

KAUK310013952025



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC, BHATKAL.**

Dated this the 3rd Day of May, 2025

PRESENT

Smt. Deepa Aralgundi, B.Com. LL.B.,

**Principal Civil Judge and
JMFC, Bhatkal.**

O.S.35/2025

Plaintiff :

Ramakrishna Durgappa Moger
S/o Late Durgappa Moger,
Aged about 72 years,
R/o : Tulasimane, Karikal village,
Post: Mavinkurve, Bhatkal Taluk.
Represented by GPA Holder
Panduranga Annappa Havalimane

V/s

Respondents :

1. Harishchandra Badiya Naik
S/o Badiya Naik
Aged about : 55 years,
R/o : Church Road, Neergadde,
Mundalli, Bhatkal Taluk

2. Narayan Badiya Naik
S/o Badiya Naik
Aged about : 58 years,
R/o : Church Road, Neergadde,
Mundalli, Bhatkal Taluk
3. Durgappa Badiya Naik
S/o Badiya Naik
Aged about : 50 years,
R/o : Church Road, Neergadde,
Mundalli, Bhatkal Taluk
4. Jattamma Kom. Badiya Naik
W/o Badiya Naik
Aged about : 80 years,
R/o : Church Road, Neergadde,
Mundalli, Bhatkal Taluk
5. Bagheerathi Kom. Manjunath Naik
W/o Manjunath Naik
Aged about : 45 years,
R/o : Church Road, Neergadde,
Mundalli, Bhatkal Taluk

I.A.No.III

Plaintiff : Ramakrishna Durgappa Moger

Vs.

Defendants :

1. Harishchandra Badiya Naik and others

ORDER ON I.A.III

The Plaintiff has filed this application under Order XXXIX Rules 1 and 2 R/w Sec.151 of CPC, praying to grant an exparte order of temporary injunction, restraining the defendants, their agents, servants, or any person claiming through them, from interfering with the peaceful possession and enjoyment of the schedule A property, specifically from obstructing access to the schedule A property by placing laterite stones between schedule A property or from applying cement/ concrete plaster to the laterite stones stored at the schedule A property to create a permanent wall (Pakka wall) pending the final disposal of the suit.

SCHEDULE A PROPERTY

All that piece and parcel of land bearing Sy.No.203 measuring 3-03-00 (A.G.A.) paiki (0-6-0) situated at Mundalli village, Soosagadi hobli, Bhatkal Taluk and bounded as follows:-

East by: Road

West by : Remaining land in Sy.No.203

North by : Sy.No.201 and Sy.No.200

South by: Remaining land in Sy.No.203.

2. In the affidavit accompanying application, the GPA holder of the plaintiff stated that, he is the absolute owner of the land bearing Sy.No.203 measuring 3-3-0

(A.G.A.) paiki 0-6-0 (A.G.A.) situated at Mundalli village, Soosagadi Hobli, Bhatkal Taluk, which is more fully described in schedule A property to the plaint. A hand sketch is placed along with the plaint which depict the shape of the property for easy understanding however the same do not represent the actual measurement. The land in Sy.No.203/1, measuring 1 acre 20 guntas, situated at Mundalli village, Soosagadi hobli, Bhatjkal Taluk was originally purchased by the plaintiff from his vendor, Nagamma Kom. Mastappa Naik, through a registered sale deed dated: 2-11-2015. This deed was duly registered at the Sub-Registrar's office in Bhatkal. The vendor, Nagamma Kom Mastappa Nik, had inherited the aorementioned land from her father, and the same was allocated to her in accordance with the order passed in FDP No.1/1998 in O.S.NO.77,1994, on the file of the Civil Judge (Junior Division) Bhatkal. However the plaintiff had sold majority of the land in Sy.No.203/1 and has retained any to the extent of land mentioned in the schedule A property. Hence prayed to allow the application.

