

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC
AT CHIKKANAYAKANAHALLI**

Present: Smt.Aparna.R, B.Com, LLB
Addl. Civil Judge & JMFC.,

Dated this 20th Day of February, 2024

O. S. No. 320 / 2022

PLAINTIFF : Nagaraju T.C.
S/o Chikkanna Swamy,
Aged about 54 years,
R/o Thovinakare Village,
C.N.Durga Hobli,
Koratagare Taluk,
Tumkur District.

(By Sri.NS, Advocate)

- Vs -

DEFENDANT : 1. Umesh
S/o Kenchappa
Aged about 45 years

2. Kamalamma
W/o Umesh
Aged about 38 years,

Both are R/o Hanumanthanahalli
Village, Kandikere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District and also
R/o Ramagondanahally,
1st Main, 3rd cross,

Near Ganesha Temple,
Whitefield, Bangalore

(By Sri.GBA, Advocate)

I.A.No.1

APPLICANT : Nagaraju T.C.

- Vs -

OPPONENT : Umesh and others

PREAMBLE

i	<i>Provision under which the application is filed</i>	<i>Under Order 39 Rule 1 and 2 of CPC</i>
ii	<i>Relief sought for</i>	<i>Injunction suit</i>
iii	<i>Date on which the application is filed</i>	<i>14/10/2022</i>
iv	<i>Number of the application</i>	<i>IA No.1</i>
v	<i>Date on which objections are filed by different opponents</i>	<i>22/11/2023</i>
vi	<i>Date on which orders were passed on the said application.</i>	<i>20/02/2024</i>

ORDERS ON I.A.No.I

This is a suit for permanent injunction filed by the Plaintiff
against the Defendants praying to restrain the Defendants

interfering with the plaintiff's possession and enjoyment over the suit schedule property. Along with the plaint, the plaintiff has maintained this application under Order 39 Rule 1 & 2 praying to issue an order of temporary injunction restraining the defendants from destroying the eastern mud bund on the suit schedule property.

1. In the affidavit annexed to this application, the Plaintiff contends that suit schedule property was purchased by him vide registered sale deed dated 30/12/2019 from Eranna S/o Siddalingashetty, Gangadhariah @ Ganganna S/o Siddalingashetty, Lakshmamma W/o Byrappa and since then he is in possession and enjoyment of the suit schedule property. That subsequent to purchase, the revenue documents have also been mutated in the name of the plaintiff vide MR No. H-48/2019-20. That the Plaintiff has been in possession and enjoyment of the suit schedule property and has invested money and labour and improved the suit property and has put up mud bunds in and around the suit property. That after pakka phod, the suit schedule property is renumbered as

Sy.No.130. That on the eastern side of the suit schedule property, there is government land, in which the defendants are in unauthorised occupation. It is the grievance of the Plaintiff that the Defendants are attempting to interfere with the Plaintiff's possession over the suit property by damaging the mud bunds on the eastern side of the suit property. Hence the suit and the present application.

2. Upon service of summons, the Defendants appeared through their Counsel and filed written statement. The Defendant admits of existence of government land on the eastern side of the suit schedule property. Furthermore, the Defendants contend that they have been in possession of the land bearing Sy.No.45/p4 from 45 years and since they were in unauthorised occupation of the same, the Defendant No.1 is said to have approached the Tahsildar, Chikkanayakanahalli for grant of the same and his application is pending consideration, however, the Taluk surveyor has prepared a sketch and shown the land in possession of the Defendants for grant. That the plaintiff has filed a frivolous suit against the

defendants by suppressing the fact that towards eastern side of suit property is the defendants' land in Sy.No.45, and by giving wrong boundaries, has filed this suit on untenable grounds and hence prays to dismiss this application.

3. Heard both sides. Both parties have filed documents in support of their arguments.

4. Upon hearing and perusal of the documents placed on record, the following points are arise for consideration of this court.

(1) Whether the Plaintiff has made out a prima facie case for grant of temporary injunction as prayed for?

(2) Whether the balance of convenience lies in favour of the Plaintiff?

(3) Whether the Plaintiff would be put to irreparable loss and injury if temporary injunction is not granted in her favour?

(4) What Order?

5. This Court answers ***Point No.1 to 3 in the Negative***, for the following,

REASONS

6. **Point No.1 to 3 :** To avoid repetition of facts, Points No.1 to 3 are taken for common discussion.

7. This is a suit for bare injunction, wherein the Plaintiff claims that the Defendants are attempting to damage the mud bunds on the eastern side of the suit schedule property. The sale deed dated 20/11/1990 depicts that the suit property was purchased by the Plaintiff herein, and the schedule mentions the eastern boundary as Land in Sy.No.45. The revenue records also shows the aforesaid sale transaction. It is towards this eastern boundary, that the Defendants are in unauthorized occupation of the government land in Sy.No.45. Though the Defendants admit to be in unauthorized occupation of the government land towards the eastern side of the suit property, it does not liberate the Plaintiff from proving his case. The allegation meted out at the Defendants is that an attempt has been made to destroy the eastern mud bunds of the suit schedule property. The documents brought on record by the Plaintiff do not prima facie show the existence of any mud bunds or fencing around the suit property, the admission of the

Defendants of being in unauthorized occupation of the government land towards the eastern side of suit property do not prima facie establish the allegations meted out at the Defendants. When such being the case, this Court is of the opinion that the Plaintiff has failed to establish prima facie case. In the absence of prima facie case, the question of balance of convenience and irreparable loss do not arise. Hence, this court answers ***Points No.1 to 3 in the Negative.***

8. Point No.4 : Having answered points No.1 to 3 in Negative, this Court proceeds to pass the following:

ORDER

I.A.No.1 filed by the Plaintiff under Order XXXIX Rule 1 & 2 is hereby dismissed.

No order as to cost.

(Directly typed by me onto my laptop, perused, corrected and then pronounced by me in open Court this 20th Day of February, 2024)

Sd/-
(Smt.Aparna.R)
Addl. Civil Judge & JMFC.,
C.N.Halli