



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC, AT SIRA**

PRESENT: Sri.VINOD KUMAR.M BAL.,LLB,LLM.,
ADDL. SENIOR CIVIL JUDGE & JMFC
AT SIRA

MA.No.10/2021

Dated this the 24th day June – 2026

Appellant/s

S.R.Mangalamma,
W/o late Shivashankara Aradhya,
Aged about 65 years,
R/at Sira – Amarapura Road,
Jyothinagara,
Sira Town,
Tumakuru District.

(BY **Sri.J.A.** Adv.)

V/s

Respondent/s

The Shivaganga Education Trust,
Represented by it's President
B.N.Thippeswamy,
S/o B.N.Nanjundappa,
Sira – Amarapura Road,
Jyothinagara,
Sira Town,
Tumakuru District.

(By **Sri.B.H.P.** Adv.)



Date and nature of decree appealed against	Impugned order passed in O.S.No.244/2020 dated 30.03.2021 by the Addl. Civil Judge and JMFC, Sira
Date of institution of the appeals	20.07.2021
Date on which the order was pronounced.	24-06-2026
Total duration	Year/s : Month/s : day/s
	04 11 04

Sd/-
(VINOD KUMAR. M)
 Addl. Senior Civil Judge &
 JMFC., Sira

:: O R D E R ::

The Miscellaneous appeal filed by appellant/original plaintiff U/o 43 Rule 1 of CPC challenging the impugned order passed in O.S.No.244/2020 dated 30.03.2021 by the Addl. Civil Judge and JMFC, Sira.

2. The appellant was plaintiff and respondent was plaintiff before the trial court. For the sake of convenient and brevity, the parties would be referred to in this order as per their ranks before the trial court.

3. Brief facts of the case leading to appeal are as follows :

The appellant/plaintiff filed suit in O.S.No.244/2020 against respondent/defendant for the relief of injunction in respect of suit property along with the suit the plaintiff filed an interim applications U/o 39 rule 1 & 2 of CPC restraining the defendant, his agents, servants or anybody acting on his behalf



from interfering with his peaceful possession and enjoyment of suit property. After service of summons the defendant appeared through their counsel and filed their objections to application U/o 39 rule 1 & 2 of CPC. Having heard the matter on both sides, the trail court has dismissed the application filed against defendant in respect of suit property.

4. The trail court has raised the following points at the time of considering the application U/o 39 Rule 1 & 2 of CPC:-

P O I N T S

- 1. Whether the plaintiff has made out prima-facie case?***
- 2. Whether the balance of convenience lies in favor of plaintiff?***
- 3. Whether the irreparable loss or injury would cause to the plaintiffs if the application is not allowed?***
- 4. What order or decree?***

5. After hearing the arguments, the trail court has dismissed the application. Upon impugned order, the aggrieved party/appellant/plaintiff preferred this Miscellaneous appeal challenging the said order upon following grounds as hereunder:

G R O U N D S

- 1. Originally suit property bearing Sy.No.47 to extent 31 acre 16 guntas of Kallukote Village belongs to Govt., and grand father of appellant with family members were residing in the constructed house and also running hotel to extent 50X20 feet as in unauthorized possession,***



after acquired the said property by Govt., for widening road towards Sira-Amarapura road and demolished the residential houses, the suit property was granted to appellant by Tahsildar of Sira by issued Hakku Patra vide LNDSR No.4/2016-17 dated 22.03.2018 and since the date the appellant and family members are in possession and enjoyment of suit property by running hotel in suit property.

2. The trial court has not looked into the narrated averments properly and passed the interim order without applied mind.

3. The trial court erred in saying that the appellant has proved that the respondent has obstructing the possession and causing interference to the suit property.

4. The impugned order passed by trial court is illegal, arbitrary, capricious and perverse.

6. Hence, on the above among other grounds, the original plaintiff/appellant in appeal prayed before this court to allow appeal and set-aside the impugned order dated 30.03.2021 passed by the trial court in O.S.No.244/2020.

7. After passing of the impugned order in O.S.No.244/2020, the original defendant/respondent appeared through counsel before this court after issued notice on the appeal.

8. The respondent resisted the application by filed objections to appeal and thereafter, heard the arguments of the counsel for appellant and that of learned counsel for respondent. Perused the entire materials available on record of the case.



