



**IN THE COURT OF THE 1st ADDL 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 27th day of February 2026

O.S.No.140/2023

PLAINTIFF: : Sri. Eshwarappa
S/o Manjappa

(By Sri.YPM., Advocate)

Vs.

DEFENDANTS: : Smt.Lalithamma
W/o Late Yallanaika and another.

(By Sri.DNH., Advocate)

I.A.No. I/2024

APPLICANT: : Sri. Eshwarappa
plaintiff S/o Manjappa

Vs.



OPPONENTS : Smt.Lalithamma
Defendants W/o Late Yallanaika and another.

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

Relief sought for : Restraining the defendant from
towards western side flowing
water by removing the badu in the
suit schedule property and
obstructing the peaceful
possession and enjoyment of the
suit schedule property

The date on which : 26.07.2023
application is filed

Number of application : 1

The date on which : 07.09.2023
objections are filed by
opponents

The date on which Orders : 27.02.2026
passed on the application

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

On 26.07.2023 I.A.No.I filed by the applicant/plaintiff
U/o. XXXIX Rule 1 and 2 of CPC for restraining the
defendants, their henchman, agents supporters from
towards western side flowing water by removing the badu in
the suit schedule property and obstructing the peaceful



possession and enjoyment of the suit schedule property till disposal of the suit.

2. In the accompanying affidavit the applicant/plaintiff submitted that the suit property is irrigation land which is allotted to the plaintiff under the partition which is effected between the plaintiff's family members. The plaintiff's name mutated in the record of right of the suit schedule property as per MR.No.T3/2021-22.

3. The plaintiff further submitted that the plaintiff is an absolute owner and in possession of the suit schedule property. The plaintiff is paying the land revenue to the Government in respect of the suit schedule property. The plaintiff by spending huge amount in the half acre of the suit property grown the areca and the said areca crops are yielding and grown paddy crops in the reaming half of the suit schedule property. Except the plaintiff nobody has right, title and interest over the suit schedule property.

4. The plaintiff further submitted that the defendants having their properties towards western side of the suit property. There is a one water canal which is running East-West existing from immemorial time. The said water canal



is 3 feet deep which is situated between the plaintiff and the defendants property. The water of the suit property going through the said water canal.

5. The plaintiff further submitted that there is no effect to the plaintiff and the defendants property from the water canal. The defendants purposely leaving the water of their properties into the suit schedule property and obstructing the peaceful possession and enjoyment of the suit schedule property due to water of the defendant's property the crops grown in the suit schedule property are rotting. Therefore, the plaintiff orally given the complaint before the Tahasildar against the defendants. But, they have not taken any action against the defendants.

6. The plaintiff further submitted that on 22.07.2023 at morning 10.00 am the defendants and their supporters flow the water in the suit schedule property without leaving water in the canal due to which the plaintiff sustained damage. If the application is allowed no hardship would be caused to the defendants. If an application is not allowed the irreparable loss would be caused to the plaintiff. The plaintiff has made out prima faice case. Hence, present application.



7. On 07.09.2023 the defendant filed memo treating their written statement as objection to IA.No.I. The defendants filed written statement by denying the averment made in the plaint and containing inter alia that the description of the suit schedule property furnished by the plaintiff is not correct. There is no cause of action arose to institute of the suit.

8. The defendants further contended that the defendants are mother and the son they are residing in joint family. The husband of the first defendant has acquired the survey no.29/1 measuring 1 acre through the partition deed which is effected between the husband of the first defendant and their brother Gundanaika. Accordingly, the said property fallen to the share of the defendants and they are in peaceful possession and enjoyment of the property. Except the defendants nobody have title, interest over their property.

9. The defendants further contended that the property bearing survey no.29/2 situated in the upper level than the property bearing survey no.29/3. Thus the property bearing survey no.29/4, 29/5, 29/6 are lowlands. The owner of the



property bearing survey no.29/1 to 29/6 are farmed areca garden towards southern side. Previously in the said properties and towards northern said of the areca gardens property there is water canal situated in the middle portion of the said properties which is running towards East-West.

10. The defendants further contended that the said water canal is two to three feet deeps and towards northern side of the said water canal the defendants and the plaintiff and their brothers are growing the paddy and coconut. The water from tari land and coconut garden was natural flowing in the said water canal. The plaintiff has no right to stop the water canal. If the injunction is granted the hardship would cause to the defendants rather than the plaintiff. Among all these grounds prays to dismiss the application.

11. Heard the learned counsel appearing for the plaintiff and the learned 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 plaintiff has made out a prima facie case for grant of temporary injunction?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put into irreparable loss and injury in the event of refusal of temporary injunction sought?
4. What order?

12. My answers to 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 : As per the final order
for the following

REASONS

13. **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 for the plaintiff argued that the



plaintiff is an absolute owner and in peaceful possession and enjoyment of the suit schedule property. The suit property standing in the name of the plaintiff. The defendants have without having the right, tile interest over the suit property trying to damage the soul badu and leaving the water in the suit schedule property and trying to obstruct possession of the plaintiff. The plaintiff has made out prima facie case and balance of convenience and irreparable loss. Among these grounds prays to allow the application.

14. Per contrary, the learned counsel for the defendants argued that the plaintiff has not approached this court with clean hand. The defendants property situated high than the suit property. The defendants property bearing survey no.29/4, 29/5, 29/6 are situated within in the area of lowland. The defendants are not leaving any water in the suit property there is small canal existence towards northern side of the defendants property and due to storage of water the plaintiff and the defendants crops grown in their property may be destroyed. Hence, among all these grounds prays to dismiss the application.



15. Peruse the records of the case. The plaintiff has filed this suit for the relief of permanent injunction against the defendants in respect of the suit property.

16. This court gone through the documents placed by the plaintiff. Perused the record of right of the suit property in the year 2003-04 which reflects that plaintiff's name entered in the owner as well as in possession cloum of the record of right of the suit property. The MR.No.H3/2021-22 which reflects that as per the said MR.Number the plaintiff's name entered in the record right of the suit property.

17. The defendants have not placed any kind of the documents in support their pleadings. The pleading of plaintiff and the defendants that there is water canal suited between the plaintiff and the defendants property. But there is records placed by the plaintiff or the defendants before this Court.

18. The record of rights of the suit property clearly prima facie indicate that the suit property standing in the name of plaintiff and the record of right of the suit property got presumption under section 133 of Karntaka Land Revenue



Act. The defendants have not placed any kind of relevant documents to rebut the presumption available to the plaintiff under section 133 of the Karnataka Land Revenue Act. Therefore, the plaintiff has made out prima facie case to go for trial. The suit property being a agricultural land. If the temporary injunction not granted by this court the irreparable loss would be cause to the plaintiff rather than the defendants and the balance of convenience lies in the favour of the plaintiff. The plaintiff has full filled the ingredients of the order of temporary injunction and other conditions. Hence, the plaintiff is entitled equitable relief from this court. Hence, in the light of above discussion this court answered in the points No.1 to 3 are answered in the Affirmative.

19. **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 hereby allowed with cost.



The defendants are hereby temporary restraining from towards western side flowing water by removing the badu in the suit schedule property and obstructing the peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

(Dictated to the Stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 27th day of February 2026)

C/c I Addl. Civil Judge & JMFC,
Hosanagara.

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