



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
J.M.F.C., AT MAGADI.**

-.Present:-

Sri. Shrinivasa.K.R B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 28th day of May, 2024

O. S. No.28/2020

PLAINTIFF : Smt. Bhramaramba
W/o Madaiah.

:Vs:

DEFENDANTS : Sri. Shivakumaraiah,
S/o Veerabhadraiah & Another.

I.A. No.I

**APPLICANT/
PLAINTIFF** : Smt. Bhramaramba,
W/o Madaiah,
Aged about 70 years,
R/at Gattipura Village,
Madabal Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. V.N., Advocate)

:Vs:



OPPONENTS/

DEFENDANTS :

1. Sri. Shivakumaraiah,
S/o Veerabhadraiah,
Aged about 70 years,
2. Sri. Veerabhadraiah,
S/o Shivakumaraiah,
Aged about 38 years,

Both are R/at: Gattipura
Village, Madabal Hobli,
Magadi Taluk, Ramanagara
District.

(By Sri. G.V.S., Advocate)

**(Sri. Shrinivasa.K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.**

ORDER ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF CPC

The applicant/plaintiff has filed application U/O.39 rule
1 & 2 CPC, with a prayer to restrain the
opponents/defendants and their men, agents or anybody from
causing any kind of obstruction or encroachment of item No.2
and also 4 ft., passage of galli between item No.1 & 3, running
across north to south of the suit schedule properties peaceful



enjoyment of plaintiff and his family members either putting up any kind of construction.

The application filed in respect of 8 ft., passage road running across from east to west abutting to item No.1 & 3 of the suit schedule property towards southern side, situated at Gattipura Village, Mathikere Grama Panchayathi, Madabal Hobli, Magadi Taluk, Ramanagara District.

2. The application is supported with an affidavit sworn to by the applicant/plaintiff stating that, the plaintiff is the absolute owner and in possession and enjoyment of the suit schedule item No.3 and husband of plaintiff by name Madaiah purchased the property through registered sale deed dated 27.06.1990 from defendant No.1. The husband of plaintiff sold item No.2 during his lifetime to defendant No.1 through registered sale deed dated 27.06.1990 and later registered rectification deed executed on 12.01.2001 and executed rectification deed showing there is 8 ft., road as shown in item



No.1 which is left for the use of plaintiff in order to reach road on the west and abutting to item No.2 & 3 and Bhadramakalamma's house running across east to west towards southern side in order to reach main road on west of item No.2 after Bhadrakalamma's malige house of the suit schedule property who is relative of defendant No.1. Between item No.2 & 3 there is 4 ft., passage running across north to south which is left by both the parties for the better enjoyment of the property.

3. Further contended that, the defendants being the father and son are initially started to constructing house in item No.2 of the suit schedule property and they attempted to encroach passage abutting to their item No.2 i.e., shown as item No.3 of suit schedule property. The plaintiff and her family members questioned the defendants about the said attempt to close the item No.1 and also passage of 4 ft., galli between item No.2 & 3 of suit schedule property but, they



failed to hear the same. On 13.01.2020 the defendants around 10.00 a.m., with men and material again started digging the item No.3 in order to put up compound wall and also toilet pit, the plaintiff questioned the same however they threatened with dare consequences. The defendants have no right, title and interest in respect of item No.1 & also 4 ft., passage between item No.2 & 3 of suit schedule property made illegal attempt to obstruct smooth passage in item No.1 and 4 ft., passage enjoyed by the plaintiff all these years without any obstruction. Hence, prays to allow the application.

4. In pursuance to suit summons, the defendants appeared and filed written statement stating that, the suit is not maintainable either in law or on facts. The plaintiff is falsely contending that, she is the owner & in possession and enjoyment of the suit schedule item No.3 property and purchased through registered sale deed dated 27.07.1990 from defendant No.1 in favour of late husband of plaintiff by



name Madaiah and similarly late husband of plaintiff sold item No.2 during his life time to defendant No.1 through registered sale deed date 27.06.1990 and later registered rectification deed executed on 12.01.2001 executed amount them showing there is 8ft., road as shown in item No.1 which is left for the use of plaintiff in order to reach road on the west and is abutting to item No.2 and 3 and Bhadrakalamma's house running across east to west towards southern side in order to reach main road on west of item No.2 after Bhadrakalamma's malige house of the suit scheudle property who is relative of defendant No.1. Between item No.2 there is 4 ft., passage running across north to south which is left by both the parties for the better enjoyment of the property.

5. Further contended that, the plaintiff with malafide intention to grab the property belongs to defendant gave wrong measurement and wrong boundaries. The plaintiff have no rights to over suit without giving correct identification of



property nor giving the correct boundaries and measurement with respect to the suit schedule property. The plaintiff has not made out any prima-facie case and balance of convenience lies in favour of defendant. Hence, prays to reject the applications.

