

KARN320029422024



Presented on : 23-11-2024

Registered on : 23-11-2024

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KANAKAPURA

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

O.S./412/2024

Dated this the 09th day of September 2025

Plaintiff: Smt. Ambujamma
D/o Honnegowda
Aged about 63 years,
R/o: Dyapegowdanadoddi Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. V.M., Advocate)

.Vs.

Defendant: Sri. Jayanthkumar.D.M
S/o H.Manju,
Aged about 30 years,
R/o: No.75,
Dyapegowdanadoddi Village,
Kasaba Hobli,



Kanakapura Taluk,
Ramanagara District.

(By Sri. M.R, Advocate)

PARTIES TO IA No.I

Applicant / plaintiff : Smt. Ambujamma

Vs.

Opponent / defendant : Sri. Jayanthkumar.D.M

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

**ORDERS ON I.A.NO.I FILED BY THE PLAINTIFF U/O
XXXIX RULE 1 & 2 OF CPC.**

This is an application filed by the plaintiff requesting the court to pass an order of temporary injunction against the defendant to restrain him, his agents or servants or anybody acting on his behalf from putting up any kind of compound wall towards the eastern side of the land bearing Sy.No.42/2 measuring 00 acres 12 guntas situated at Cheeranakuppe Village, Kasaba Hobli, Kanakapura Taluk and Ramanagara District in any manner during the pendency of the suit. The description of the above property is clearly mentioned in the plaint and application schedule and herein after referred as the suit schedule property.



2. The defendant has appeared before the court through his counsel and filed his written statement and memo to consider his written statement as objections to the present application.

3. On the basis of application and written statement filed by either party, the following points would arise for the consideration of this court.

1. Whether the plaintiff has made out prima-facie case?

2. Whether balance of convenience lies in favour of plaintiff?

3. Whether irreparable loss and injury would be caused to plaintiff if temporary injunction is not granted?

4. What order ?

4. Heard the arguments canvased by the learned Sri.V.M Advocate for plaintiff and the learned Sri.M.R Advocate for the defendant at length in great detail on IA No.1. Scrutinized the records of the case.

5. On scrutiny of records of the case and having heard arguments, my answer 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 final Order, for
the following :

REASONS

6. Point No.1: Admittedly, the plaintiff has filed this suit against defendant for the relief of permanent injunction in respect of the suit schedule property.

7. The present application is supported by the affidavit of the plaintiff, wherein he deposed that he is the absolute owner in possession of the suit schedule property as he purchased the same from one K.A. Anantha Iyengar under the registered sale deed dated 12-03-2023. Accordingly the katha and RTC pertaining to the suit schedule are transferred in the name of the plaintiff. Since the day of purchase the plaintiff is in possession and enjoyment of the suit schedule property. The suit schedule property is consisting with coconut and Areca nut trees. The defendant owns a land towards the eastern side of the suit schedule property. The defendant is a stranger and not having any manner of right, title, interest or possession on the suit schedule property. Even though in order to grab the suit schedule property the defendant is trying to interfere into the plaintiff's peaceful possession and enjoyment of the suit schedule property. On 15-11-2024 at about 10:30 A.M the defendant along with his henchmen have illegally



trespassed onto the suit schedule property and cut and removed the Arecanut Trees thereby tried to interfere into the plaintiff's peaceful possession and enjoyment of the suit schedule property. The defendant is also trying to dispossess the plaintiff by way of encroachment on the suit schedule property towards the eastern side by putting up a compound wall and stored materials without any valid reasons or cause. The plaintiff however tried to resist the illegal acts of the defendant but his all efforts are went in vain. Hence, without having any other alternative in order to stop the defendant from such illegal acts the plaintiff has filed this suit along with present application. On these grounds the plaintiff prayed to allow the present application.

8. On the other hand the defendant has filed his written statement and memo to consider his written statement as objections to the present application. In the written statement, the defendant has denied the entire contents of plaint. It is the specific defence of the defendant that he is the absolute owner in possession and enjoyment of the land bearing Sy.No.42 measuring 5 guntas as he got the same from his father under the registered Gift Deed dated 02-06-2023. Accordingly the katha pertaining to the above said land is transferred in the name of the defendant as per M.R.No.H32/2022-23. Since the day of gift deed, the defendant is in possession and enjoyment of his property.



