

KAUK510003772023



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL  
AT: HALIYAL, UTTARA KANNADA**

**DATED THIS THE 3<sup>rd</sup> DAY OF APRIL, 2024**

**PRESENT:- DESHABHUSHAN KOUJALAGI,  
B.A.,LL.B  
Civil Judge and J.M.F.C., Haliyal**

**O.S. No.37/2023**

**BETWEEN : 01. SHRI. CHANDRAKANT S/O YALLAPPA  
SHIRAGAPUR**

**...PLAINTIFF**

**AND : 01. SHRI. KAREEMSHA S/O LATIFSHA  
LATIFNAVAR**

**...DEFENDANT**

**PARTIES TO I.A NO.I**

**BETWEEN : 01. SHRI. CHANDRAKANT S/O YALLAPPA  
SHIRAGAPUR**

**...APPLICANT/ PLAINTIFF**

**(By: Sri. M.R.M, Advocate)**

**AND : 01. SHRI. KAREEMSHA S/O LATIFSHA  
LATIFNAVAR**

**...OPPONENT/ DEFENDANT**

**(By: Sri. C.V.N/S.L.S, Advocates)**

**ORDER ON I.A. NO.1**

The present application is filed by the plaintiff against defendant under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. for the relief of temporary injunction to restrain the defendant or anybody acting on his behalf from interfering with peaceful possession and enjoyment of the suit schedule property by the plaintiff till final disposal of the suit.

2. An affidavit is annexed with the instant application wherein, the plaintiff has stated that, he has filed the present suit for the relief of declaration of title and permanent injunction against the defendant in respect of the suit schedule property i.e., 1 acre 16 gunthas of land of Survey No.54/2 of Haliyal Village of Haliyal Taluk. It is also prayed to consider plaint averments as part and parcel of the present application and as such, it is necessary to look into the contents of plaint.

3. It is pleaded by the plaintiff in the plaint that, he is the absolute owner in possession and enjoyment of the suit schedule property which has been developed by him by investing huge amount and growing paddy crop in the same. The defendant is adjoining owner of the suit schedule property and trying to encroach the same. The defendant intends to convert his land into N.A land and in this regard, he is demarcating the

suit land without the consent of the plaintiff. On 10.03.2023, the defendant attempted to encroach more than 1-2 gunthas of land of eastern side of the suit schedule property for making road to his land. When the same was enquired by the plaintiff, the defendant has informed the plaintiff that, he needs more extent of land to form road and as such, he is demarcating the suit property and also quarrelled with plaintiff and threatened with dire consequences. It is further case of the plaintiff that, the defendant is having men and money power backed with political influence and on the contrary, the plaintiff is not having any such power and as such, the plaintiff is constrained to file the present application.

4. On the other hand, the defendant has filed a memo to treat the contents of his written statement as objections to the instant application and as such, it is necessary to look into the averments made in the written statement. The defendant in his written statement has completely denied the case of the plaintiff and according to him, the suit property is not adjoining property of the property of defendant and he has never encroached any portion of the suit schedule property. The defendant is owner in possession of Survey No.55/1 and he is not in a position to cultivate his land and as such, he has applied for conversion of his land

into N.A land. By knowing the said fact and to grab money from the defendant, the plaintiff started to threaten the defendant. By demanding huge amount with an oblique motive to grab the money from the defendant and to create hurdle in N.A work, the plaintiff has filed the present false suit. The plaintiff is having men and money power and without any cause, he has filed the present application.

5. Heard on both side. Perused the entire materials.

6. The plaintiff in support of his case has relied upon documents such as RTC of land bearing Survey No.54/2 of Haliyal Village of Haliyal Taluk of the year 2022-23 and copy of Sketch of Block No.54/2.

7. On the other hand, the defendant has relied on documents such as RTC of land bearing Survey No.55/1 of Haliyal Village of Haliyal Taluk of the year 2016-17 and certified copy of Sketch of Block No.55/1.

8. Having heard and perusal of the records, the following points arise for the consideration of the Court:

POINT NO.1: Whether plaintiff has made out a prima-facie case?

POINT NO.2: Whether balance of convenience lies in favour of the plaintiff?

POINT NO.3: Whether if TI is not granted, plaintiff would be put to untold hardship and irreparable loss?

POINT NO.4: What Order?

9. Findings of the Court on the above points are as under:

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:

**REASONS:**

**10. POINTS NO.1 TO 3:** Since these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

**11.** The present application is filed by the plaintiff to restrain the defendant from interfering with peaceful possession and enjoyment of the suit schedule property till final disposal of the suit. According to the

plaintiff, he is owner in possession and enjoyment of suit property and the defendant being adjoining owner is attempting to encroach the suit property on its eastern side. On the other hand, the defendant has taken a contention that, his land is not situated towards eastern side of the suit property and he has not made any attempts to encroach the suit property on its eastern side.

**12.** When the allegation of the plaintiff is denied by the defendant, it is the plaintiff who has to make out prima-facie case and he has to show that, balance of convenience lies in his favour. Admittedly, in his plaint, the plaintiff has not at all pleaded his source of title to the suit schedule property. Except RTC and one sketch of Survey No.54/2, no documents have been produced by the plaintiff to show the boundaries of the suit schedule property and to show the exact location of property of the defendant. As per RTC of Survey No.54/2, the name of the plaintiff is entered in the record of rights on the basis of gift. Admittedly, the plaintiff has not produced the gift deed which is mentioned in the RTC of the suit schedule property.

**13.** Though the plaintiff has relied upon a sketch of Block No.54/2 but, that itself is not enough to show prima-facie by the plaintiff.

In the said sketch, Survey No.55/1 is shown towards eastern side of Survey No.54/2 of Haliyal Village. However, the defendant has also produced sketch of his land bearing Survey No.55/1 which shows that, on western side of his land, not only the land bearing Survey No.54/2 but also, the land bearing Survey No.56/6 is shown. When such being the case, at this pre-trial stage, there is no clarity to the Court as to whether only the suit schedule property i.e., 54/2 is situated towards western side of land of the defendant or some other lands are also situated. Hence, Court does not find any prima-facie case on the side of the plaintiff.

**14.** It is pertinent to note that, by approaching the Court casually by seeking the relief without any documents is of no use. If the sketch relied upon by the plaintiff in respect of Survey No.54/2 and if the sketch relied upon by the defendant in respect of Survey No.55/1 are taken into consideration, the Court opines that, both parties shall lead evidence to prove their respective claim. At this stage, the Court does not find any prima-facie case on the side of the plaintiff and even balance of convenience does not lie on the side of the plaintiff. The plaintiff has also failed to show the irreparable loss which would be caused to him if

temporary injunction is not granted. Therefore, Points No.1 to 3 are answered in the **NEGATIVE**.

**15. POINT NO.4:** In view of the findings on Points No.1 to 3, Court proceeds to pass the following:

**ORDER**

I.A.No.I filed by the plaintiff against the defendant under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, then corrected, signed and pronounced by me in the Open Court on this the *3<sup>rd</sup> day of April, 2024.*)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge and J.M.F.C., Haliyal