6. Heard arguments by plaintiff counsel. Even though sufficient opportunity defendants counsel not addressed argument. Hence, argument taken as nil.

7. Upon hearing arguments by plaintiff counsel and materials placed on record, following points that arise for my consideration:

1. Whether plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted ?



4. What order?

8. My answer to the above points are as under.

Point No. 1 to 3 : In the ***Affirmative***.

Point No. 4 : As per order
for the following;

REASONS

9. **POINT No.1**: Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other



considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as



an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

10. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The applicant/plaintiff has filed suit for the relief of perpetual injunction to restrain the opponents/defendants from interfering into peaceful possession of applicant/plaintiff by encroachment of item No.2 and also 4 ft passage of galli between item No.1 & 3.

11. The contention of the plaintiff is that, the plaintiff is the absolute owner and in possession of the suit schedule item



No.3 property and the plaintiff had purchased the same through registered sale deed dated 27.06.1990 from defendant No.1. The husband of plaintiff sold item No.2 property during his lifetime to defendant No.1 through registered sale deed dated 27.06.1990 and later, registered rectification deed executed on 12.01.2001 about showing 8 ft., road in item No.1 which is left for the use of plaintiff in order to reach road. The defendants are started to constructing in the house in item No.2 of the suit schedule property and they are attempting to encroach the passage abutting to item No.2 of the suit schedule property. The plaintiff has established prima-facie and balance of convenience. Hence, prays to allow the application.

12. The applicant/plaintiff in support of her contention has produced the certified copy of rectification deed dated 12.01.2001, sale deed dated 17.06.1990 and photos. I have carefully gone through the certified copy of sale deed dated



17.06.1990, on perusal of sale deed no doubt the husband of plaintiff by name Madaiah had purchased the property No.158/73, measuring 22 ½ X 22 ½ from defendant No.1 and on 12.01.2001 the rectification deed executed between defendant No.1 & husband of plaintiff about changing of boundaries in respect of purchased property and in the said rectification deed it clearly mentioned that, on southern side of property there is 8 ft., road. On perusal of said rectification deed it clearly shows that, the plaintiff as well as defendants are using said 8 ft., passage to reach their property. But, at this juncture the defendants have not produced any relevant documents in support of their contention. On perusal of documents no doubt at this juncture the plaintiff is in possession over the suit schedule property. As per **section 133 of Land Revenue Act** it is presumed that, any entry in the records of rights and a certified entry in the register of



mutation shall be presumed to be prove until the contrary is proved.

13. On perusal of documentary proof placed by applicant/plaintiff in proof of her contention, no doubt the suit schedule property stands in the name of plaintiff, as on the date of suit. Applicant/Plaintiff has established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Opponents/Defendants have not challenged the prima-facie material placed by applicant/plaintiff, by placing documents in support of their contention. Under the circumstances, I am of the opinion that plaintiff has made out prima-facie case in her favour. Accordingly, I answer point No.1 in the **Affirmative**.

14. **POINT No.2 and 3:** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must



necessarily show that balance of convenience lies in his/her favor and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the applicant/plaintiff to show that the balance of convenience lies in her favor.

15. In considering the question of balance of convenience, the court has to consider to whom more hardship or inconvenience would be caused. If temporary injunction is granted the defendants would not be put to loss and hardship. Has discussed supra applicant/plaintiff has very well established prima-facie possession over suit schedule property as on the date of suit. If an order of temporary injunction is not granted, the opponents/defendants will be successful in interfering the applicant/plaintiff from the suit schedule property by changing the nature of suit schedule property by construction over the suit schedule property. If the



defendants changed the nature of suit schedule property definitely the plaintiff will be put into more hardship. In such an event the applicant/plaintiff would be left no where. Therefore balance of convenience and comparative hardship is more on the applicant/plaintiff than the opponents/defendants. Accordingly, I answer points 2 and 3 in the **Affirmative**.

16. **POINT No. 4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, applicant/plaintiff has made out prima-facie case and also made out a fit case for trial. Besides this the applicant/plaintiff has also established that balance of convenience lies in her favour and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the applicant/plaintiff is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following :



ORDER

I.A. No.I filed by the applicant/plaintiff under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC is hereby allowed.

Consequently, the opponents/defendants, their agents or any persons claiming under them are hereby restrained by way of temporary injunction from interfering over suit schedule property and further restrain the defendants, their agents or servants by way of temporary injunction from not to put up any construction in item No.1 & also 4ft passage between item No.2 & 3 of the suit schedule property until the final disposal of the suit.

No order as to cost.

(Directly dictated to stenographer, typed by her, then corrected and pronounced by me in the open Court on this the **28th Day of May, 2024.**)

**Prl. Civil Judge & J.M.F.C.,
Magadi.**