The suit schedule property was originally belonged to one Anantha Iyyangar.K.A S/o late Narasappa and he was died on 12-08-1978 leaving behind only one daughter viz Nagamani. After the death of said Nagamani, her only daughter viz Shuba succeeded the said property. The suit schedule property is situated towards the western side of the defendant's land. The grand daughter of the said Anantha Iyyangar is presently residing at Mysore. The plaintiff by taking the undue advantage of the same by colluding with others have fabricated the sale deed by playing impersonation has created the sale deed in respect of the suit schedule property. As on the date of sale deed dated 19-09-2023, the said Anantha Iyyangar was dead. As such the original owner viz Shuba has lodged a criminal complaint against the plaintiff along with six others and the said case is registered under Crime No.24/2024. The plaintiff had also filed an another suit under O.S.No.38/2024 for permanent injunction against the father of the defendant and original owner Shuba and the said suit is pending for adjudication. The plaintiff has not approached the court with clean hands as she suppressed the real facts. The plaintiff is not in lawful possession and enjoyment over the suit schedule property. The plaintiff is claiming her right on the basis of alleged created, fabricated documents.



9. Further it is contended by the defendant that he is constructing a compound wall around his land within the boundaries in order protect his property. The defendant has never encroached the plaintiff's land towards the eastern side as alleged for. The plaintiff herself has approached the survey department and conducted survey to her land. After conducting survey it is disclosed that there is no encroachment in the plaintiff's land. The defendant has never encroached the plaintiff's land nor interfered into her peaceful possession as alleged for. The plaintiff by suppressing all real facts has filed this false and frivolous suit against the defendant on the basis of false and imaginary cause of action. As such, the plaintiff is not entitled for any relief as sought for. On these grounds the defendant prayed to dismiss the application.

10. I have gone through the pleadings of plaintiff, written statement and documents available on records. The plaintiff in support of her contention has produced Photostat copy of registered sale deed dated 12-09-2023, Photostat copy of mutation extract, RTCs, Photographs and CD. I have carefully gone through the documents produced by the plaintiff in support of her case. It is the case of the plaintiff that she purchased the suit schedule property from one Ananth Iyyangar but the said contention is denied by the defendant on the ground that the said Ananth Iyyangar was



not alive on the date of execution of sale deed. In the present case the defendant has completely denied the title of the plaintiff on the suit schedule property. The defendant has also contended that he is constructing a compound wall around his property within the boundaries only and he has not encroached any piece of land in the suit schedule property. In support of this contention, the defendant has produced Photostat copy of registered gift deed dated 22-05-2023, RTCs, Photostat copy of death certificate of K.A Anantha Iyyangar, Photostat copy of election ID card of K.A.Anantha Iyyangar, Photostat copy of G-Tree written on a non-judicial stamp, Photostat copy of death certificate of one Radhamma, Photostat copy of death certificate of one Nagamani, Photostat copy of FIR with complaint in Crime No.24/2024, Photostat copy of plaint, Photostat copy of survey notice, Photostat copy of Hudbust survey sketch with Mahazar and photographs. I have carefully gone through the death certificates produced by the defendant, on perusal of the same it reveals that the said K.A Anantha Iyyangar was died in the year 1978 itself as such execution of registered sale deed in respect of the suit schedule property in favour of the plaintiff in the year 2023 by the said K.A.Anantha Iyyangar has to be proved in this case and the same is the matter of trial. When the title of the plaintiff is under dispute then the plaintiff is not entitled for any temporary injunction. More over on going through the



Photographs produced by the defendant it is clear that the construction work of the said compound wall is completed as such there is no question to restrained the defendant from making any kind of further construction towards the eastern side of the suit schedule property. It is pertinent to note that, the defendant **has already completed the construction work in his property towards the eastern side of the suit schedule property by investing money as evidenced by the photographs produced, and at this stage, question of restraining the defendant from making the further construction do not arise at all. If the defendant restrained from putting up further construction, no purpose will be served and the same will be put to monetary loss and hardship.** In this context it is relevant to rely upon a judgment of Hon'ble High Court of Karnataka reported in 2021 (1) KCCR 508 in between Kethaki Versus. Kamalamma and others wherein at para No.9 of the said judgment, the Hon'ble High Court of Karnataka has held as under:

