

KAUK510004572025



Presented on : 20-03-2025
Registered on : 20-03-2025
Decided on : 19-08-2025

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

Dated this 19th day of August, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.40/2025

BETWEEN:

1. Mr. Suresh Honagekar,
S/o Pundalik Honagekar,
Aged about 31 years, Occ : Agriculturist,
R/o : Laxmigalli, Tergavon,
Tq: Haliyal, Dist: Karwar (U.K)-581239.

.....**Plaintiff**

(By Shri. N.S.S., Advocate)

AND:

1. Mr. Sanjay Benechekar,
S/o Gurunath Benechekar,
Aged about 48 years, Occ: Agriculturist,
R/o : Tergavon,
Tq: Haliyal, Dist: Karwar (U.K)-581239.

.....**Defendant**

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

I.A.No.II

Applicant/Pliff : **Mr. Suresh Honagekar,
S/o Pundalik Honagekar**
-Vs.-
Opponent/Deft : **Mr. Sanjay Benechekar,
S/o Gurunath Benechekar**

ORDERS ON I.A.No.II

The plaintiff filed I.A.No.II under Order XXXIX Rule 1 R/w Section 151 of C.P.C praying to grant temporary injunction restraining the defendant, his henchmen, representatives, agents, heirs or third parties acting on his behalf from interfering with possession of plaintiff and to maintain the status-quo regarding the possession over the suit schedule property till disposal of the suit.

Subsequently plaintiff filed Memo to consider prayed of I.A.No.2 as to grant ad-interim ex-parte order of temporary injunction restraining the defendant, his henchmen, agents, or anybody from interfere with the plaintiffs peaceful possession over the suit schedule property, till disposal of suit, said memo allowed by this court.

2. The description of the suit property is as under:

All that Piece and Parcel of residential property bearing property No.152700301100100626 and as per the Gram Panchayat property records details property No.325/1 measuring 70.65 site inclusive of house 87.60 measuring East to West 21.63 + 17.30 and North to South 4.05 in meters bounded on ;

East By : Panchayat Road

West By : Panchayat Road

South By :Gurunath Vittal Benechekar house

North By : Basavanth Maruthi Iranna Property

3. In the affidavit the plaintiff stated that, he is the absolute owner in possession and enjoyment of the suit property i.e., House No.325/1 and Pid No.152700301100100626 measuring east-west 21.63+17.30 and north-south 4.05. The suit schedule property is a residential house and vacant space, which is an ancestral property of plaintiff. The suit property acquired by the plaintiff in view of relinquishment deed executed by his sister in his favour on 16.11.2023. Since then the plaintiff is in possession and enjoyment of the same without any disturbance. In the year 2023, the plaintiff has constructed new store room and wash room at backyard which is vacant portion belongs to

the plaintiff. The defendant being adjoining owner with malafide intention and with support of members of the Gram Panchayat had conducted a meeting on 1.2.2025 and pressurized the plaintiff to agree for their decision and to face consequences. In spite of request by the plaintiff and in spite of showing a necessary documents, the elders of the Village and defendant not allowed the plaintiff to act over his backyard portion. On 17.03.2025, the defendant called one of the relative of plaintiff and informed him to advice plaintiff to clear shed constructed at backyard portion of the house of the plaintiff. Now the defendant is in hurry to construct compound illegally with an intention to encroach backyard portion of the plaintiff's house. The backyard portion is enjoyed by the plaintiff since several years without any disturbance, if defendant construct compound, the plaintiff will be put to loss and also it will affect free flow of air and light to the house of the plaintiff. The defendant and his henchmen are trying to encroach and construct compound wall over backyard portion of the property belongs to the plaintiff and also threatened the plaintiff with dire consequences and tried to interrupt his possession. Hence, the plaintiff filed this suit along with this application.

4. After issuance of suit summons, the defendant appeared through his counsel and filed

written statement and a memo to consider the written statement as objections to I.A No.II. In the written statement, the defendant denied the plaint averments and also denied the description of the suit property. The defendant contended that, father of the plaintiff and defendant are own brothers and owners of houses adjoining to each other. The house of father of defendant is situated towards southern side of the plaintiff's house and there is backyard to the house of defendant's father. The said property is an ancestral property of father of defendant. In the year 1990, grandfather of plaintiff by name Maruti Irappa Hongekar and Yallappa Babu Hubbalkar have purchased the said property from its original owner by name Yallappa Babu Hubbalkar. As per the sale deed, the extent of property is east-west 59ft and north south 12ft 5" and also east-west 67ft 2" and north-south 13ft. After the death of grandfather of plaintiff, father of plaintiff inherited the same and now the plaintiff inherited said property from his father. The father of plaintiff had encroached an area measuring 1.5ft at the time of constructing his house, for this reason, the father of defendant had given an objections before the Gram Panchayat, Tergaon, at that time, Gram Panchayat members and also elders of the Village had decided the matter and on the advice of the elders of

village, father of plaintiff and defendant have compromised the dispute and directed the father of plaintiff to give 1.5ft to the father of the defendant in vacant space belongs to father of the plaintiff. The plaintiff without obeying the compromise decree is now constructing house by encroaching 1.5ft belongs to the defendant. With these contentions, the defendant prayed to reject the application.

5. Heard both counsel and perused the records.

6. Now the points that arise for consideration are as under;

1. Whether the plaintiff has made out prima facie case to grant of temporary injunction?

2. Whether the plaintiff proves balance of convenience lies more in his favor?

3. Whether the plaintiff proves irreparable loss will be caused more to his, if temporary injunction is not granted?

4. What order?

7. Answers on above points are as follows;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

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

REASONS

8. **POINTS NO.1 TO 3:-** In order to avoid the repetition of facts and for the sake of convenience these points are taken together for discussion.