9. In view of the grounds in the appeal made out by the appellant/plaintiff the following points arise for my consideration :

P O I N T S

1. Whether the trial court erred in holding that, the plaintiff has not made out prima-facie case, balance of convenience and irreparable hardship for grant of temporary injunction as prayed in the application?

2. Whether the trial court has passed illegal, arbitrary, capricious and perverse order while considering the interim order?

3. Whether the order of trial court calls for interference by this court?

4. What order or decree?

10. After perusal of the entire records including documents available on record and hearing the arguments, my findings to the above points are as follows :

POINT NO.1 : In the **Negative**

POINT NO.2 : In the **Negative**

POINT NO.3 : In the **Negative**

**POINT NO.4 : As per final order
for the following :**

R E A S O N S

11. **POINTS NO.1 to 3** : Since all these points are inter-connected with each other and involved common discussion, they are taken up together for consideration in order to avoid repetition of facts and discussion.



12. It is specific contention of appellant/plaintiff that, originally suit property bearing Sy.No.47 to extent 31 acres 16 guntas of Kallukote Village belongs to Govt., and appellant with family members were residing in the constructed house and also running hotel to extent 50X20 feet in unauthorized possession, after acquired the said property by Govt., for widening road towards Sira-Amarapura road and demolished the residential houses, the suit property was granted to appellant by Tahsildar of Sira by issued Hakku Patra vide LNDSR No.4/2016-17 dated 22.03.2018 and since the date the appellant and family members are in possession and enjoyment of suit property by running hotel in suit property.

13. Per-contra, the respondent specifically contended that, the plaintiff filed the suit in respect of Sy.no.47, situated at Kallukote based on grant by Tahsildar of Sira. But the suit property situated at Sira Town property. The property claimed by the plaintiff and suit property are all together different. The plaintiff never mentioned in the plaint about Sy.No.47 is situated in which village. The plaintiff has suppressed the correct boundary of suit property and civil proceedings taken place in O.S.No.05/1994. It is further that, originally property to extent East to West 860 feet and North to South 800 feet belongs to Kalingayyana Mutt in the name and owned by Srishial Nidumamidi Samsthana Mutt, Gulur, Bagepalli Taluk. Out of the total extent, the GPA holder of Mutt executed sale deed dated 24.02.1982 in favor of defendant and mutated the same vide M.R.No.32/1994-95. But the plaintiff and others



have illegally tried to entering into suit property based on grant issued by Tahsildar of Sira. Subsequently, he challenged the grant order by Tahsildar of Sira before DC of Tumakuru vide MUN(A)8/2000-01 become to be allowed by set aside the grant order of Tahsildar, Sira. In turn, the defendant filed suit in O.S.No.107/2000 before Senior Civil Judge of Madhugiri for declaration of title and permanent injunction includes mandatory injunction against plaintiff and others & after establishment of Senior Civil Judge in Sira, the suit in O.S.No.107/2000 was renumbered as O.S.No.122/2005, which came to be decreed in part and dismissal the relief of mandatory and permanent injunction. Against Judgment and decree in O.S.No.122/2005, he preferred appeal in R.A.No.125/2010 came to be allowed in entirety for all prayer made in the appeal. Subsequent appeal against judgment and decree passed in RA.No.125/2010, the plaintiff preferred an appeal in RSA.No.1832/2011 before Hon'ble High Court of Karantaka came dismissed on dated 01.08.2015 and SLP No.44/2016 filed by plaintiff before Apex Court also stands dismissed on dated 08.02.2016. The suit property is part and parcel of the decree property and the defendant is true owner of the property. The plaintiff has no right, title or interest over the suit property.

14. I have gone through the rival contention made by both parties. It is necessary to culled out about whether the plaintiff has made out prima-facie, balance of convenience and irreparable loss before the trail court while considering the



I.A.No.1 U/o 39 Rule 1 & 2 of CPC. It is specific contention of appellant/plaintiff before trial court that, he acquired the suit property under Hakku Patra issued by Tahsildar of Sira and put in possession of the same by running hotel includes all the records stands in his name and paying taxes to concerned authority. In support of prima-facie, the appellant and counsel never produced any documents to show the suit property was granted by Tahsildar of Sira and issued Hakku Patra in his name. Moreover that, the appellant originally claiming the property of Kallukote Village in Sy.No.47. But the suit property situated at Sira town and it comes within the limits of CMC of Sira. If the Sy.No.47 comes within the Sira limits and assigned as CMC property, the appellant and counsel have not produced any documents to show the same. On other hand, the respondent specifically contended that, the appellant claiming their property within the limits of CMC of Sira instead of Sy.No.47 of Kallukote village. The suit property and Hakku Patra have said to be issued in favor of appellant are all together different. But the appellant claiming the their property instead of Sy.No.47 of Kallukote Village.