3. On the other hand the defendant No.2 filed objection to I.A.No.I to III and submits that, the suit of the plaintiff is not tenable both on question of law as

well as on question of facts, it is liable to be dismissed with cost. The suit in the present form is not tenable. The suit of the plaintiff is experimental in nature. It is submitted that the suit of the Plaintiff is false, frivolous, vexatious, experimental, misconceived and not maintainable either in law or on facts. It is submitted that the Plaintiff with an ulterior motive has suppressed the true and material facts before this Court in the above suit. Further submits that boundaries are not clear. Hence prays to reject the said application.

4. Heard the counsel for the Plaintiff and defendants. Perused the I.A., affidavit, photographs and records.

5. Under the circumstances, following points arises for her consideration:-

POINTS

- 1) Whether the plaintiff has made out prima-facie case to allow the I.A.?
- 2) Whether the Plaintiff has got balance of convenience in his favour?
- 3) Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction is not allowed?
- 4) What order?

6. After careful scrutiny of material available on the file, the findings to the above points are as follows:

Point No.1: **In the Affirmative**

Point No.2: **In the Affirmative**

Point No.3: **Partly in the Affirmative**

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

REASONS

7. POINTS No. 1 TO 3 :- All these three points are interlinked with each other. Hence, they are taken together for discussion in order to avoid the repetition of facts.

8. This is a suit filed by the Plaintiff for permanent and mandatory injunction restraining the defendants from interfering in any manner with the plaintiff peaceful possession and enjoyment more particularly from obstructing/ blocking the access to the “Schedule A Property” belonging to the plaintiff. For Mandatory injunction, in the event, the defendant failed and neglected to remove the laterite stones stored in the middle of the schedule A property, then permit the plaintiff to demolish the same up by the defendants at the cost of the defendants under the supervision of a commissioner appointed by this court. On the other hand the defendant No.2 has filed objection to said application and prays to dismiss the I.A.No.III.

9. To show the bonafides, the Plaintiff has photographs, RTC, Map etc., It is pertinent to note

here that this Court has issued emergent notice to the all defendants but defendants No.4 and 5 not appeared before this court. But after careful perusal of photographs produced by the plaintiff with respect to present situation of the spot, which are prima facie appears that the stones were kept in the suit schedule property. Hence at this stage it is just and necessary to stop the construction of compound wall till completion of trial, to see whether he is constructing the said wall in his land or constructing the compound wall by the defendants land. Until then the suit property has to be protected till the final disposal of the suit, otherwise there is chance of completion of construction of compound wall as a permanent wall. For which reason, I am of the opinion that, both the parties have to maintain the statusquo till final disposal of suit on merit only on full fledged trial. Unless & until the suit is decided, the suit property has to be protected and moreover, it leads to multiplicity of litigations. In this regard, this court relying on the decision cited in the ***Hon'ble high court of Karnataka in ILR 2004 KAR Page 4076 (Fakirasab V/s. Syedusab and Others)*** in which is held that:

***“(B) CIVIL PROCEDURE CODE, 1908-
ORDER 39 RULES 1 And 2- OBJECT OF-
While considering an application for grant of
temporary injunction, the right and need of***

respective parties should be considered and the suit property also should be protected and preserved so that, if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.”

In view of above said decision of Hon'ble High Court of Karnataka and upon hearing the arguments of plaintiff and defendants counsel with respect to the suit property, at this juncture I am of the opinion that, the suit property has to be protected till further order, else it would lead to multiplicity of litigation. Accordingly both parties are to maintain statusquo with respect of suit property till final disposal of this case. Hence the points framed for consideration are answered, point No.1 and 2 **in the Affirmative and** point No.3 **partly in the Affirmative.** Hence I Proceed to pass the following :

ORDER

IA.No.III filed U/o XXXIX Rules 1 & 2 R/w Sec.151 of CPC filed by the plaintiff is partly allowed.

The plaintiff and defendants are hereby directed to maintain statusquo with respect to the further construction

**of compound wall as permanent wall in
the suit schedule property till further
order.**

(Dictated to the stenographer on computer, computerized by him, corrected, printout taken by him, signed and pronounced by me in the open court on this the **3rd Day of May, 2025**).

Sd/-

(Deepa Aralgundi)
Prl. Civil Judge and
JMFC, Bhatkal.