

IN THE COURT OF SENIOR CIVIL JUDGE BHATKAL, AT BHATKAL

PRESENT: SRI. KURANI KANT DHAKU

B.Com.,LL.B.(Spl.)

SENIOR CIVIL JUDGE, BHATKAL.

REGULAR APPEAL NO. 25/2023.

DATED THIS 17th DAY OF APRIL-2025.

BETWEEN:

1. SRI. MANJU BIN SANNU GOND

-----**APPELLANT.**

[BY SRI. R. R. SHRESTY ADVOCATE FOR APPELLANT]

AND:

1. SRI. SHIVRAM S/O: NAGAPPA GOND AND OTHERS.

-----**RESPONDENTS.**

[BY SRI. S.B. BOMMAI ADVOCATE FOR RESPONDENTS]

PARTIES TO THE I.A No.II

BETWEEN:

1. SRI. MANJU BIN SANNU GOND

REP. BY GPA.

-----**APPLICANT.**

[ORIGINAL APPELLANT]

AND:

1. SRI. SHIVRAM S/O: NAGAPPA GOND AND OTHERS.

-----**OPPONENTS.**

[ORIGINAL RESPONDENTS]

DETAILS OF INTERLOCUTORY APPLICATION AS PER CIRCULAR NO. R.J.163/2023 DATED

24.08.2023 AND WP NO. 201865/2023.

Provision under which application is filed	U/O. XXXIX RULE 1 & 2 OF CPC
Relief sought for	ORDER OF TEMPORARY INJUNCTION.
The date on which the application is filed	07/03/2025.

No. of application	I A No.II.
Date on which the objections are filed by different opponents	11/03/2025.
The date of order.	17/04/2025.

Sd/-

SRI. KURANI KANT DHAKU.

SENIOR CIVIL JUDGE, BHATKAL.

ORDER ON I.A No.II UNDER ORDER XXXIX RULE 1 AND 2 R/W SEC. 151 OF CPC

The I.A No. II is under Order XXXIX Rule 1 and 2 R/W section 151 of CPC, filed by the plaintiff/applicant/appellant for the relief of order of temporary injunction, restraining the respondents/ defendants from interfering with peaceful possession and enjoyment over the suit-schedule property and also sought relief to restrain the respondents/ defendants from leveling/meddling with suit schedule property, till the disposal of the suit.

2. In the affidavit , it is stated that the present appellant has filed O.S No. 39/2019 before the Trial Court for the relief of recovery of possession and injunction with respect to suit schedule property. The said suit came to be dismissed erroneously by the Trial Court without proper appreciation of material evidence. The Trial Court has dismissed the suit with observations that the appellant has alternative remedy U/sec. 142 of Karnataka Land Revenue Act, for recovery of possession. So, the dismissal of the suit will not leave the plaintiff remedy-less, which is misapplication of law and which lead the appellant to file appeal before this Court.

3. In response to the issuance of notice, the respondents have appeared before this Court and they are well aware about the pendency of appeal. But, on 5.3.2025, the respondent No.3 with the aid of JCB had forcefully entered into the suit schedule property and marking over the property and started leveling the suit schedule property. Hence, the very appellant had approached to the police station and lodged the complaint against the respondents. But, the said police have not enquired the matter. The appellant has filed this application before this Court as he has no other alternative remedy to protect his property. Further, it is stated that there are several grounds to set aside the judgment of Trial Court. So, if the respondents succeed in their efforts in changing the nature of the suit schedule property, then the entire purpose of filing the appeal will be defeated. It is stated that to prove the prima-facie case and alleged interference by the respondents, the appellant has produced photographs and till the respondents have engaged to leveling the land and marking over the property with the help of the JCB. So, if they have continued their work, then the right over the property of the appellant will be taken away and undue hardship will be caused to the appellant, which cannot be compensated in terms of money, since the balance of convenience lies in favour of appellant. Hence, prays to allow the I.A.No.II for the interest of equity and justice.

