

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

**Present: Smt. Radha S,** B.A., LL.M.,  
**Prl. Civil Judge & JMFC.,**  
**Gubbi.**

Dated this the 16<sup>th</sup> day of February 2021

**O.S.No.47/2020**

**Plaintiff :** Vijayamma W/o Late Ganganna,  
Aged bout 48 years,  
R/o Bhogasandra Village, Nittur Hobli,  
Gubbi Taluk, Tumkur District.

(By Sri. A.S.L., Advocate)

**V/s**

**Defendant :** Rathnamma W/o Mahadevaiah,  
R/o Bhogasandra Village,  
Nittur Hobli, Gubbi Taluk,  
Tumkur District.

(By Sri. R.V., Advocate)

**I.A.No.I**

**Applicant :** Vijayamma  
V/s

**Opponents :** Rathnamma

(Smt. Radha.S)  
Prl. Civil Judge & JMFC.,  
Gubbi.

**ORDERS ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 AND 2  
OF CPC BY THE PLAINTIFF**

This is an application filed by the plaintiff U/o XXXIX Rule 1 and 2 of C.P.C praying the court to grant temporary injunction against the defendant, to restrain him from destroying and damaging the bund which is situated towards the eastern side of the suit schedule property in any manner during the pendency of the suit.

2. Defendant has appeared in the present case through her counsel and filed memo to consider her written statement as objections to present application.

3. Heard the arguments advanced by the learned Sri. ASL Advocate for Plaintiff and the learned Sri RV Advocate for the defendant at length in great detail on IA No.I. Scrutinized the records of the case.

4. On scrutiny of records of the case and having heard arguments, the following points would arise for consideration of this court:

1. Whether plaintiff has established her prima-facie case?

2. Whether irreparable loss and injury will be caused to plaintiff if injunction is not granted?

3. Whether balance of convenience tilts in favour plaintiff?

4. What order?

5. My findings to the above points as under:

Point No.1 to 3- In the Affirmative

Point No.4- As per final order for the following;

**::REASONS::**

**6. REASONING ON POINT NO.1 :** Admittedly the plaintiff has filed this suit against defendant for the relief of permanent injunction in respect of suit schedule property. It is the case of the plaintiff that, she is the owner in possession and enjoyment over the suit schedule property. The suit schedule property was originally belonged to plaintiff's husband viz Ganganna and he got the same in his family partition. The katha and pahani were also made out in the name of said Ganganna under M.R.No.28/98-99. After the death of her husband, plaintiff succeeded to the suit schedule property and changed the katha in respect of suit schedule property into her name under M.R.No.H12/15-16 on the basis of pavathi varasu. Except plaintiff no one are having any manner of right, possession and title over the suit schedule property. The defendant is no concerned to the suit schedule property even though she is trying to interfere into the peaceful possession and enjoyment of the plaintiff over the suit schedule property by damaging the bund which is situated towards eastern side of the suit schedule property. The plaintiff tried to resist the defendant from her illegal acts but her efforts went in vain. Hence

without having any alternate go to stop the illegal acts of the defendant, the plaintiff has come up with this suit along with present application with above relief. On these grounds the plaintiff prayed to allow the present application.

7. The defendant has appeared in the present case and filed her written statement and memo to consider her written statement as objections to the present application. In the written statement, the defendant denied the entire case of the plaintiff and contended that, 5 acres of land in Sy.No. 28/1 of Bhogasandra village was granted in favour of grandfather of defendant viz Siddaramaiah in the year 1958-59. Since then the defendant's family are cultivating over the said 5 acres of land without anybodies interruption. All the revenue documents were standing in the name of said Siddaramaiah and he was in possession and enjoyment over the said 5 acres of land in Sy.No. 28/1. The katha and pahani were also made out in the name of said Siddaramaiah. After the death of said Siddaramaiah the defendant's grandmother viz Rudramma was continued in possession and enjoyment of the said 5 acres of land in Sy.No.28/1. The said Rudramma was constructed a hut in the said land and was residing in the said house. After the death of said Rudramma, the defendant's mother viz Siddagangamma and her children were succeeded to the

said land and are continued in peaceful possession and enjoyment of the same.

8. Further it is contended by the defendant that, when the plaintiff tried to encroach the land in Sy.No.28/1P1, the defendant's mother has filed a suit against the plaintiff and another under O.S.No.67/2020 for permanent injunction and the said case is till pending. The defendant has never interfered into the property of the plaintiff. Even though only with an intention to harass the defendant, the plaintiff has filed this false suit against the defendant. Hence the plaintiff is not entitled for any relief. On these grounds the defendant prayed to dismiss the present application.

9. In support of plaintiff's contention, she has produced RTCs, encumbrance certificate, death certificate of Ganganna, Patta and rashithi book. I have meticulously gone through the entire documents produced by the plaintiffs, while **perusing these documents in Sy.No.28/1, measuring 3 acres of land is standing in the name of plaintiff.** These documents are clearly disclosed that, the husband of the 1<sup>st</sup> plaintiff had purchased the suit schedule property under registered sale deed. Hence these documents prima facie discloses the case of the plaintiff at this stage to grant temporary injunction against

the defendant as prayed for. More over the genuineness of the documents can not be discussed at this stage.

10. Per contra to disprove the case of the plaintiff, the defendant in support of her defense has produced xerox copy of Aadhaar card, RTC pertaining to land bearing Sy.No. 28/1P1. **It is pertinent to note that, the plaintiff has filed this suit in respect of land bearing Sy.No.28/1 measuring 3 acres and the defendant has taken the defense in respect of land bearing Sy.No.28/1P1 measuring 5 acres. While perusing the RTCs available on record it is clear that, both Sy.No. 28/1 and Sy.No.28/1P1 are different lands. As such the defense taken by the defendant regarding the encroachment over her land by the plaintiff cannot be looked into at this stage.** As per the documents produced by the plaintiff, the plaintiff has proved prima-facie case in her favour. As such under these findings I answer point No. 1 in the affirmative.

**11. Point Nos. 2 and 3 :** Since these points are interconnected to each other as such they are taken together for common discussion to avoid the repetition of facts.

In the present case trial has to be conducted to prove the case of plaintiff but at this stage it seems to the court that, till the disposal

of the suit the defendant must restrain from her acts as prayed in I.A, If the defendant is not restrained, the very purpose of filing of the suit shall be defeated, as such no harm or injustice will be caused to the defendant if this application is allowed. Validity and genuineness of the documents can be seen at the time of deciding the case on merits. The defense of the defendant regarding the encroachment over her land by the plaintiff is concerned can not be decided at this stage, that can be decided after full pledged trial. Hence the defense taken by the defendant can not be seen at this stage. Since the plaintiff has approached the court with some relief as such I am of the considered opinion that, defendant is to be restrained from interfering into the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit. Hence this court is of the considered opinion that, plaintiff has made out prima facie case and balance of convenience is also lies in favour of plaintiff. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiff rather than the defendant. Hence I answer Point Nos. 2 and 3 in the Affirmative.

**12. Point No.4 :** In view of discussion made on point Nos.1 to 3 above, I proceed to pass the following;

**ORDER**

I.A.No.I filed Under Order XXXIX Rule 1 and 2 of CPC by the plaintiff is hereby allowed.

The defendant is hereby restrained from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property by destroying mud bund which is situated towards the eastern side of the suit schedule property in any manner till the disposal of present suit.

Cost of this I.A will follow the final result of this case.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 16<sup>th</sup> day of February 2021.)

(Smt. Radha.S)  
Prl. Civil Judge & JMFC.,  
Gubbi.