

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC.,GUBBI**

Present: Sri. Ganesha N. M.A. LL.B.,
Addl. Civil Judge and JMFC.,
Gubbi.

Dated this 4th February of 2019

O.S. No. 184/18

Plaintiff: Basavaraju

Vs.

Defendants: Chikkanna and Others

**ORDERS ON I.A. No.1 FILED UNDER ORDER 39 RULE 1
AND 2 OF C.P.C.**

The applicant/plaintiff has filed I.A. No.1 U/o 39 Rule 1 and 2 of CPC seeking an order of temporary injunction by this court against the defendants to restrain them from encroaching the suit schedule property towards the northern and southern side of the suit schedule property during the pendency of the suit.

2. As stated in the affidavit the matrix facts which constrained the plaintiff to file the instant application are that the plaintiff is the absolute owner in possession and

enjoyment of the suit schedule property acquired under the Panchayat Parikat dated 28.10.2007 executed between him and his brothers by growing coconut and arecanut trees and he has been paying Revenue to the concerned authorities. The defendant No.1 being adjacent land owner towards the northern side of the suit schedule property and defendant Nos.2 to 4 being the land owners towards the southern side of the suit schedule property are trying to encroach the suit schedule property and the defendants are interfering into the peaceful possession and enjoyment of the suit schedule property by the plaintiff. Hence the plaintiff has instituted the instant suit against the defendants for perpetual injunction simplicior in which the instant application seeking temporary injunction against the defendants came to be filed.

3. Per contra the defendant No.1 has filed his objections wherein it is stated that the plaintiff has filed the instnt suit only to grab the property of the defendant No.1 and the plaintiff has encroached about 4 guntas of land of the defendant No.1 towards the northern side of the property of

the defendant No.1 which measures 3 acres 22 guntas in Sy. No.1/2. The plaintiff has given wrong boundaries. Hence he prays to dismiss the application with exemplary costs.

4. Heard the counsel for plaintiff and defendant No.1. Perused the pleadings, IA No.1, affidavit, objections and other material on record.

5. The points that arise for my determination are:

1. Whether the plaintiff has made out a prima facie case?
2. Whether the balance of convenience lies in plaintiff's favor?
3. Whether irreparable loss would be caused to the plaintiff if this application is not allowed?
4. What order?

6. My answer to above points are as under:

Point No.1 to 3- In the affirmative

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

REASONS

7. **Point No.1 to 3** – Since these points are interconnected with each other, taken up together for determination to avoid the repetition of facts and circumstances of the case. It is stated that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property acquired under the Panchayat Parikat dated 28.10.2007 executed between him and his brothers by growing coconut and arecanut trees and he has been paying Revenue to the concerned authorities. The defendant No.1 being adjacent land owner towards the northern side of the suit schedule property and defendant Nos.2 to 4 being the land owners towards the southern side of the suit schedule property are trying to encroach the suit schedule property and the defendants are interfering into the peaceful possession and enjoyment of the suit schedule property by the plaintiff.

8. Since the instant application is for temporary injunction the quest and preliminary enquiry would be restricted to find out the prima facie case, balance of

convenience and irreparable loss and injury. The plaintiff has produced RTC, MR, photo copy of unregistered and unstamped partition deed dated 28.12.2007. Defendants have produced photo copy of atlas of Sy. No.51/7, copy of sketch, copy of RR and copy of village map.

9. The defendant No.1 in his written statement has stated that his property is bearing Sy. No.1/2 measuring 3 acres 22 guntas is situated on upper side of the property of the plaintiff hence there is no chance for encroached. The defendant No.1 has not seriously disputed the possession of the plaintiff over the suit schedule property except saying that the plaintiff has given wrong boundaries to the suit schedule property. The defendant No.1 is not claiming the suit schedule property. The defendant No.1 is claiming his property measuring 3 acres 22 guntas in Sy. No.1/2. Though the defendant No.1 has stated in his objections that plaintiff has encroached 4 guntas of land in Sy. No.1/2, but he did not produced any documents to that effect rather he did not seek for counter claim. Inpite of due service of sui

summons the defendant Nos.2 to 4 did not appear before the court. RTC produced by the plaintiff prima-facie goes to show that suit schedule property is in the name of plaintiff acquired through partition as per MR No.12/2011-12. It appears from the MR No.H12/2011-12 produced by the plaintiff that he has acquired that the suit schedule property under the partition deed. Though the plaintiff has produced photo copy of partition deed dated 28.12.2007, since same is unregistered and unstamped this court cannot look in to that unless stamp duty is paid. However since defendant Nos.2 to 4 remained absent inspite of due service of suit summons, defendant No1 has not seriously disputed the possession of the plaintiff over the suit schedule property and the MR and RTC produced by the plaintiff go to show the name of the plaintiff, this court opines that the plaintiff has shown the prima-facie case. Since the defendant No.1 who is contesting defendant is claiming his property in Sy. No.1/3 not the suit schedule property, the balance of convenience lies in favour of plaintiff. Therefore if the instant application is not allowed

loss and injury would be to the plaintiff. Since the above three points are commensurately favors the plaintiff, this court is inclined to allow the instant application. Hence I answered point Nos.1 to 3 in the Affirmative.

10. **Point No.4**- In view of above discussion, I proceed to pass the following:

ORDER

I.A. No.1 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

Defendants are hereby restrained from encroaching the suit schedule property towards northern and eastern side during the pendency of the suit.

No order as to costs.

(Dictated to the Typist, transcribed and typed and print out taken by her, corrected by me and then pronounced in the open court on this 4th day of February 2019.)

**(Ganesha N.)
Addl. Civil Judge and JMFC.,
Gubbi.**