



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT MADHUGIRI**

Dated this the 31st day of January 2023

PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

**Prl. Civil Judge & JMFC,
Madhugiri.**

O.S.No.76/2021

- PLAINTIFFS :**
- 1) Smt. Lakshmamma
W/o Govindappa
aged about 50 years
 - 2) Sri. Madlerappa
S/o Late Ugrappa
aged about 45 years

Both are R/o Sadarahalli Village,
I.D.Halli Hobli, Madhugiri Taluk.

(By Sri SRR., Advocate)

Vs/-

- DEFENDANTS :**
1. Sri. Ashwathanarayana
S/o Subba Narasegowda,
aged about 58 years
KEB Line Men,
R/o Jakkepalli Village
Siddagiri Post,
Madakasira Taluk, A.P.
 2. Sri. Narayanagowda
S/o Lakshminarasegowda
aged about 49 years

R/o Sadarahalli Village,
I.D.Halli Hobli,
Madhugiri Taluk.

3. Sri. Govindappa
S/o Singanna
aged about 55 years
R/o Raghavendra Colony
Madhugiri Town.

4. Sri. Narasegowda S.U.
S/o Ugrappa
aged about 50 years
R/o Sadarahalli Village,
I.D.Halli Hobli,
Madhugiri Taluk.

5. Sri. S.N.Ramakrishna
S/o Narasegowda
aged about 47 years
R/o Sadarahalli Village,
I.D.Halli Hobli,
Madhugiri Taluk.

(By Sri DSR., Advocate)

I.A.No. I

Applicants : Lakshamma & others Plaintiffs

Vs/-

Opponents : Ashwathanarayana & others Defendants

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**ORDER ON I.A.No.I FILED BY PLAINTIFFS UNDER
ORDER XXXIX RULE 1 AND 2 OF C.P.C**

The present application is filed by the plaintiffs seeking order of temporary injunction restraining the defendants, their agents, servants or anybody claiming

under him from interfering with their peaceful possession and enjoyment of the suit schedule properties till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff No.1 averred that the plaint may be read as part and parcel of the affidavit. The plaint averments shows that plaintiffs have filed suit against defendants seeking for the relief of Permanent Injunction restraining the defendants, their agents, servants claiming under them from interfering with the plaintiff peaceful possession and enjoyment of the suit schedule properties along with Sri. Anjaneyaswamy Temple in any mode or manner. The plaintiffs contended that the suit schedule properties originally belongs to their family and the said properties are the ancestral properties and they are in possession and enjoyment of the suit schedule properties.

3. Further they have contended that one Ugrappa who is father of plaintiff No.2 was in possession and enjoyment of the land bearing Sy.No.66/1 total measuring 1 acre 28 guntas and same was newly survey number as 66/8 and 66/10. The katha and pahani stood in the name of Ugrappa in the year 1976 to 2001. And he acquired the said properties through Registered Sale Deed. Further they have contended that they are

absolute owner of the suit schedule properties by way of inheritance. Item No.1 of the suit property there was a small Sri. Anjaneyaswamy Temple was in existing since time immemorial and it is family deity. Their ancestors have performed the pooja of the said temple since 6 months back themselves and their relatives have renovated the said temple. At that time the defendants have unnecessarily interfered with their peaceful possession and enjoyment of the suit schedule properties and also Sri. Anjaneyaswamy Temple.

4. The defendants are in no manner of right, title and interest over the suit schedule properties, they are trying to interfere with their possession and enjoyment of the suit schedule properties and defendants are very powerful persons and he could not be prevented by them to their illegal acts. Further they have contended that they have got prima facie case and balance of convenience lies in their favour. Hence they prayed to allow the application by way of granting temporary injunction.

5. On the other hand the defendants counsel filed an objection to the said application contending that contents of written statement treated as part and parcel of objection to said application. In the written statement they have denied the entire plaint averments, the

application filed by the plaintiffs are not maintainable either in law or facts. Further they have specifically contended that the Sy.No.66/1 measuring 1 acre 31 guntas is ancestral property of plaintiffs and one Puttanarasamma daughter of Julappa. The said Julappa and his brothers were divided the family properties under partition deed dated 10-02-1955, in the said partition half share fallen to the Julappa and remaining land fallen to the share of plaintiffs father by name Govindappa, Ugrappa and Parasappa. As per partition they are in possession and enjoyment of their respective shares and also enter their name in revenue records.

