

KASM310069132023



**IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT
BHADRAVATHI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
Prl. Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 3rd DAY OF FEBRUARY -2025.

O.S.No.623/2023

Plaintiff : H.S.Sanganatha
S/o Late Halaiaha Sanbogh
Aged about 67 years, Agriculturist,
R/o D.B.Halli Village, Bhadravathi.

V/s

Defendants :1) Shivajirao S/o Late Krishnappa,
Aged about 64 years, Agriculturist,

2) Chandribai W/o Shivajirao,
Aged about 52 years,

3) Santhosh S/o Shivajirao,
Aged about 30 years,

4) Ambubai W/o Hanumantha Rao,
Aged about 62 years,

All are R/o Marashettyhalli Village,
Bhadravathi Taluk.

I.A.No.I**Applicant** : H.S.Sanganatha**(Rept. by Sri.A.N.T, Adv)**
V/s**Opponents** : Shivajirao and others**(Rept. by Sri.T.H.R, Adv)**

Provision Under which the application Is filed	Order 39 Rule 1 and 2 R/w Sec.151 of CPC
Relief sought for	Temporary injunction
Date of application	08.11.2023
Number of application	I.A.No.I
Date of objection	
Order date	03-02-2025

ORDERS ON I.A.NO.I

The plaintiff filed this IA under Order 39 Rule 1 and 2 R/w Section 151 of CPC by praying to issue an order of temporary injunction by restraining the defendants, their men, agents, servants etc., from interfering with his peaceful possession and enjoyment over the suit properties, till pending disposal of the suit.

2. In the affidavit accompanying to the IA, the plaintiff has stated that his father Late Halaiah purchased the

property totally measuring 2 acre 28 guntas in Sy.No.43/2A of D.B.Halli Village and accordingly the revenue records were stood in the name of said Halaiaha till his death on 14.06.1988. That, the plaintiff and his brothers have jointly acquired the aforesaid property after the death of Halaiaha and are in peaceful possession of the same. That, 20 guntas of land out of 2 acre 28 guntas was converted for industrial purpose with the orders of concerned authority and a Rice Mill along with 28 commercial shops were established in the said 20 guntas, which is described as suit 'B' schedule property. That remaining 2 acres of land are being cultivated by plaintiff and same is described as 'A' schedule property. The plaintiff alleged that, his brothers are residing at Davanagere and Bengaluru and as such they have executed a general power of attorney to look after the suit property.

2.1 The plaintiff alleged that the defendants are having properties towards eastern side of the suit property and recently they started constructing a house in their property by removing survey stone affixed in the suit

property. The plaintiff further alleged that the defendants are also trying to encroach the suit property without having any kind of right thereof. He further alleged that the defendants have colluded with each other and came near the suit property on 5.11.2023 with their henchmen and interfered his possession. Thus, the plaintiff claims to have filed this suit and the present IA.

3. In response to the suit summons, the defendants have appeared through their counsel and filed their written statement along with a memo by praying to treat the contents of the written statement as their objections to the present IA.

3.1 In their written statement the defendants are contending that the house of defendant No.2 is situated towards eastern side of the suit property and the plaintiff trying to encroach a triangle portion in the property belongs to defendants. They further contending that the plaintiff himself tried encroach the property belongs to defendant and filed this false suit. They further contending that the plaintiff does not have any exclusive right in the suit property and

rights of his two brothers are also involved in the said property. Further, it is contended by the defendants that, they learn about the brothers of the plaintiff revoking the unregistered general power of attorney executed in favour of the plaintiff on 26.03.1993 and hence, the defendants contending that, the plaintiff does not have any *locus-standi* to file this suit. They also contending that the suit of the plaintiff is bad for non joinder of his brothers. It is further contended by the defendants that the title of the plaintiff to the suit property is under cloud and hence he cannot maintain a suit for mere injunction without seeking the relief of declaration. Accordingly, the defendants prays to reject the claim of the plaintiffs.

4. In view of the rival contentions of both the parties, the following points are arises for my consideration;

- 1. Whether plaintiff establishes that, there exists a prima-facie case in his favour?**
- 2. Whether plaintiff establishes that, the balance of convenience also exists in his favour?**

3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction order is not granted ?

4. What order?

5. I have heard the learned counsel appearing for both sides.

6. Carefully perused the entire materials available before this court.

7. My answers to the above points are as follows:

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

Point No.2 : **In the Affirmative.**

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

Point No.4 : **As per final order,**

for the following;

REASONS

8. Points No.1 to 3: These points are inter connected to each other and are based on common set of facts. Hence, they are taken together for my common consideration in order to avoid the repetition of facts and for the purpose of brevity.

9. Three ingredients that are to be considered while granting or rejecting the application for temporary injunction order are that:

- (1) Prima facie case
- (2) Balance of convenience
- (3) The party who will be put to irreparable loss and injury in the event of non granting of temporary injunction.

10. The Prima facie case means, a case of plaintiff is such that, it needs adjudication on merits and that, there is a triable issue. Plaintiff's case should not be such it is liable to be rejected summarily. However, prima facie case does not mean cent percent case. Suffice to satisfy the case about the existence of the triable issue.

