

KARN320010232024



Presented on : 19-04-2024

Registered on : 19-04-2024

**IN THE COURT OF THE ADDL. CIVIL JUDGE &  
JMFC., KANAKAPURA**

Present: Smt. Radha S, B.A., LL.M.,  
Addl. Civil Judge & JMFC.,  
Kanakapura.

**Dated this the 16<sup>th</sup> day of July 2024**

**O.S./149/2024**

- Plaintiff/s :- 1. Smt. Kullamma  
@ Kempamma  
D/o late Kempasiddegowda  
@ Kempasidda  
Aged about 96 years,
2. Sri. Madegowda  
S/o late Kempasiddegowda  
@ Kempasidda  
Aged about 77 years,

Both are R/at:  
Tattekere Village,  
Maralavadi Hobli,  
Harohalli Taluk,  
Ramanagara District.

**(By Smt. A.B.S., Advocate)**

.Vs.

Defendant/s :- Sri. Mahadeva Naika  
S/o late Rama Naika  
Aged about 45 years,  
R/at: Lokanaikana  
Tandya Village,  
Maralavadi Hobli,  
Harohalli Taluk,  
Ramanagara District.

**( Ex-parte)**

**PARTIES TO IA No.I**

Applicant / plaintiffs: Smt. Kullamma @  
Kempamma and another

Vs.

Opponents / defendant : Sri. Mahadeva Naika

(Smt. Radha.S)  
Addl. Civil Judge & JMFC.,  
Kanakapura

**ORDERS ON I.A.NO.I FILED UNDER ORDER XXXIX RULE  
1 AND 2 R/W SECTION 151 OF CPC BY THE PLAINTIFFS**

This is an application filed by the plaintiffs praying the court to grant temporary injunction against the defendant, to restrain him, his agents, servants or anybody acting on his behalf from interfering into the plaintiff's peaceful possession

and enjoyment over the suit schedule property in any manner during the pendency of the suit.

2. Despite service of summons and notice on the defendant, he didn't appear before the court as such the defendant has placed as Ex.Parte.

3. Heard the arguments canvassed by the learned Sri. A.B.S Advocate for Plaintiffs at length in great detail on IA No.I. Scrutinized the records of the case.

4. On scrutiny of records of the case and having heard arguments, the following points would arise for consideration of this court:

- 1 Whether the plaintiffs have made out prima-facie case?
- 2 Whether balance of convenience lies in favour of plaintiffs?
- 3 Whether irreparable loss and injury would be caused to plaintiffs if temporary injunction is not granted?
- 4 What order?

5. My answer to the above points as under;

Points No. 1 to 3 : In the Affirmative  
Point No. 4 : As per the final order  
for following:

**::REASONS::**

6. **REASONING ON POINT NO.1** : Admittedly the plaintiffs have filed this suit against defendant for the relief of permanent injunction in respect of suit schedule property. It is the case of the plaintiffs that, they are the absolute owner in possession of the suit schedule property. The suit schedule property was original belonged to plaintiffs' father viz Sri. Kempasiddegowda @ Kempasidda. After the death of said Sri. Kempasiddegowda @ Kempasidda the plaintiffs being his legal Lrs are inherited the suit schedule property and in possession of the same. The khata pertaining to the suit schedule property is also transferred in the name of plaintiff No.1. The documents pertaining to the suit schedule property are also standing in the name of plaintiff No.1. Except the plaintiffs no one has any kind of right, title or possession over the suit schedule property. The defendant is a stranger and no where concerned to the suit schedule property even though he is trying to interfere into the peaceful possession and enjoyment of the plaintiffs over the suit schedule property by making illegal construction. How ever the plaintiffs tried to resist the illegal acts of the defendant but the same was also went in vain. Hence without having any alternate go to stop the illegal acts of the defendant, the plaintiffs have come up with this suit along with present application with above relief. On these grounds the plaintiffs prayed to allow the present application.

7. The contention taken by the plaintiffs are remained unchallenged as the defendant has failed to appear and oppose the same.

8. In support of plaintiffs' contention they produced RTC for the year 2023-2024 pertaining to suit schedule property, mutation extract, Photostat copy of interim order passed by the A.C, Ramanagara and Photostat copy of photographs. I have meticulously gone through the entire documents produced by the plaintiffs, the documents produced by the plaintiffs are juxtaposes the possession of the plaintiffs on the suit schedule property at this stage to grant temporary injunction. Hence these documents prima-facie discloses the case of the plaintiffs at this stage to grant temporary injunction against the defendant as prayed for. More over the genuineness of the documents can not be discussed at this stage.

9. Per contra to disprove the case of the plaintiffs, the defendant did not appear and opposed the same. Hence the contention and documents produced by the plaintiffs are remained unchallenged. As per the documents produced by the plaintiffs, they proved prima-facie case in their favour. As such under these findings this court answers point No. 1 in the affirmative.

**10 Point Nos. 2 and 3 :** Since these points are interconnected to each other as such they are taken together for common discussion to avoid the repetition of facts.

In the present case trial has to be conducted to prove the case of plaintiffs but at this stage it seems to the court that, till the disposal of the suit the defendant must restrain from his acts as prayed in I.A. If the defendant is not restrained, the very purpose of filing of the suit shall be defeated, as such no harm or injustice will be caused to the defendant if this application is allowed. Validity and genuineness of the documents can be seen at the time of deciding the case on merits. Since the plaintiffs have approached the court with some relief as such I am of the considered opinion that, defendant is to be restrained from interfering into the plaintiffs' peaceful possession and enjoyment over the suit schedule property till disposal of the suit. Hence this court is of the considered opinion that, plaintiffs have made out prima-facie case and balance of convenience is also lies in favour of plaintiffs. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiffs rather than the defendant. Hence this court answers Point Nos. 2 and 3 in the Affirmative.

11. **Point No.4 :** In view of discussion made on point No.1 to 3 above, I proceed to pass the following;

**O R D E R**

I.A.No.I filed Under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC by the plaintiffs is hereby allowed.

The defendant, his agents, servants or anybody acting on his behalf are hereby restrained by way of temporary injunction from interfering into the peaceful possession and enjoyment of the plaintiffs over the suit schedule property in any manner till the disposal of present suit.

Cost of this I.A will follow the final result of this case.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 16<sup>th</sup> day of July 2021.)

(Smt. Radha.S)  
Addl. Civil Judge & JMFC.,  
Kanakapura