9. It is the contention of the plaintiff that, he is the absolute owner of suit property i.e., house and backyard measuring East-West 21.63 + 17.30 and North to South 4.05 in meters out of property bearing Gram Panchayat No.325/1. He constructed a store room and wash room in his backyard which is vacant portion of suit property. The defendant being adjoining owner is trying to encroach and construct compound illegally over the backyard portion, which belongs to plaintiff and has threatened him with dire consequences. The defendant denied the contentions of the plaintiff and stated that, at the time of constructing house by the father of plaintiff. He encroached 1.5 feet in the land of defendant, which is situated towards southern side of plaintiff's house. The defendants specifically contended that, the father of plaintiffs has removed 1½ feet Wall situated towards

northern side $\frac{1}{2}$ house of defendant and constructed his Wall. When the matter is placed before the elders of the Gram Panchayat, father of plaintiff agreed to leave his 1.5 feet land to defendant at backyard portion of his house. Therefore, the defendant not encroached upon the land of the plaintiff.

10. In order to prove his contentions, the plaintiff produced E-swattu khata issued by the Tergaon Gram Panchayat with respect to suit property i.e., property No.325/1 which stands in the name of plaintiff, in which, construction portion is measuring 87.60 Sq. Mtrs., and vacant space is measuring 70.65 Sq. Mtrs. It is also shown that, the land of plaintiff is totally measuring $21.63 + 17.30 \times 4.05$. The plaintiff also produced Tax Paid Receipts, copy of Relinquishment deed executed by his sisters in his favour, in the said document also, the entire extent of land shown as $21.63 + 17.30$ Mtrs., and north-south 4.05 Mtrs. They also produced Photos, the extent and boundaries Certificate issued by the Gram Panchayat, Tergaon in which, entire extent of land shown as house property measuring 59.1 Sq. Mtrs., and vacant space measuring 67.2 Sq. Mtrs. He also produced Photo of suit property, representation given by him to Gram Panchayat on 24.10.2024 requesting to take action

against the defendant as he is constructing compound wall by encroaching backyard portion belongs to him.

11. In order to prove his contentions, the counsel for the defendant produced certified copy of Resolution issued by the Gram Panchayat, Tergaon in which, it is clearly mentioned that, the extent of land belongs to plaintiff in which constructed portion is measuring 50 feet 7 inch and vacant side therein 12 feet 9 inch and he encroached 1.5 feet by removing eastern side Wall belongs to defendant's house. As such, the members of Gram Pachayat passed a resolution directing the father of plaintiff to give 1.5 feet to defendant at backyard portion and also directed the plaintiff to remove toilet constructed by him, as it is constructed by encroaching the property of defendant.

12. The defendant has also produced certified copy of sale deed dated 08.05.1990. As per this document, grandfather of plaintiff by name Maruti Irappa Hongekar and Yallappa Babu Hubbalkar have purchased house property and backyard portion measuring 67.2., 13feet from Sri. Yallappa Babu Hubbalkar. The defendant also produced Photos of suit property and E-swattu extract.

13. On perusal of documentary evidence, at this stage, it appears that, there is serious dispute

regarding extent of property belongs to plaintiff and extent of property belongs to defendant. The plaintiff is contending that, the defendant is trying to construct compound Wall at backyard portion which belongs to him. On the contrary, the defendant is contending that, father of plaintiff encroached land measuring 1.5 feet by removing northern side Wall of his house and also father of plaintiff agreed to give 1.5 feet land to defendant at backyard portion. As such, he is constructing compound wall. On perusal of resolution passed by the Gram Panchayat, Tergaon, it appears that, at the time of construction of house by the father of plaintiff, he encroached 1.5 feet and agreed to hand over 1.5 feet to father of defendant in backyard portion but, the said document is not supported by other documents. On perusal of photos, construction of compound wall by defendant is not visible but, the contentions of the defendant in the written statement prove that, he is trying to construct Compound Wall at backyard portion of house of plaintiff. Whether, father of plaintiff encroached land measuring 1.5 feet by removing northern side Wall of defendant's house and father of plaintiff agreed to give 1.5 feet land to defendant at backyard portion or not has to be decide by considering the evidence of parties, therefore, it needs full fledged trial. Under these circumstances

defendant has to be restrained from disturbing possession plaintiff over suit property.

14. Therefore at this stage, the plaintiff has made out prima-facie case to go for trial. Further, on perusal of records, balance of convenience lies in favour of the plaintiff, if temporary injunction is not granted and if the defendant construct compound Wall, the plaintiff will be put to hardship and also it will lead to multiplicity of this proceedings. Therefore, the plaintiff has made out grounds to allow the application. Hence, **I answer Point No.1 to 3 in the Affirmative.**

15. **POINT NO.4:-** In view of the discussion on Points No.1 to 3 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.II filed by the plaintiff under Order XXXIX Rule 1 R/w Section 151 of C.P.C., is hereby allowed.

The defendant, his henchmen, agents or anybody acting from him are hereby restrained from interfering with plaintiff's peaceful

**possession over the suit
property till disposal of the
suit.**

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, then corrected, signed and pronounced by me in the Open Court on this the **19th day of August, 2025**)

Sd/-
(GEETA)
Civil Judge and JMFC.,
Haliyal