6. Further they have contented that during life time of Julappa the plaintiffs have colluded with the revenue officials and giving false statement they have enter their names in entire suit properties. After death of said Julappa his daughter Puttanarasamma was continue in possession over her father share measuring 33 guntas. Out of which 3 guntas of land was gifted to Tulasamma Temple dated 05-03-2014. On the same day the defendant No.4 was gifted the land measuring 3 guntas to the Lakshmidēvi Temple for construction of temple in Sy.No.66/2. The defendants and devotees of the said temple have farm a Trust in the name of Sri. Lakshmidēvi Tulasamma Temple Trust on 05-09-2020. The

defendants are the President, Secretary and Executive members of said trust. Further they have contended that the defendants and devotees have collect the funds for construction of both temple in the above said land and now both the temple are already construction was completed.

7. Further they have contended that plaintiffs have colluded with survey authorities have given new survey number as 66/1, 66/8, 66/9 and 66/10. Now the said Tulasamma Temple was existence in new Sy.No.66/1. There is no existence of Sri. Anjaneyaswamy Temple in the suit property, the plaintiffs have no manner of right, title or possession of the said land. Further they have contended that the plaintiffs have filed this suit for relief of Permanent Injunction along with the suit they have filed an application seeking temporary injunction against defendant. The relief sought in the suit as well as interim relief one and the same. Hence on that ground alone the said application is rejected. Hence they prays to reject the said application with costs.

8. Heard both counsel. Perused the I.A., affidavit, objection and records placed before the court. The learned counsel for defendant filed memo with decisions.

9. The points that arise for my consideration is as under :

- 1) Whether plaintiffs have made out prima-facie case?
- 2) If injunction is granted or refused, to whom inconvenience will be caused ?
- 3) Whether irreparable loss and injury would be caused to plaintiffs in case of not granting temporary injunction ?
- 4) What Order ?

10. My findings to the above points is as under:

Point No.1 and 3 : In the Negative.

Point No.2 : To the defendants

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

REASONS

11. **POINT No.1 to 3** : For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

12. The plaintiffs have sought for Temporary Injunction restraining the defendants, their agents, servants or anybody claiming under them from interfere with plaintiffs peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

Description of plaint schedule properties:

(1) The land bearing Sy.No.66/8, measuring 0.18.08 guntas assessed at Rs.0.36, bounded by East: Halla, West: Gramatana, North: Road and South: land Sy.No. 66/10.

(2) The land bearing Sy.No.66/10, measuring 0.38.04 guntas, assessed Rs.0.74, bounded by East: Govt. Halla, West: Gramatana, North: land of Sy.No.66/8 and South: land of Narasegowda.

All the said properties are situated at Sadarahalli Village, I.D.Halli hobli, Madhugiri Taluk.

13. The main contention of the plaintiffs that they are in possession and enjoyment of the suit schedule properties. Now the defendants are interference over the suit schedule properties. Hence they filed the suit and also seeking temporary injunction against the defendants. In support of their case the plaintiffs produced the Index of Land, Record of rights in the year 1971 to 1988 and 2019 to 2021, Mutation Register, Photos, Xerox copy of Trust Deed dated 20-11-2021 and Invitation Card.

14. On the contrary the defendants counsel contented that the plaintiffs are not in possession and enjoyment of the suit schedule properties. In support of

their contention the defendants counsel produced the Xerox copy of Gift Deeds dated 05-03-2014, Endorsement issued by the Endowment Officer, Xerox copy of Trust deed dated 05-09-2020, Pakka Book, Photos, Tippani, Invitation Card in respect of opening of Lakshmidēvi Tulasamma Temple, Certified copy of the record of rights pertaining to Sy.No.66/1 and appeal memo filed before the Assistant Commissioner, Madhugiri.