11. The balance of convenience means a comparative hardship or inconvenience that is likely to be caused from withholding the order of temporary injunction or by granting it. In other words, if it is the plaintiff who will be put to greater inconvenience if temporary injunction is not granted, then the balance of convenience lies in his favour. If the

greater inconvenience is caused to the defendants on granting such injunction, then the balance of convenience lies in favour of the defendants.

12. The record would reveal that, the plaintiff filed this suit for mere relief of permanent injunction. According to the plaintiff, he is in exclusive possession of the suit properties having succeeded it through his father Halaiaha. The plaintiff also contending his brothers are also having right and share in the suit property and they have executed general power of attorney in his favour to file this suit as well as to maintain the suit property as they are residing far away from the suit property. The plaintiff alleged that the defendants are having their properties towards eastern side of the suit property and are trying to encroach the suit 'A' property by removing survey stones. Thus the plaintiff claims to have filed this suit.

13. In support of the aforesaid plaintiff allegations and to show his possession in the suit property the plaintiff has produced the copy of registered sale deed dated 21.09.1959 along with death certificate of his father, general power of

attorney executed by his mother and his brothers, survey sketch, Form No.5, survey documents and RTC.

14. The aforesaid documents produced by the plaintiff at this stage of the suit would clearly indicate that his father Halaiah had purchased the suit property in the year 1959 under a registered sale deed and was in possession of the suit property. It is further appears that the mother of the plaintiff and his two brothers namely H.N.Niranjana Reddy and H.N.Darshan have executed a general power of attorney on 26.03.1996 by entrusting to maintain the suit property as well as by authorizing the plaintiff to appear before the court in any suit filed in respect of the suit property and file such suit to safeguard the said properties. The revenue records and survey records produced by the plaintiff at this stage would clearly indicate that a Rice Mill is in the suit 'B' property and remaining 2 acre 8 guntas of property is remained as agricultural land and in possession of the plaintiff. It is further evident that the suit 'B' property is

surrounded by suit 'A' property on all its side, except a road towards its southern side.

15. The aforesaid documents at this stage would reveal the exclusive possession of the plaintiff in the suit properties as on the date of filing of this suit. It is to be noticed that the defendants in their written statement have also not disputed the possession of the plaintiff in the suit property. Rather, they alleged that the plaintiff himself trying to encroach their property situated towards eastern side of the suit property. In view of the said facts and circumstances of the case it is clearly evident that there is more than a prima-facie case existence in favour of the plaintiff and he has a case for trial.

16. On the other hand, though the defendants are contending that the brothers of the plaintiff have revoked the general power of attorney executed in his favour, they have not produced any single document at this stage of the suit to believe the said contention. There is no justifiable reasons to prima-facie believe at this stage of the suit that the brothers

of the plaintiff are necessary properties to this suit as they have already executed the GPA to prosecute any litigation in respect of suit property. Therefore, the contention of the defendants that the suit is bad for non joinder of necessary parties does not holds good at this stage of the suit. Similarly, the defendants contending that the plaintiff cannot maintain this suit for permanent injunction without seeking the relief of declaration as there is cloud on his title to the suit property. A careful reading of the plaint averments does not disclose anything about the cloud covering the title of the plaintiff to the suit property. Hence, no force found in the said contention raised by the defendants.

17. Since the plaintiff prima-facie found in possession of the suit property and since the way in which the defendants contesting the suit would itself suffice to believe that they are interfering with the possession of the plaintiff, the balance of convenience clearly lies in favour of the plaintiff. Though, the defendants are contending that the plaintiff himself has trying to encroached the suit property,

there is no materials produced by them to believe the said allegations at this stage of the suit. Hence, non granting of temporary injunction order will be definitely cause hardship to the plaintiff. On the other hand, no hardship will be caused to the defendants if an injunction order is granted against them.

18. Under the facts and circumstances of the case, this court is of the considered view that the plaintiff prima-facie found in possession of the suit property and such possession of him shall be protracted at least during the pendency of the suit. Hence, having found it is a fit case to grant the relief of temporary injunction. Accordingly, **Point Nos.1 to 3** are answered in the **Affirmative**.

19. Point No.4: Resultantly, I proceed to pass the following;

ORDER

**I.A. No.I filed by the plaintiff
under Order 39 Rule 1 and 2 R/w
Section 151 of CPC is hereby allowed.**

**Consequently, the defendants,
their men, agents, servants etc., are
restrained from interfering with the
peaceful possession and enjoyment of
the plaintiff in the suit properties in
any manner, till pending disposal of
the suit.**

No order as to cost.

(Dictated to the Stenographer, translated, computerized by her, corrected and then pronounced by me in open court this **3rd day of February-2025**)

(Ravi Kumara V.)
Prl. Civil Judge & JMFC.,
Bhadravathi.

(Pronounced in the open court vide separate Order)

ORDER

I.A. No.I filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

Consequently, the defendants, their men, agents, servants etc., are restrained from interfering with the peaceful possession and enjoyment of the plaintiff in the suit properties in any manner, till pending disposal of the suit.

No order as to cost.

For compliance of Section 89 of CPC. Call on 25.02.2025.

Prl. Civil Judge & JMFC.,
Bhadravathi.