“9. Defendants No.9 and 10 have already put up construction up to the roof level by investing money as evidenced by the photographs produced, and at this stage, if they are restrained from putting up further construction, they will be put to monetary loss and hardship. The balance of convenience lies in their favour. The ratio laid down in the decisions relied upon by the learned Counsel for the appellant are not applicable to the facts of the case, since defendants No.9 and 10 have



made out a case of irreparable loss if they are restrained from putting up further construction. The Apex Court in the case of ECE Industries Limited Vs. S.P Real Estate Developers Private Limited and Another, (2009) 12 SCC 776 has held at paras- 27 & 28 as follows:

“27. If ultimately, the suit filed by the appellant-plaintiff is decreed, he can be compensated in damages or the respondent- defendants may be directed to pull down the construction and deliver vacant possession to the appellant- plaintiff when no equity can be claimed for such construction by the respondent- defendants.

28. On the other hand, in our view, if at this stage, an order of injunction is granted against the respondent- defendants from proceeding with further construction in the suit property, it will undoubtedly destroy the constructions already made by the respondent-defendants and the respondent-defendants will suffer irreparable loss and injury for not allowing them to make construction on the suit property.”

11. The above relied Judgment is very much applicable to the present case on hand. More over the plaintiff must establish the alleged encroachment in this case and the same is matter of trial. At this pre-trial it is very much difficult to ascertain the alleged encroachment towards the eastern side of the suit schedule property by the defendant. In the present case it is



required full pledged trial to prove the encroachment and to ascertain the real facts. Considering the nature of the suit and materials available on record, this court is of the opinion that, plaintiff is not made out prima-facie case in her favour as there is no dispute with regard to the ownership of the defendant on the property situated towards the eastern side of the suit schedule property and at this stage there are no prima-facie documents to believe the said encroachment as contended by the plaintiffs.

12. Further it is pertinent to note that, the defendant has specifically denied the title and lawful possession of the plaintiff on the suit schedule property as described in the plaint schedule as such the facts with regard to the title and possession of the plaintiff on the suit schedule property on the basis of alleged sale deed dated 12-09-2023 has to be ascertained during trial. Hence there are no reasons to disbelieve the version of the defendant with regard to the title and possession of the plaintiff on the suit schedule property. The plaintiff has not produced any documents to establish the alleged encroachment towards the eastern side of the suit schedule property at this stage to grant temporary injunction as prayed for. As such under these findings this court proposes to answer point No. 1 in the Negative.

13. Point No.2 and 3:- Both points are taken together for common discussion in order to avoid repetition of reasoning.



While considering the question of granting an order of temporary injunction one way or the other, the court, apart from finding out a prima-facie case would consider the question with regard to balance of convenience of the parties as also irreparable injury which might be suffered by the parties.

14. As discussed supra, the plaintiff has utterly failed to prove the encroachment by the defendant towards the eastern side of the suit schedule property by producing cogent documents to grant temporary injunction at this stage. In the present case trial has to be conducted to prove the case of plaintiff. Validity and genuineness of the documents cannot be seen and discussed at this stage and that can be seen at the time of deciding the case on merits. If order of temporary injunction is granted it will cause injustice, irreparable loss and injury to the defendant rather than the plaintiff. Moreover the title and possession of the plaintiff on the suit schedule property is also under dispute, as such at this stage the plaintiff failed to prove alleged encroachment in the suit schedule property as on the date of suit, if an order of temporary injunction is granted the defendant would be put into greater hardship and balance of convenience is also lies in favour of the defendant. By considering the nature of the property and death certificates this court answers Point No.2 and 3 in the Negative.



15. Point No.4 : In view of the aforesaid reasons and finding made on Point No.1 to 3, this court proceeds to pass the following;

ORDER

I.A.No.I filed Under Order 39 Rule 1 and 2 of CPC by the plaintiff is hereby dismissed.

Cost of this I.A. shall follow the final result of the suit.

An Ex-Parte Temporary Injunction granted in favour of the plaintiff on 25-11-2024 is hereby vacated.

(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 **09th day of September 2025.**)

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