4. On the other hand, the respondents have filed objections to the I.A.II and contended that the application is false, frivolous, vexatious and not sustainable under law or facts. The grounds stated in the affidavit are all false, baseless and there is no merit in the eyes of law. Further, it is contended that the very written statement of the

respondents itself speaks that there is no prima-facie case of appellant. So, once the no prima-facie case, then question of granting of TI order does not arise. The Trial Court has rightly dismissed the suit with observations that the plaintiff/appellant has not produced any cogent evidence with regard to the encroachment of 0-1-0 of land in RS No. 59/2 situated at Marukeri village of Bhatkal Taluk. Further, it is contended that the very appellant and his family have encroached the land belongs to the respondents bearing RS No. 58/3 situated at Marukeri village and for that respondents have filed suit for possession of the said encroachment land in its O.S No. 46/2019 against the appellant and against the brother of appellant. The said suit came to be decreed and the appellant and his brother have filed Appeal against the judgment of the OS No. 46/2019. So, the appellant has habit to file a false suits and I.A. Further, it is contended that appellant has no right, title or interest over the land bearing RS No. 58/3. The said land is situated on the eastern side of the respondents' land bearing Sy.No. 58/3. In between suit land and land of the respondents, there is unmet late-rite stone compound wall about 4 feet height. The respondent No.3 is going to construct the house in their malki property since 2019. The plaintiff and his family members are unnecessarily disturbing the respondent No.3, even the malki land of the respondent No.3 is situated about 50 meter distance from the boundaries of the suit land. So, the question of encroaching any portion of the suit land by the respondents does not arise. So, if they have any doubt, then they may approach to competent survey authorities. In O.S No. 39/2019 the Court commissioner was

appointed and the Court commissioner clearly reveals that there is no prima-facie case of plaintiff. Hence, prays to dismiss the I.A. with heavy costs.

5. On careful perusal of material records, the points would arise for considerations are:

P O I N T S:

1. Whether the plaintiff/appellant/applicant has proves that there is prima-facie case?

2. Whether the plaintiff/appellant/applicant proves that there is balance of convenience lie in his favour?

3. Whether the plaintiff/appellant/applicant further proves that there is irreparable losses or injuries, if TI is refused?

4. What order.?

6. I have heard the arguments of plaintiffs' side, perused material records.

7. On careful perusal of entire material records, my findings to the above points are as follows:

F I N D I N G S:

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

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

Point No.3 : **In the Negative**

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

R E A S O N S:

8. POINT NO.1 to 3 : These three points are inter connected with each others. Hence, to avoid the repetition of facts and to save the precious time of the Court, these three points are taken together for common discussion.

9. The plaintiff/appellant has filed O.S NO. 39/2019 before the Trial Court for the relief of recovery of possession and consequential relief of permanent injunction in respect of suit schedule property bearing Sy.No. 59/2 measuring 0-1-0 situated at Marukeri village of Bhatkal Taluk. It is alleged that the suit schedule property in R.S No. 59/2 is belongs to the appellant and his family members. The plaintiff/appellant and his family members have purchased the suit schedule property in the year 1990 under registered sale deed. Hence, from the date of sale deed, the plaintiff /appellant and his family members are in peaceful possession and enjoyment of the suit schedule property. But, the defendants have encroached suit schedule property of plaintiff with extent to 0-1-0 on the front side of western and northern side and constructed RCC building in the suit schedule property. On the other hand, in the written statement, the defendants/ respondents have denied the allegations of plaintiff /appellant.

10. Admittedly, this appeal is preferred against the judgment and decree in O.S No. 39/2019 passed by the Trial Court dismissing the suit filed by the plaintiff /appellant.

11. Admittedly, the appellant/plaintiff has filed this I.A.No.II U/O XXXIX Rule 1 and 2 of CPC during the pendency of the appeal for the relief of temporary injunction, restraining the defendants/ respondents from interference with peaceful possession and leveling meddling with the suit schedule property.

