

KATK510013672024



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

PRESENT: SMT. SUJATHA A.B.

B.A.L, LL.B.

**PRI. Civil Judge & JMFC,
KUNIGAL**

DATED: THIS 07th DAY OF MARCH , 2025

ORIGINAL SUIT No.247/2024

BETWEEN:

Plaintiffs-

Nagaraju G

(By Sri.TMS., Advocate)

AND:

Defendants-

Shivashankara and others

(D-1& 2 by Sri. SHS,Advt.,
D-4 by Sri. YRH Advt., and
D-3 is exparte)

I.	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC
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II.	Relief sought for	To grant an exparte ad-interim order of temporary injunction order against defendants
III.	The date on which the application is filed	15.04.2024
IV.	Number of the application	I
V.	The date on which the objections are filed by	09.07.2024
VI.	The date on which the order were passed on the said application	07.03.2025

RANKS OF THE PARTIES IN IA No.I

Applicant/Plaintiff-

Nagaraju G

Vs.

Opponent/Defendants-

Shivashankara and others

ORDERS ON I.A.No.I

IA.No.I is filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of CPC, to pass an ad-interim order of

temporary injunction restraining the defendants or their agents, servants, attorneys or anybody on their behalf from not to interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

2. The plaintiff has sworn to an affidavit and contended that, the suit schedule property originally belongs to Narasimhamurthy and his brother Narayana and for their legal necessities and to maintain their family on 05.03.2022 they have sold the suit schedule property for Rs.9,60,000/- to the plaintiff. The plaintiff contended that as per said sale his name came to be mutated as per MR.No.H8/2021-22. After purchase of suit schedule property it was numbered as 40/19 and after the division said survey number renumbered as Sy.No.40/22 and he is in possession of the same. According to plaintiff the

defendants without having any right, title, interest and possession over the suit schedule property they are trying to interfere with his possession and enjoyment and they trying to trespass over the same. The plaintiff grown vegetables, plants and defendants used to through garbage in the suit schedule property and they left cattle for graze in the suit property, when the plaintiff has questioned the illegal act of the defendants then they have threatened and same is cause of action to file the suit. Hence plaintiff constrained to file this suit and prayed to allow the application.

3. The defendant No.3 in spite of service of summons he remained absent and he placed exparte. The defendant No. 1 & 2 in spite of appearance they have not filed any objection. In pursuance to the suit summons, defendant No.4 has appeared through his counsel by filing

written statement and same is adopted by him as objection. The defendant No.4 contended that the property bearing Sy.No.40/5B measuring 01½ guntas, situated at Kothipura Village previously belongs to Narasegowda @ Iyyana he had sold the same in favour of defendant No.4 under a registered sale deed dated 19.08.1992 and under the said conveyance, he has acquired the absolute right title, interest and possession over the property referred in the sale deed and continued in actual physical possession and enjoyment of the same as absolute owner.

4. Defendant No.4 further contended that based on his sale deed, the concerned authorities have accepted mutation in his name and the written statement schedule property attached to state highway and also comes under grama Tana limits. Hence the Grama Panchayath Herur, Kasaba Hobli, Kunigal Taluk by its resolution levying

betterment charges under the provisions of Karnataka Panchayath Raj Act under a resolution is also passed by the Grama Panchayath for commercial purpose and also the concerned Panchayath authorities have accepted the Katha No.94, with respect to written statement schedule property and now E-katha also accepted in his name as No.152500400900600108, measuring east to west 12.192 meters and north to south 12.192 meters, with respect to written statement schedule property and also issued building license in his favour to construct the building within the Written statement schedule by verifying the all necessary document by visiting the spot. In view of the same the defendant No.4 constructed a building within the Written statement property.

5. Defendant contended that he is not adjacent owner of alleged suit schedule property and the plaintiff

also not having any adjacent property to the Written statement schedule property, hence question of alleged interference alleged by the plaintiff does not arise. The plaintiff with malafide, deliberate intention to harass him has filed this suit by suppressing material true facts. The defendant No.4 and his family members being the owners having absolute right, title, interest and possession over the written statement schedule property, they have got fundamental right of enjoying the property and that cannot be restricted and curtailed by mere assertion has that been attributed by the plaintiff in the pleading. Among these grounds they prayed to dismiss the application.

6. Heard arguments from both sides. Perused the materials available on record.

7. The points that would arise for my consideration are:-

(1) Whether the plaintiffs have made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiffs?

(3) Whether the plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?

(4) What order?

8. My findings on the above 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 orders
For the following:*

REASONS

9. **Point No.1 :-** Admittedly the plaintiff has filed this suit for the relief of permanent injunction. In order to support his case the plaintiff has produced sale deed dated 05.03.2022 and same goes to show that the plaintiff has purchased suit schedule property from one Narasimhamurthy and his family members and he has also produced RTC of Sy.No. 40/19 and same goes to show that in the year 2020-21 the vendor of the plaintiff names are appearing jointly. Thereafter plaintiff has produced RTC of Sy.No.40/22 and in the same, plaintiff name is appearing as per MRT4/2023-24 and he also produced said Mutation copy. According to plaintiff while purchasing property said property number was Sy.No.40/19 and later same was renumbered after division

i.e., 40/22. But on perusal of boundaries of the sale deed as well as suit property are one of the same.

10. It is further noted that plaintiff has also produced Tax paid receipt and patta Book and in the same present plaintiff name is appearing. On the other hand, the defendants contended that he has not adjacent property holder of the suit schedule property and at the same time plaintiff has not claimed that defendants are adjacent owner of the suit schedule property. But at the same time, based on the documents produced by the plaintiff it appears that he is in possession of the suit schedule property. On the other hand, the defendants except producing photograph they have not placed any documents to show that the plaintiff claiming a false relief over the suit schedule property. Hence, by considering the above, this court is of the opinion that the present plaintiff

has made out prima facie case in his favour and he is entitled for the relief as claimed under this application.

Hence I answer Point No.1 in the **Affirmative**.

11. **Point No.2 and 3:-** Since these points are involves common facts so in order to avoid the repetition of facts, I combined these two points together for my discussion.

The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the

injunction will be greater than that which is likely to be caused to the opposite party by granting it.

12. In light of the above, after considering the materials on record, this court is of the opinion that when plaintiff has filed the present suit for permanent injunction and further if plaintiff got intimidated with the defendants since as per their own contention they are denying the possession of the plaintiffs over the suit schedule property. So under such circumstances, if this Court declines to grant temporary injunction in favour of the plaintiff and if the defendants continue with their interference, then it will lead to multiplicity of proceedings. At the same time, if the application is allowed, no hardship injury caused to the defendants because anyway defendant themselves contended that their property is not situated beside suit schedule property. So in that regard in order to protect the

interest of the parties to the suit, this Court is of the opinion that defendants have to be temporarily restrained from interfering with plaintiff possession over the suit schedule property till disposal of the suit as they have not claiming any right over the suit property and as a result at this stage, **I answer Points No.2 and 3 are in the Affirmative.**

13. **Point No.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

By way of granting temporary injunction in favour of the plaintiff, against defendants or their agents, servants, attorneys or anybody are hereby restrained from interfering with the peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

No orders as to costs.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court, this the **7th day of March 2025.**)

(SMT. SUJATHA A.B.)

Prl. Civil Judge & JMFC,
Kunigal.