



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

**Dated this the 20<sup>th</sup> day of July 2023**

**PRESENT :  
SRI RAGHUNATHA GOWDA K.T.**

*B. Com., L.L.B.*

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

**O.S. No. 205/2020**

**Plaintiffs** : 1. Sri. B.Radhakrishna Shetty  
S/o H.Bheemaiah Shetty  
Aged about 70 years.

2. Sri. B.D. Gopal  
S/o R.Doddananjappa  
Aged about 56 years.

3. Sri. B.C. Ghanghadaraiah  
S/o Chikkanna  
Aged about 39 years.

4. Sri. Bheemanna  
S/o Doddanna  
Aged about 58 years.

5. Sri. Eramallappa  
S/o Mallanna  
Aged about 48 years.

All are R/at Byalya Village,  
Puravara Hobli, Madhugiri Taluk.

(By Sri. S.R.R., Advocate)

**-V/s-**

- Defendants** :
1. Sri. B.P. Nagaraju  
S/o Puttaiah  
Aged about 50 years.  
President of Sree. Ayyappa  
Swamy Samithi.
  2. Sri. H.S. Balaramaiah  
S/o H.N.Sathyanarayanashetty  
Aged about 55 years.  
Secretary of Sree. Ayyappa  
Swamy Samithi.
- Both are R/at Byalya Village,  
Puravara Hobli, Madhugiri Taluk.
3. President,  
Byalya Gramapanchayath,  
Byalya Village,  
Puravara Hobli,  
Madhugiri Taluk.
  4. Panchayath Development Officer  
Byalya Gramapanchayath,  
Byalya Village,  
Puravara Hobli,  
Madhugiri Taluk.

(D-1, 2, 4 By Sri. BKR., Advocate)  
(D-3 by Exparte)

**I.A.No.II**

Applicants : B.Radhakrishna Shetty & others  
.... Plaintiffs

**V/s**

Opponent : B.P.Nagaraju and others  
.... Defendants

\* \* \*

**ORDER ON I.A.No.II 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 defendant No.1 and 2, their agents, servants or anybody under them from put up any construction over the suit schedule property in any mode or manner till the disposal of the suit.

**2. The suit schedule property is as under :**

The Panchayath Khatha No.366 measuring 84x74 feet in Khatha No.366, situated at Byalya Village, Puravara Hobli, Madhugiri Taluk, bounded by East : Milk Dairy, West : Government Road, North : House of Balachandrappa and site of Narayana Rao and South : Muddaiahnanapalya Road. **(Herein after called as suit schedule property)**

3. In the affidavit annexed to the application, the plaintiff No.1 averred that the contents of plaint avernments treated as part and parcel of affidavit of this application. The plaint avernments discloses that the suit schedule property is a Chatra and it is meant for conducting religious functions of various communities. The suit schedule property consist old mantapas and same was in existing since from time immemorial. The ancestors of the plaintiffs are used the said property for religious functions, cultural activities and the suit property has been using as rest rooms.

4. Further they are contended that the defendant No.3 is the President of Byalya Grampanchayath, the defendant No.4 is the Development Officer and it is their duty to save the public property for future generation but they have colluded with the defendant No.1 and 2 have passed a resolution on 09-01-2020 and the suit property was granted in favour of "Sri. Ayyappa Swamy Samithi (Registered) Byalya Village so has to construct the Sri. Ayyappa Swamy Temple. In the absence of themselves the panchayath passed a resolution now the defendants are trying to pull down the existing old ancient structure which are existing over the suit property but they have resist the illegal acts of defendants but they did not heed their words. Further they have contended that they have got prima-facie case and balance convenience lies in their favour. Hence they prays to allow the application.

5. On the other hand, the defendant No.1 and 2 counsel filed objection to said application contended that, the avernments of the written statement treated as part and parcel of objection to the said application. In the written statement they have denied the entire contents of plaint avernments. Further they have specifically contended that the plaintiffs never in possession and enjoyment of the suit schedule property. Further they are admitted that there is a old Chatra situated at Byalya village. There is no mantapa are construction in the suit property and they never removed the said mantapa or Chatra.

