



**IN THE COURT OF THE PRL CIVIL JUDGE & JMFC,
HOSANAGARA
AT: HOSANAGARA**

Present: Sri. MARUTI R SHINDHE
B.A.LL.B
Prl. Civil Judge & J.M.F.C.,
Hosanagara.

Dated: This the 06th day of April 2026

O. S. No.73/2024

PLAINTIFFS: Grama Panchayath Melinabesige
and another

(By Sri.VSK., Advocate for plaintiff)

//and//

DEFENDANTS: Sri.Gokul Das Kamath
S/o late.Vasudev Kamath.P.
and another

(By Sri.YPM., Advocate for defendants)

I.A.No. I/2024

APPLICANT: : Grama Panchayath Melinabesige
plaintiff and another

Vs.

OPPONENTS : Sri.Gokul Das Kamath



Defendants

S/o late.Vasudev Kamath.P.
and another

The Provision under which : Order XXXIX Rule 1 and 2
application filed of CPC

Relief sought for : Restraining the defendants from
intefering in peaceful possession
and enjoyment of the suit
schedule property

The date on which : 20.04.2024
application is filed

Number of application : 1

The date on which : objection filed on 26.11.2024
objections are filed by by way memo
opponents

The date on which Orders 06.04.2026
passed on the application

Order on IA No.I under Order XXXIX
Rule 1 & 2 of CPC

On 20.04.2024. This I.A.No.I filed by the applicants/plaintiffs U/o. XXXIX Rule 1 and 2 of CPC for restraining the defendants and their henchman, heirs, agents, supporters, servant, or any persons on their behalf from interfering in the peaceful possession and enjoyment of the suit schedule property till disposal of the suit.



2. In the accompanying affidavit the applicants/plaintiffs submitted that the first plaintiff is the president of Melinabesige Grampanchayat. The plaintiffs have acquainted with the defendants. The plaintiffs have filed this suit against the defendants for the relief of permanent injunction restraining them from interfering in the possession and enjoyment of the plaintiffs suit property.

3. The plaintiffs further submitted that the first plaintiff is the Panchayat Development Officer and the second plaintiff is the president of Melinabesige Grampanchayat. The Melinabesige Grampanchayat constituted under the Karnataka Panchayat Raj Act 1993. The suit property are stone builds Mangloure tailed complex erected by Taluka development since long time. The plaintiffs are in possession and enjoyment of the same. The Melinabesige Grampanchayat is an absolute owner and in possession and enjoyment of the same. The earlier the suit property was rent for the cycle shop and cement shop and provision-store.



4. The plaintiffs further submitted that the tenants of the suit property are regularly paid rent to the plaintiffs and the plaintiffs are only making repairs of the suit property. Except the plaintiffs nobody have right, title and interest over the suit schedule property.

5. The plaintiffs further submitted that the defendants without having any right, title and in possession over the suit schedule property. The first defendant had filed an original suit no.9/2013 for the relief of permanent injunction against the first plaintiff in respect of the suit schedule property. In the said case the first plaintiff had appeared and contested the case. The said suit came to be dismissed on 30.08.2018. Thus the first defendant has filed suit no.269/2023 against the one Puttaswamy for the relief of permanent injunction based upon false cause of action and obtained ex-part temporary injunction.

6. The plaintiffs further submitted that the defendants and their children are illegally trespassed in the suit schedule property and tired to demolished the construction of the suit property and tired to cause and damage to the plaintiffs property. Therefore, the plaintiffs have issued show cause notice to the second defendant and lodged the complaint



against the defendants in Hosangara police station. The defendants have executed indemnity bound for the same.

7. The plaintiffs further submitted that on 04.04.2024 the defendants and their supporters were forcibly tried to interference in the suit schedule property same was retained by the plaintiffs. The plaintiffs have made out prima facie case and balance of convenience. If the application is not allowed the plaintiffs will be put to untold hardship and legal injury and whereas if this application is allowed no prejudice will be caused to the defendants. Hence, the present application.

8. Per contrary, on 26.11.2024 the defendants have filed memo treating their written statement as objection to the IA.No.I.

9. The defendants have filed their the written statement by refuting in the entire averment made in the plaint admitting that the first plaintiff Grampanchayat is established under the Karnataka Panchayat Raj Act. The defendants further admitted that the first defendant filed had an original suit no.9/2013 on the file of this court in respect his property bearing assessment no.22 situated in



Melinabesige village of Humcha Hobli, Hosangara Taluk and same is dismissed on its merits.

10. The defendants further contended that there is no cause of action arose to institution of the suit. There is no identity to the suit schedule of the plaint is in sufficient with regard to the Gampanchayat property, number, extent, demarcation and village. The defendants seriously disputing the identity of the suit property.

11. The defendants further contended that the first defendant has purchase the property bearing assessment no.22 for the year of 1979 of the Melinabesige Panchayat through the registered sale deed dated 01.06.1979 and the measurement of the first defendant's property is East-West on northern side 107 feets and East-West on southern side 66 feets North- South on western side 53 feets. Now the first plaintiff in incorporated E- kata of the first defendant's property and given E-kata with boundaries and conversion measurement and as per the Gramapanchayat above said E-kaka record there is no property of Gramapanchayat situated adjacent to the property of the defendants. Now the plaintiffs are trying to establish the right over the suit schedule property of the first defendant by giving false survey number and village under will.



12. The defendants further contended that at that time of construction of the new house the first defendant had constructed the shed for the purpose of storage of building materials and after the construction of the house, the first defendant had been using the shed. But, the shed felled down naturally few years back during there any season and after the felled down of the shed. The defendants constructed cement slab compound wall through out south north in the western side.