15. Per-contra, the respondent specifically contended that, he purchased the part of the property acquired under sale deed dated 24.02.1992 from original owner/Kalligaiana Mutt out of extent East West 860 feet North to South 800 feet. Even after purchase, he become owner in possession and enjoyment of the property. In turn he filed suit in O.S.No.107/2000 for declaration and permanent injunction before Senior Civil Judge



of Madhugiri and renumbered as O.S.No.122/2005 after establishment of Senior Civil Judge in Sira against appellant and others came to be partly decreed regarding ownership and dismissed the possession and mandatory injunction. Upon Judgment and Decree passed in O.S. No.122/2005, he preferred an appeal in RA.No.125/2010 came to be decreed it entirety and appeal preferred by appellant and others before Hon'ble High court of Karnataka in RSA.No.1832/2011 and Apex Court in SLP No.44/2016 came to be dismissed. The claiming of appellant upon grant has been set aside by DC of Tumakuru. But the appellant has suppressed the real fact before the court. Even though, the respondent never produced any documents to prove the contents of objection before the court.

16. It is important to note that, the claiming of suit property by plaintiff and Hakku Patra are all together different and appellant has suppressed the judicial as well as quasi judicial proceedings held between both parties from this court to Apex Court. As such, the appellant has not come before the court with clean hands and suppressed the entire proceedings taken place before judicial and quasi judicial proceedings. If the appellant is not come before this court with clean hands, he will not get any relief from the court. In this regard, I would like to relying ratio laid down by Apex Court in land mark Judgment in **Lakshminarasimmaiah & Others Vs Yalakki Gowda** reported in AIR 1965 Mysore-310 held that,



“The granting or refusing of injunction is a matter resting in the sound discretion with the trail court and consequential no injunction will be granted, whenever it will operate oppressively or inequitably or contrary to the real justice of the case. It is further held that, while granting of temporary injunction. It is strong arm of equity and right must be clear. One of the main consideration is the fairness or good conduct of the party invoking the aid of the court. It is a well known maxim of equity that, who comes into equity must come with clean hands. The wrong conduct of the Plaintiff in the particular mater or transaction with respect to which he seeks injunctive relief precludes him from obtaining such relief of injunction will not be granted in aid of a possession secured by staratagem or trick”

17. In the instant case, the appellant has suppressed the judicial and non-judicial proceedings taken place since 2000 to 2016 from this court to Apex Court. On other hand, the appellant also claiming the property of Sira Town except claiming the property have said to be granted at Kallukote Village in Sy.No.47. Therefore, the trail court cannot exercised its discretionary to grant of injunction in favour of defendant over suit property. On these said grounds, the ratio laid down in **Yellakki Gowda** is aptly applicable to present subject of matter the case in hand.

18. It is pertinent to note that, the plaintiff has made out prima-facie and balance of convenience to get order of injunction before the trail court. The trail court has rightly exercised its power under 39 Rule 1 & 2 of CPC to refused to grant injunction order against defendant in respect of suit



property. Moreover that, the trial court has passed reasonable grounds to reject the grant of injunction order. Therefore, for all the above reasons, I hold that the impugned order passed by the trial court is justified and convinced. Hence, no interference of this court is required into the impugned order passed by the trial court. **Accordingly, I answered to Points No.1 to 3 in the Negative.**

19. POINT NO.4 : For foregoing reasons, I proceed to pass the following :

ORDER

The appeal filed by the appellant/plaintiff
U/o XLIII Rule 1 of C.P.C. is hereby Dismissed.

Consequently, the impugned order passed
in O.S.No.244/2020 on dated 30.03.2021 by the
Addl. Civil Judge and JMFC, Sira is hereby
confirmed.

Office is hereby directed to send the copy
of this court order to trial court.

(Dictated to Stenographer directly on computer, typed by
him, corrected by me & then pronounced in open court on this
the **24th day of June 2026**)

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira