land measuring 14 guntas in Sy. No.64/5 of Bekuppe village and originally the said property belonged to one late Munisiddegowda @ Shivasiddegowda and late Kempegowda, who are the brothers and it was their ancestral property and fell to their share in a family division and subsequent to such division they were in possession and enjoyment of said property as its absolute owners and katha also stood in their joint names. The plaintiff further states that, she was married to late Kempegowda and her sister was married to late Munisiddegowda @ Shivasiddegowda and subsequent to death of their husbands, being their wives herself and her sister allegedly inherited the said property and got the katha mutated in their joint names as per M.R. No. 47/2017-18 and continued to be in possession and enjoyment of suit schedule property by cultivating and

growing Ragi, Jowar, groundnuts and other cereal crops without any interference from anybody.

13. The plaintiff also contends that defendant who is on the eastern side of suit property, having her land in Sy No. 159/2, has encroached to 2 guntas out of 14 guntas of land towards the eastern side of said property, even though she has no manner of any right title interest or possession whatsoever over the encroached portion of 2 guntas. The plaintiff also states that defendant has trespassed in to the suit schedule property and trying to put up illegal construction in the said property which belongs to plaintiff, with oblique motive to grab 2 guntas of land by falsely claiming title over the same and defendant along with her henchmen came over the suit property and illegally obstructed plaintiff's peaceful possession and enjoyment of suit property by putting up illegal construction over the same. In that regard plaintiff made several requests to defendant not to do illegal acts but it went in vain and even the complaint was filed before the Kanakapura Rural Police on 26.01.2023 against the defendant to stop putting up construction work in the suit property but it became futile. Defendant taking advantage of weakness of plaintiff

allegedly with the help of goonda elements encroached the suit property and started putting up illegal construction, if defendant is not immediately stopped from putting up the said construction over the suit property it will lead to much complication and cause undue hardship and irreparable loss and injury to plaintiff. She further states that documents produced by her prima facie establish case in her favour and hence prays to pass an order temporary injunction restraining the defendant, her heirs, agents, labours, workers or anybody claiming through her from in any way putting up further illegal construction over the suit schedule property pending disposal of the suit.

14. The plaintiff in support of her contention has produced the RTC extract pertaining to Sy No. 64/5 in which 14 guntas of land appears to be in joint name of plaintiff and her sister Jayalakshamma, she has also produced the application filed by her for hadubastu of Sy. No.64/5 in which it is clearly mentioned that towards east defendant's property in Sy No.159/2 appears to be situated and she also produced the hadubastu prepared by concerned authority pertaining to Sy No. 64/5 in which it is clearly stated that 2 guntas of land in Sy No. 64/5 is encroached by

land holder in Sy. No.159/2, apart from that she has also produced copy of the complaint given to Kanakapura Rural Police and acknowledgment and endorsement issued by them. The hadubastu sketch prepared by Mojini officer prima-facie reflects the alleged contention taken by the plaintiff regarding encroachment.

15. On the other hand, the defendant in her written statement submit that, she is the absolute owner in lawful possession and enjoyment of property bearing Sy.No. 159/2 old Sy.No. 159 measuring 7 guntas situated at Bekuppe Village, Kasaba Hobli, Kanakapura Taluk having purchased the same under registered sale deed dated 14.12.2022 from one Smt. Chikkatayamma W/o late Puttaswamy and her children and accordingly she also got katha and revenue records transferred in her name and is in peaceful possession and enjoyment of said property without any interruption. She also states that after purchasing the said land out of 7 guntas, in 2 guntas of land she has put up foundation for construction of house and put up pillars and erected half portion of wall for construction of house. She further states that, land in Sy.No. 159 measuring 36 guntas originally belonged to one

Lingegowda @ Puttegowda S/o Marilingegowda and after his death his legal heirs succeeded the said property and partitioned their properties as per registered partition deed dated 02.03.2021 and in the said partition land to the extent of 7 guntas in Sy.No. 159 acquired by vendor of the defendant namely Chikkatayamma W/o Puttaswamy as per M.R.H 40/2021-22 and at the time of registration of partition deed the share of the vendor of the defendant was measured and survey sketch was prepared and in the said survey sketch no encroachment of land in Sy.No. 64/5 appears.