13. The defendants further contended that with intention to dispose the defendants from his property the PDO of the plaintiffs Grapanchayat has instigated the present president of the plaintiffs Grampanchayat and his followers to demolish the portion of the front compound wall and they demolished a portion of the compound wall on 30.10.202. In this regard the defendants have lodged the criminal complaint before the Hosanagara police station. Hence,among all these ground prays to dismiss the application.

14. Heard the learned counsel appearing for the plaintiffs and leaned counsel appearing for the defendants on IA No I. In view of the materials placed before me and rival



contention arise by the parties, the following points arisen for my consideration;

POINTS

1. Whether the plaintiffs have made out a prima facie case for grant of temporary injunction?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether the plaintiffs will be put into irreparable loss and injury in the event of refusal of temporary injunction sought?
4. What order?

15. My answers 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 the final order
for the following

REASONS

16. **Point No.1 to 3:** These points are taken together for the common discussion and to avoid the repetition of the facts. The learned counsel appearing for the plaintiffs



argued that, the plaintiffs have filed this suit for the relief of permanent injunction against the defendants in respect of the two complex situated in survey no.20 of the Melinabesige village belongs to the plaintiffs. The defendants being the negihboure of the suit schedule property trying to interference in the suit schedule property by taking undue advantage of the ex-parte judgment and decree in original suit no.269/2023 passed by this court.

17. The learned counsel appearing for the plaintiffs further argued that the plaintiffs have placed the relevant documents in support of their case and the plaintiffs have made out prima facie case in respect of the suit schedule property. Among all these grounds prays to allow the application.

18. Per contrary the learned counsel appearing for the defendants argued that the plaintiffs have not furnished sufficient details of the suit schedule property. The plaintiffs have not furnished, measurement and property numbers and boundaries of the each complex of the suit schedule property. Therefore, the plaintiffs are not entitled the relief of temporary injunction in respect of the suit



schedule property. The learned counsel appearing for the defendants relied upon the unreported judgment of Hon'ble our own High Court in MFA.No.1621/2020 in the case of Shrinivas and Saraswathi in support of their arguments.

19. The learned counsel appearing for the defendants further argued that the plaintiffs have not produced any relevant documents to show the title and possession in support of their pleadings. Therefore, Among all these grounds prays to dismiss the application.

20. This court gone through the entire record of the case which reflects that the first plaintiff is the Panchayat Development Officer of the Melinabesige and the second plaintiff is its president. They have filed this suit for the relief of permanent injunction against the defendants in respect of two shop complex situated in the survey no.20 of Salageri village, situated within the jurisdiction of the Melinabesige.

21. The plaintiffs and the defendants have placed their relevant documents in support of their pleadings. This court before considering in the documents placed by the either



parties. This court carefully gone through the averment made in the plaint / pleadings of the plaintiffs.

22. It is well settled law that while adjudication of order of temporary injunction. The pleadings got importance not only for the order of temporary injunction, but also for framing of the issues. The plaintiffs have filed this suit for the relief of permanent injunction in respect of immovable property of two shop complex situated in survey no.20 of Salagiri village.

23. The plaintiffs have not given the description of the suit schedule property as prescribed under order VII Rule 3 of the CPC. The plaintiffs only mentioned two shop complex situated in survey no.20 in Salageri village. The suit schedule property neither having the boundaries of the shops numbers nor the measurement or location of the suit schedule property.

24. The leaned counsel appearing for the defendants rightly argued that the description of the suit schedule property furnished by the plaintiffs in the plaint is unidentified. This court without holding any mini trail on the description of



the suit schedule property gone through the averment made in the plaint, which not disclosed the correct identification of the suit schedule property either by boundaries or numbers.

25. This court gone through the above cited citation. The facts of the above cited case reflects that the plaintiff has filed a suit for permanent injunction against the defendants restraining him from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property. He had also filed IA seeking ex-parte ad-interim injunction against the defendant. In the said facts in the para 4 held thus the plaintiff has failed to establish to identify the property question of granting injunction in his favour does not arise.

26. This come to facts of the instance case, the suit property is not identified and the facts of the above cited case and facts of the present case are one and same applicable to case on hand. Therefore, in the light of above facts of the case the plaintiffs have failed to establish to identify of the suit property. Therefore, question of the granting temporary injunction in the favour of plaintiffs does not arise at all.



27. When the plaintiffs have failed to established the identity of the suit schedule property than considering the documents placed by the both parties does not arise. The plaintiffs have failed to made out prima facie case to go for trail

28. It is well settled law that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out prima facie case to go for trial, the balance of convenience is also in his favour and he will be suffer irreparable loss and injury if injunction is not granted. But, it is equally well settled law that when the party fails to prove prima facie case to go for trial, the question of considering balance of convenience and irreparable loss and injury to the party concerned would not be material at all that is to say if the party fails to prove prima facie case to go for trial, it is not open to the court to granted injunction is his favour even. If, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.



29. This court by considering above settled principle of law discussing about balance of convenience and irreparable loss does not arise. Hence, for ends of justice and in the light of above discussion this court answered in the points No.1 to 3 are answered in the Negative.

30. **Point No.4:** For above said reasons of point No.1 to 3, following:

ORDER

The IA-I filed U/o XXXIX Rule 1 and
2 of CPC is here by dismissed with cost.

(Dictated to the Stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 06th day of April 2026)

Prl.Civil Judge & JMFC,
Hosanagara.

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