

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

**Present: Smt. Vinutha D.S., B.Sc.(seri)., LL.B.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 14th day of March 2023

O.S.No.667/2022

- Plaintiffs:** 1. Chandra Bai W/o late Lakshman Rao,
Aged about 72 years,
2. Krishnoji Rao S/o late Lakshman Rao,
Aged about 45 years,
3. Babu Rao S/o late Lakshman Rao,
Aged about 40 years,

All are R/o Giddanapalya (Maratipalya)
C.Nandihalli Mazare, Chelur Hobli,
Gubbi Taluk.

(By Sri.T.S.B, Advocate)

V/s

Defendant: Jagannatha Rao S/o late Krishnoji Rao,
Aged about 52 years,
R/o Giddanapalya (Maratipalya)
C.Nandihalli Mazare, Chelur Hobli,
Gubbi Taluk.

(By Sri.M.H.P.R., Advocate.,)

PARTIES TO IA No.1

APPLICANTS : Chandra Bai and others- Plaintiffs



V/S

OPPONENT : Jagannatha Rao - Defendant

ORDERS ON I.A No. 1 U/O.XXXIX RULE 1 AND 2 OF THE CPC

I.A .No.1 is filed by the plaintiffs under order 39 Rule 1 and 2 of CPC praying for temporary injunction against the defendant restraining the defendant from interfering with their peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

2. The suit schedule property is described as under:

Sy.No.32/5 measuring 1-23 acres situated at
Jalaguni, Chelur Hobli, Gubbi Taluk bounded by ;

East : Jalaguni Road
West : land of defendant
North: Channel (Acquired land of plaintiff)
South: Nandihalli Gadi

3. In the affidavit annexed to the application, plaintiff No.1 stated that, plaintiffs have filed the present suit against the defendant seeking relief of permanent injunction. She is the owner in possession and enjoyment of the suit schedule property along with her sons. The said suit property was acquired by her husband in a partition. After the death of her husband, she along with her sons have succeeded the suit property. The defendant being utter stranger to the suit property having no manner of right, title, interest or possession over it, is trying to interfere in her peaceful possession and



enjoyment. It is stated that if an order of temporary injunction is not granted, she will be put to great hardship and irreparable loss and injury. Therefore, she prays to allow the application.

4. On service of suit summons, the defendant appeared through his counsel and has filed written statement. He filed memo praying to consider his written statement as objection to IA.No.1.

In the written statement, the defendant has denied the plaint averments in toto.

At para 3 of the written statement, he has specifically stated that, property bearing Sy.No.32 situated at Jalaguni, Chelur Hobli, Gubbi Taluk is totally measuring 11 acres 19 guntas, out of which 14 guntas is kharab. The said survey number land is subdivided into Sy.No.32/1 measuring 3-32.08 acres which belongs to one Basavaraju, Sy.No.32/2 measuring 2-15.08 acres which belongs to one Lalitha Bai W/o Narasinga Rao. Sy.No.32/3 measuring 1-10 acres which belongs to one Lakshman Rao that is husband of plaintiff No.1. The land bearing Sy.No.32/4 measuring 1 acre 35 guntas belongs to Krishnoji Rao that is father of defendant. The Sy.No.32/5 measuring 1 acre 36 guntas belongs to one Lakshman Rao that is the husband of plaintiff No.1.

The defendant's father had got the above said Sy.NO.32/4



measuring 1 acre 35 guntas through a gift deed dated:28.03.2016. Since the date of gift, the defendant's father was in possession and enjoyment of said property as absolute owner. In the said survey number, 11 guntas has been acquired by Government under Vishweshwaraiah Jala Nigama Niyamitha. The remaining 1 acre 24 guntas was again re-phoded into 2 parts as sy.No.32/6 measuring 27 guntas and Sy.No.32/7 measuring 37 guntas. These properties are standing towards western side of the plaintiffs' suit property Sy.No.32/5. In Sy.No.32/6 and Sy.No.32/7 exclusively belongs to the defendant, the plaintiffs have encroached 20 guntas on the eastern side of above said survey numbers. Recently, the defendant come to know about the said encroachment when he obtained survey sketch and other revenue documents. The plaintiffs have filed this suit in order to grab the property of the defendant. Plaintiff has not approached the Court with clean hands. Therefore, not entitle for any of the reliefs prayed in the plaint muchless in the application. The plaintiff has encroached 20 guntas of land in the defendant's property bearing Sy.No.32/6 and 32/7 and when the defendant asked him to vacate and handover the possession of the encroached land, the defendant refused do so. The plaintiffs have obtained an order of exparte temporary injunction by suppressing the materials facts. Hence, application to be dismissed with exemplary cost.



5. Heard both sides. Perused materials on record.

6. After going through the pleadings and other materials available on record, the following points arise for my consideration.

1. Whether the plaintiffs have made out prima facie case ?
2. Whether the plaintiffs have balance of convenience in their favour?
3. Whether irreparable loss or injury would be caused to plaintiffs if temporary injunction is not granted?
4. What Order?

7. for the above points my answer as under:-

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:

REASONS

8. Points No.1 to 3:- Prima-facie case means an arguable case made out from the allegation and averments made in the pleadings in support of the documents produced by the party concerned. Among the trios as a guiding factor 'balance of convenience and irreparable loss



to the plaintiff also plays a vital role. Grant of injunction is in the discretion of the court and if such discretion has to be exercised in favour of the applicant/plaintiff, it is to be proved to the satisfaction of the court that there is prima-facie case on their side, balance of convenience leans on their side and unless the opponents/defendants are restrained by an order of injunction, an irreparable loss or damage would be caused to plaintiff during pendency of the suit. Let us examine the case on hand keeping these trio factors into consideration.