16. She also states that plaintiff has no manner of any right title interest or possession of suit schedule property and plaintiff and her sister Jayalakshamma in order to safe guard their property in Sy. No.64/5 measuring 14 guntas have already put up stone fence surrounding their property. Therefore the suit schedule property is not a part and parcel of land in Sy. No. 64/5 and its actually the part of land in Sy. No.159/2 belonging to defendant but plaintiff by colluding with surveyor has created and concocted survey sketch and hadubast and on the basis of those documents has filed this false and frivolous application with malafide

intention to knock of the defendant's property or to black mail the defendant and to make illegal gain.

17. She also states that plaintiff has furnished wrong boundaries and wrong Survey Number to the suit schedule property, the boundaries mentioned in the plaint schedule are not belonging to Sy. No.64/5 on the other hand its relating to Sy.No.159/2 which belongs to defendant and also states that 2 guntas mentioned in the plaint schedule is the portion of property in Sy. No.159/2 and not portion of land in Sy. No.64/5. She also states that by colluding with surveyor plaintiff got created and concocted alleged sketch by wrongly mentioning that there is an encroachment of land measuring 2 guntas in Sy No.64/5 but neither the defendant nor her vendor encroached any land as alleged by plaintiff hence on these grounds prays to reject the application and to vacate the ex-parte T.I Order passed against her. Defendant has produced the copy of registered sale deed executed in her favour by her vendor with respect to property in Sy. No.159/2 measuring 7 guntas. Even though defendant contends that the boundaries furnished by plaintiff are relating to her property but the said fact is not substantiated by her because the

boundaries furnished in plaint schedule and in the sale deed dated 14.12.2022 of defendant appears to be different. The other documents i.e., E.C, MR copy of partition deed of her vendor those documents need no discussion because plaintiff is not disputing ownership rights of defendant over property in Sy.No.159/2. The only contention of the plaintiff is defendant has encroached her 2 guntas of land in Sy. No. 64/5. So far as said contention is concerned it can be taken note of that defendant also does not deny that she has property towards east of plaintiff's property, the only submission of defendant is she has not encroached plaintiff's property and the plaintiff by giving wrong boundaries is trying to grab her property in Sy. No. 159/2 but there are no material on record in support of said contention. Now coming to the hadubast sketch and mahajar produced by the defendant relating to her property in Sy. No. 159/2 in which even though it is stated that there is no encroachment in said property but the said hadbust is dated 09.04.2023, whereas hadbustu produced by the plaintiff is dated 09.01.2024. Hence, it is clear that hadbustu produced by plaintiff is recent one and has more value and both the documents being given by proper authority, the contention taken by the defendant that the

said hadubastu furnished by the plaintiff is created and concocted by colluding with revenue authorities can not be considered by the court at this stage. Same requires full fledged trial. Hence, the court is of the opinion that plaintiff has prima-facie made out case. Hence, I answer point No.1 in the Affirmative.

18. **Point No.2 and 3:-** So far as irreparable loss and injury and balance of convenience is concerned as already discussed above the present suit filed by plaintiff seeking the relief of mandatory injunction to direct the defendant to deliver the vacant the physical possession and enjoyment of suit property and for grant of permanent injunction. On perusal of photos furnished by both the parties it is clear that construction is still at initial stage and at this stage an order of temporary injunction is not granted then it is the plaintiff who will be put to irreparable loss and injury and very purpose for which suit is filed will not survive for consideration and the hadubastu produced by the plaintiff reflects prima-facie alleged encroachment hence balance of convenience appears to be in favour of plaintiff accordingly I answer **point No.2 and 3 in the Affirmative.**

19. **Point No.4:-** So far as application filed by defendant to vacate TI order is concerned, as already discussed above defendant has not substantiated her alleged contention and as plaintiff has made out prima-facie case in her favour and as balance of convenience and irreparable loss and injury appears to be caused to plaintiff. The TI order passed against defendant needs no vacate. Hence, **I Answer Point. No.4 in the Negative**

20. **Point No.5 :-** For the aforesaid reasons discussed, I proceed to pass following.

ORDER

The I.A. No.I under Order XXXIX Rule 1 and 2 R/w section 151 of CPC filed by the plaintiff is hereby allowed.

The defendant, her agents, legal heirs, workers, labours, henchmen or anybody claiming through her are hereby restrained from in anyway putting up any further construction over the suit schedule property pending disposal of this suit in the interest of justice and equity.

Consequently, the I.A No.2, application filed by the defendant under order 39 rule 4 R/W section 151 of CPC is hereby rejected.

(Dictated to the Stenographer directly on computer then corrected and pronounced by me in the Open Court on this **21st day of February 2025**)

**II Addl. Civil Judge & JMFC.,
Kanakapura.**