12. I have carefully gone through the entire material records.

13. Admittedly, the plaintiff/appellant has filed I.A.No.II Under Order XXXIX Rule 1 and 2, seeking relief of interim temporary injunction against the defendants/respondents. Order XXXIX Rule 1 & 2 of CPC, dealt with under which circumstances the T.I. order is to be granted. The parties who sought the relief of TI order shall fulfill three main ingredients, such as prima-facie case, balance of convenience lies in his favour and irreparable losses or injury, if the TI order is refused. The granting of TI order is purely discretionary power of Court and it is settled law that even it is the discretionary power, the Court should not grant T.I order, if the opposite party suffers more irreparable injury than the applicant. Further, while granting or refusing the TI order, Court has to see firstly the prima-facie case, balance of convenience lies in whose favour and irreparable losses if TI order refused. The prima-facie case includes the maintainability of the suit also. Further, while granting Temporary injunction Court must first see the three main principles, such as prima-facie case, balance of convenience lies in favour of the parties and irreparable losses, if the granting of Temporary injunction refused. So, before touching to the merits of the I.A., it is better to know the meaning of prima-facie case, balance of convenience and irreparable losses. The word prima-facie means **'at first sight' or 'at first face' or 'first information'**. The Balance of convenience" means the comparative mischief or inconvenience to the parties. The irreparable losses or injury refers, it is deemed irreparable if there is no clear monetary standard by which damages may be determined.

14. The main allegation of the plaintiff/appellant is that during the pendency of the appeal, the respondent No.3 has forceably entered into the suit schedule property and marking over the property and started leveling the suit schedule property with the aid of JCB, even they well aware of the pendency of this appeal. On the other hand, the respondents have denied the same and contended that the plaintiff/appellant has failed to prove the encroachment of suit schedule property before the Trial Court and contended that the respondent No.3 has constructing the house in his malki property since 2019 in bearing its Sy.No. 58/3 measuring 1-4-0 of Marukeri village and the constructed house by the respondent No.3 is about 50 meters distance from the boundaries of the suit land.

15. On perusal of plaint prayer, it is seen that admittedly the plaintiff/appellant has filed O.S 39/2019 before the Trial Court for the relief of recovery of encroached possession of suit schedule property with extent to 0-1-0 from the respondents/ defendants. So, admittedly the plaintiff/appellant has not having possession of suit schedule property. Hence, at the first sight and at first information, it is noticed that the plaintiff/appellant has not made out prima-facie case.

16. The plaintiff/appellant has produced photographs and stated that the respondents/ defendants have started construction and leveling the suit schedule property with the aid of JCB. On perusal of photographs produced by the plaintiff/appellant, it is seen that construction work is going on through JCB. In the

objections, the defendants/ respondents have contended that the respondent No.3 has not constructing any building in the suit schedule property. But, he has constructing building other than the suit schedule property in bearing its land Sy.No. 58/3, which is more than 50 meter distance from the suit schedule property. The plaintiff /appellant has produced photographs but, there is no definite or specific evidence to show that the very respondents/ defendants have started construction in the very suit schedule property. Hence, the plaintiff/appellant has not shows prima-facie case and balance of convenience lies in his favour.

17. Admittedly, the present appeal is filed by the appellant/ plaintiff challenging the correctness of judgment and decree in O.S No. 39/2019 passed by the Trial Court. On perusal of judgment and decree of the Trial Court, it is seen that the Trial Court has dismissed the suit with observations that the plaintiff/appellant has failed to establish the alleged encroachment. So, to grant the order of temporary injunction, the final hearing of appeal is very much necessary.

18. In the instant case, the plaintiff/appellant has not proved the prima-facie case, balance of convenience lies in his favour. So, when the plaintiff/appellant has failed to show the prima-facie case, then the question of consideration of irreparable loss or injury does not arise.

19. In the instant case, the plaintiff/appellant has not made out prima-facie case and balance of convenience lies in his favour and not proves that he will suffers irreparable injuries if granting of order of temporary injunction is refused. Hence,

considering the above facts and circumstances of the case, I am of considered view that I.A.II is to be dismissed. Hence, from careful perusal of entire material records, it is noticed that plaintiff has not proved prima-facie case, balance of convenience lies in his favour and not proved irreparable losses, if granting of TI is refused. Hence, I answer Point No.1 to 3 in the **Negative**.

20. POINT NO.4 :- In view of reasons discussed supra, I proceed to pass the following:

ORDER

**The I.A. No. II Under Order XXXIX Rule 1 and 2
R/w Section 151 of CPC filed by the plaintiff/appellant
is hereby DISMISSED.**

(Dictated to Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on this 17th day of April - 2025)

Sd/-
(SRI KURANI KANT DHAKU)
SENIOR CIVIL JUDGE, BHATKAL