



**IN THE COURT OF THE ADDL CIVIL JUDGE AND JMFC
AT GUBBI**

Present : **Smt. Medha., P.M. B.A. LL.B.,(Hons.)**
Addl Civil Judge and J.M.F.C.,
Gubbi

Dated this 13th day of March 2023

O.S.No.596/2022

PLAINTIFF : A.L. Narasimhamurthy
S/o Late Lakshminarasimhaiah,
Aged about 76 years,
R/o Adalagere Village and Post,
Nittur Hobli, Gubbi Taluk.

(By Sri.P.K.S., Advocate)

V/s

DEFENDANTS :

1. Puttarevamma
W/o Late A.G.Gangadharaiah,
Aged about 70 years,
2. Rajesh
S/o Late A.G.Gangadharaiah,
Aged about 50 years,
3. Shivashankara,
S/o Late A.G.Gangadharaiah,
Aged about 48 years,



4. Suresh
S/o Late A.G.Gangadharaiah,
Aged about 46 years,

All are R/o Adalagere Village
and Post, Nittur Hobli,
Gubbi Taluk.

(By Sri. M.R.P., Advocate for D1 to 3
and Sri. S.N.S., Advocate for D4)

Applicant : A.L.Narasimhamurthy

V/s

Opponent : Puttarevamma nd others

ORDERS ON I.A. NO. I FILED UNDER ORDER 39 RULES 1

AND 2 CPC

1. The plaintiff has filed this application U/o XXXIX Rule 1 and 2 CPC seeking an order of temporary injunction against the defendants, their agents, servants or anybody claiming under them from removing the basement stones by interfering with plaintiff's peaceful possession with respect to suit schedule property.

2. The plaintiff contends that he is the owner in possession and enjoyment of the suit property. The suit schedule property is the ancestral property of the plaintiff and the khata of it stands in his name. The suit schedule property being a



dwelling house, the plaintiff and his family are living in the same by putting a compound basement around the vacant space in the suit schedule property. The defendants having no right or title over the suit schedule property, who are having a dilapidated studio towards the southern side of the suit schedule property are trying to interfere with plaintiff's peaceful possession and enjoyment over suit schedule property by trying to remove the basement stones. Hence, plaintiff filed this suit and application.

3. The defendants appeared through their counsel after service of summons and filed their written statement and objections to the application. The defendants have prayed to treat their written statement as part of their objections. The defendants have denied the entire case of the plaintiff as false. In addition to denial, the defendants have pleaded that the suit is not maintainable on facts. Further the defendants have contended that the plaintiff being the owner of the property adjacent towards the western side of their property, which is a Gramatana property, is trying to encroach on their property and is trying to dig the ground to put up compound wall in the name of ex-parte interim order granted by this court. For the said interference of the plaintiff, the defendants have filed O.S. No. 643/2022 on the files of Hon'ble Principal Civil Judge and JMFC,



Gubbi. Hence, the defendants prayed to dismiss the application with exemplary costs.

4. Heard the learned Counsel for the plaintiff and the defendants. Perused the application, affidavit, objection, pleadings of the parties and documents produced by them.

5. The following points arise for this court's consideration.

- 1) Whether the plaintiff has made out a prima facie case?*
- 2) Whether the balance of convenience lies in favour of the plaintiff?*
- 3) Whether the irreparable loss will be caused to the plaintiff if temporary injunction is not granted?*
- 4) What order?*

6. My answer to the above aforesaid 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

7. Point No.1 to 3:- As per the case of the plaintiff, plaintiff is the owner in possession and enjoyment of the suit property. The suit schedule property is the ancestral property of the plaintiff and the khata of it stands in his name. The suit schedule property being a dwelling house the plaintiff and his family are living in the same by putting a compound basement around the vacant space in the suit schedule property. The defendants having no right or title over the suit schedule property, who are having a dilapidated studio towards the southern side of the suit schedule property are trying to interfere with plaintiff's peaceful possession and enjoyment over suit schedule property by trying to remove the basement stones.

8. The plaintiff has produced all the documents relating to the suit schedule property such as, khata extract, EC, construction license, tax paid receipts, demand register extract which all stand in the name of the plaintiff, that prima facie shows he is in possession of the suit schedule property. The defendants have denied the material plaint averments and have submitted that the plaintiff is encroaching upon the written statement schedule property illegally. The defendants have also produced documents such as demand register extracts which



are related to the written statement schedule property. Further the defendants have produced any evidence to show that the plaintiff is illegally constructing a compound wall encroaching the written statement schedule property.

9. Admittedly the khata entries of suit schedule property stands in the name of plaintiff. The various documents mentioned above, produced by the plaintiff prima facie show that the plaintiff is in possession of the suit schedule property. The averment of the defendants that there is a subsequent suit filed by them against the plaintiff is immaterial to the facts of this case. Therefore, the court opines that the plaintiff has made out a prima facie case to grant temporary injunction against the defendant.

10. Initially this court had granted an order of ex-parte ad-interim temporary injunction on 10.10.2022 and thereby restrained the defendants from interfering in the plaintiff's peaceful possession and enjoyment of the suit schedule property by removing the basement stones. The suit schedule property being house property the constant interference of the defendants is a loss to the plaintiff's peaceful enjoyment of the property. This shows that irreparable loss to the plaintiff has been prevented from the ex-parte temporary injunction order. Further



the balance of convenience is in the favour of the plaintiff and the order of this court in granting an order of ad-interim temporary injunction is rightful.

11. The plaintiff has established his prima facie case to grant temporary injunction and irreparable injury will be caused to him if his application is rejected. Whereas the defendants have not established their contention as to how the ad-interim temporary injunction is causing them irreparable injury. The plaintiff has prima facie established all the necessary conditions for the grant of ad-interim temporary injunction and all the other contentions asserted by both the parties can only be decided by a full-fledged trial. Based on the above reasons this court proceeds to pass the following: **Hence, this court answers point No.1 to 3 in the Affirmative.**

12. Point No.4:- As per following:-

ORDER

The IA No. I filed U/o XXXIX Rule 1 and 2 CPC filed by the plaintiff is hereby allowed.

No order as to costs.



(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 13th day of March 2023.)

**Addl. Civil Judge and JMFC.,
Gubbi.**