15. On perusal of the entire contents of the plaint averments, written statement and the documents produced by the both parties are claiming their possession over the suit schedule properties based on the unregistered partition deed dated 10-02-1955. The main contention of the plaintiff that the father of the plaintiff No.2 purchase the suit property through Registered Sale Deed but the said document not produced before this court. Further the document produced by the plaintiffs i.e., record of rights in the year 1971 to 1998 pertaining to land bearing Sy.No.66/1, the said document at column No.9 the Ugrappa name was mentioned and he purchase the said property. In the said document at column No.12(2) the Julappa, Govindappa are in possession and enjoyment of the said property. As per revenue records i.e., RTC in the year 1993 to 1998

discloses that the said Ugrappa name was round off and the name of Chikkamare, Lakshamma and Madlerappa name was entered into the Sy.No.66/1 to extent of 1 acre 30 guntas. Further as per record of rights pertaining to land bearing Sy.No.66/8 and 66/10 i.e., suit schedule properties standing in the name of plaintiffs as per MR.No.2/1998-99. The photos produced by the plaintiff it will depicts that the temple was existence. On the contrary the documents produced by the defendants i.e., unregister partition deed dated 10-02-1955 the family properties were divided between father of plaintiffs and father of the Parasamma. Further the said Parasamma was gifted the 3 guntas land in favour of Tulasamma and Lakshmidevi Temple based on unregister Gift Deed dated 05-03-2014. As per photos produced by the defendants discloses that the said temples were constructed and the opening ceremonies of said temple was fixed on 08-02-2023.

16. On perusal of the entire documents the defendants are very disputed the possession of the plaintiffs over the entire property as claimed by the plaintiffs. Further the relief sought in the interim application as well as main relief one and the same. On that ground alone the application filed by the plaintiffs is not maintainable the said proposition of law laid down in

the judgment reported in **ILR 1994 KAR 1715** in between **Mrs. Jayanthi R. Padukone V/s Mrs. I.C.D.S. Ltd.** In the above said judgment the para No.44 the Hon'ble High Court held that where Section 41(b) of Specific Relief Act was considered, according to which an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is an inconceivable that where the final relief cannot be granted in the terms sought for, because the statute bars granting such a relief ipso-facto the temporary relief of the same nature cannot be granted. The ratio laid down in the said judgment is applicable to the facts and circumstances of this case because in the present case the relief sought by the plaintiffs in the suit as well as interim application one and the same and moreover at this juncture the plaintiff failure to establish that they have got prima facie case and at this juncture the plaintiff failure to establish that the defendants caused interference with their peaceful possession and enjoyment of the suit schedule property.

17. The point to be noted here is that plaintiffs has sought for main relief of Permanent Injunction restraining the defendants, their agents, servants or anybody claiming under them from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property. The interim relief claimed by the plaintiff in his application is also same. Thus the relief sought by plaintiffs in the plaint as well as in his application is one and the same. If as per the prayer of plaintiffs in the application, relief is granted, it would amount to granting of final relief.

18. In-order to grant of temporary injunction, 3 essential ingredients have to be fulfilled, Prima facie case, balance of convenience and irreparable loss or injury. Prima facie case includes maintainability of the suit and probability of plaintiffs succeeding in the case, i.e. entitlement for the reliefs sought. On going through the plaint averments, the plaintiffs have filed the present suit against the defendants seeking for the relief of Permanent Injunction. By pleadings and production of documents, the plaintiffs have not made out prima-facie. If temporary injunction as prayed by plaintiffs are granted, it would cause irreparable loss or injury to defendants. The balance of convenience also lies in favour of defendants. Further both the parties are claiming their possession

over the suit schedule property and the said fact will be adjudicated at the time of full pledged of trial and the defendants are very disputed the possession of the plaintiffs over the suit schedule properties. Hence, I answer point No.1 and 3 in the Negative and Point No.2 as 'injury will be caused to defendants in case of refusing to grant temporary injunction'.

19. **POINT No.4** : In view of the aforesaid discussion and reasons on point No. 1 to 3, this court proceeds to pass the following :

ORDER

I.A.No.I filed by plaintiffs under Order
XXXIX Rule 1 and 2 of C.P.C is hereby
rejected.

Parties to bear their own costs.

(Dictated to the stenographer directly on computer,
corrected by me and then pronounced in open court on this **31st**
day of December 2023)

Sd/-
(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.