6. Further they have contended that they have formed the trust name and style as Sri. Ayyappa Seva Samithi and the said trust have performed the Ayyappa Swamy pooja and other religious functions belongs to various communities. Further they have admitted that the defendant No.4 has passed a resolutions dated 09-01-2020 and they have sanctioned the space to extent of East-West 74 feet, North-South 64 feet to the trust. Now the said samithi was in possession and enjoyment of the said property. Further they have contended that they have not put up any construction over the suit property. Hence they prays to reject the said application.

7. Heard both counsel. Perused the I.A., affidavit, and records placed before the court.

8. The points that arise for my consideration are 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 ?

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

- Point No.1 : In the Negative  
Point No.2 : To the defendants  
Point No.3 : In the Negative  
Point No.4 : As per final order  
for the following ;

### **REASONS**

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

11. I have already narrated the pleadings of plaintiffs and defendant No.1 and 2 at para No.2 to 6 respectively. As noted above, the plaintiffs are filed the present suit against the defendants seeking for relief of Permanent Injunction in respect of the suit schedule property.

12. On coming to the documents produce by the plaintiffs i.e., Demand Register Extract pertaining to suit property, Panchayath Resolution dated 09-01-2020, Resolution dated 16-08-2011, Resolution dated 15-11-2013 and photos.

13. On the contrary the defendant No.1 and 2 counsel filed memo with documents i.e., Demand Register Extract, Panchayath Resolution dated 09-01-2020, Order passed by the Executive Officer, Madhugiri, Registration Certificate and photos.

14. On careful perusal of the documents produced by plaintiffs at this juncture it discloses that admittedly the suit property belongs to Government, on 09-01-2020 the defendant No.4 passed a Resolution to allotted the space to extent of East-West 74 feet, North-South 64 feet for the purpose of construction of Sri. Ayyappa Swamy Temple. Further the same resolution was accepted by the The Executive Officer, Taluk Panchayath, Madhugiri dated 07-01-2020. Further the plaintiffs are filed the present suit in a representative capacity. Further the plaintiffs are not challenging the resolution passed by the Byalya Grampanchayath before the appropriate appellate authority.

15. Further in the written statement the defendant No.1 and 2 clearly stated that they have not put up any construction over the suit property and they have not demolish the old chatra and mantapa existing in the suit property. Further the defendant No.1 and 2 and other persons are the members of Sri. Ayyappa Seva Samithi and in order to perform the Ayyappa Swamy pooja and other religious functions belongs to various communities the trust was formed. Further the panchayath resolution dated 22-11-2013 in Sy.No.9 to extent of 13 guntas was sanctioned for the purpose of construction of Ayyappa Swamy Temple and unanimous the villagers of the Byalya village have not objected to land allotted for construction of Ayyappa Swamy Temple.

16. Further at this juncture, the plaintiffs are without seeking relief of declaration filed a suit for Permanent Injunction and the relief sought in the interim application for not to put up any construction over the suit property and already the defendant No.1 and 2 have stated in their written statement they have not put up construction over the suit property as well as they have not demolish the old mantapa and chatra in the suit schedule property.

17. In-order to grant order 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 plaintiff succeeding in the case, i.e. entitlement for the reliefs sought. These documents at this stage show that the plaintiffs have not made out prima-facie case in their favour. On the other hand, it causes irreparable loss and injury to the plaintiffs. Merits of the case cannot be decided at this stage. Considering the nature of suit and materials available on record, this court is of the opinion that plaintiffs have not made out prima-facie case and balance of convenience lies in their favour. Therefore, if order of injunction is granted, irreparable loss and injury would be caused to the defendant No.1 and 2 rather than the plaintiffs. For these reasons, I answer point No.1 and 3 in 'Negative' and point No.2 as "to the defendant No.1 and 2 if granted".

18. **Point No.4** : For the above said reasons, I proceed to pass the following ;

**ORDER**

I.A. No.II filed by plaintiffs against defendants 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 **20<sup>th</sup> day of July 2023**)

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