9. From the pleadings, it is gathered that the defendant in his written statement admitted that suit schedule property belonged to Lakshman Rao, husband of plaintiff No.1. It is also admitted that he is western bajudar of the suit schedule property. The defendant has denied the possession of plaintiffs over suit schedule property and the alleged interference. Interalia, he has contended that, the plaintiffs have encroached his property bearing Sy.No.32/7 measuring 37 guntas; Sy.No.32/6 measuring 27 guntas to an extent of 20 guntas on eastern side.

10. The plaintiffs in support to their case have drawn the attention to this Court to following documents;

Certified copy of RTC of the year 2022-23 in respect of



suit schedule property; mutation extract No.H-8 dated:10.02.2022; tax paid receipt; copy of death certificate of husband of plaintiff No.1. Certified copy of JMC report SLAO.SR5/2017-18 Gazette dated:04.04.2018

The RTC produced by plaintiffs with respect of suit schedule property of suit years depict that at column No.9 the entire extent 1.34 guntas is standing in the name of plaintiff No.1. The corresponding column No.10 entry shows as MR.H8/2021-22, dated:23.03.2022 ಪೌತಿ. So from MR produced by plaintiffs it shows RTC of suit schedule property is mutated in her name from her deceased husband's name by inheritance. The column No.12(2) meant to mention name of person in possession, name of plaintiff No.1 appears. At column No.11 it is mentioned as “ಎತ್ತಿನ ಹೊಳೆ ಯೋಜನೆಗೆ ಭೂಸ್ವಾಧೀನವಾಗಿರುತ್ತದೆ.” Tax paid receipt shows that tax is paid in the name of plaintiff in respect of suit survey number. The certified gazette copy dated:04.04.2018 produced by plaintiff shows that in suit schedule property, 11 guntas is acquired for yettinahole project.

11. The defendant has produced the following documents;

Copy of NCR dated:28.05.2020 issued by Chelur.P.S,



copy of joint statement; copy of pakka book; copy of Akar bank Uttar and copy of pakka book of Sy.No.32/4.

The document NCR dated:28.05.2020 and this joint statement appended to it are not related to suit year. It depicts that the plaintiffs No.2 and 3, their father and defendant had jointly agreed to resolve their dispute with respect to Sy.No.32/4 by surveying both of their properties. The copy of pakka book of Sy.No.32 of Jalaguni Village produced show the said survey number is totally measuring 11.19 acres and it is phoded into 5 phodes wherein suit schedule property is standing in the name of husband of plaintiff No.1 that is Lakshman Rao and Sy.No.32/4 measuring 1.35 guntas is name of defendant. The Pakka book hissa survey of Sy.No.32/4 depict it is phoded into 3 phodes wherein 32/4 measuring 11 guntas is acquired for Vishweshwaraiah Jala Nigama Niyamitha; 32/6 measuring 27 guntas and 32/7 measuring 37 guntas is in the name of defendant. Defendant counsel relying on photographs argued that plaintiffs are digging earth in their property.

Per contra, the plaintiffs counsel argued that photographs are not related to suit schedule property. It is pertinent to note that defendant has not produced any piece of document to show that plaintiffs have encroached 20 guntas in their property on eastern side. Though he claimed



that recently he came to know about encroachment by plaintiffs through survey sketch and revenue documents, the defendant has not produced any piece of material in support of his version. If really such is the case, they how did defendant remained silent without taking suitable action against encroachers. Further, there is no any counter claim by defendant. The defendant at this stage has failed to substantiate his case. On other hand, prima-facie the documents produced by plaintiff that is the RTC of suit schedule property clearly goes to show that suit schedule property is standing in the name of plaintiff No.1 and that she is in possession of suit schedule property. The manner in which defendant is contesting also makes to gather the interference by him. Therefore, the balance of convenience also lies in favour of plaintiffs. If temporary injunction is rejected plaintiffs will suffer irreparable loss. Hence, all the 3 points for grant of temporary injunction is substantiated by plaintiffs. Hence, the points No.1 to 3 are answered in the **Affirmative.**

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

ORDER

**The I.A.1 filed by the plaintiffs U/O
39 Rule 1 and 2 of CPC is hereby
allowed on cost of Rs.200/-.**



The defendant, his agents, servants or anybody on his behalf are restrained by way of temporary injunction from interfering with plaintiffs peaceful possession and enjoyment over the suit schedule property, till disposal of the suit.

(Dictated to the stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this the 14th day of March 2023).

(VINUTHA. D.S.)
Prl. Civil Judge and JMFC.,
GUBBI



(Order pronounced in the open
Court vide separate order)

ORDER

**The I.A.1 filed by the
plaintiffs U/O 39 Rule 1 and 2
of CPC is hereby allowed on
cost of Rs.200/-.**

**The defendant, his agents,
servants or anybody on his
behalf are restrained by way
of temporary injunction from
interfering with plaintiffs
peaceful possession and
enjoyment over the suit
schedule property, till
disposal of the suit.**

**For compliance U/Sec.89
of CPC.**

Call on 22.05.2023.

**Prl. Civil Judge and JMFC.,
GUBBI.**

