

KAUK510004992022



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

**DATED THIS THE 27<sup>th</sup> DAY OF SEPTEMBER, 2023**

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

**OS. No.32/2022**

**BETWEEN : 01. SRI. NARAYAN IRAPPA  
GHOTGOLLA KAR**

**...PLAINTIFF**

**AND : 01. SRI. MARUTI RAJAPPA MUGALI**

**...DEFENDANT**

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

**BETWEEN : 01. SRI. NARAYAN IRAPPA  
GHOTGOLLA KAR**

**...APPLICANT/ PLAINTIFF**

**(By: Sri. M.V.A, Advocate)**

**AND : 01. SRI. MARUTI RAJAPPA MUGALI**

**...OPPONENT/ DEFENDANT**

**(By Sri. S.G.H/Sri. S.S.B/Sri. S.K.K., Advocates)**

**ORDERS ON I.A. NO.I**

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

2. In support of the instant application, the plaintiff has filed an affidavit wherein, he has contended that, the suit schedule property is totally measuring East-West 160 ft. and North-South 16 ft. 6 inches which includes residential house and backyard. It is further stated in the affidavit that, the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property and the same is his ancestral property. The defendant is a neighbourer and he is claiming the rights in 4 ft. X 54 ft. area of backyard of the plaintiff. The defendant has purchased his property about 40 years back from one Sri. Ramning Mirashi. However, the plaintiff has already constructed toilet, fire wood shed and manure pit in his backyard and without any interruption, he is using the same. On the other hand, though the defendant has purchased his property about 40

years back but, he has not measured his property. Without there being any rights, the defendant is attempting to encroach the suit schedule property and also attempting to construct a building by laying foundation.

3. It is further stated in the affidavit that, the defendant has no manner of rights or interest in the suit schedule property. In spite of the same, the defendant is attempting to construct a house by encroaching the suit schedule property. When the plaintiff was out of station on 02.03.2022, the defendant on that day at 8.00 A.M. has attempted to lay a foundation in the suit schedule property and the same was resisted by the plaintiff. The defendant is interfering with the possession of the plaintiff over the suit schedule property by denying the title of the plaintiff. The defendant is using money and muscle power to serve his illegal acts. Hence, the plaintiff has approached the Police but, they have advised him to approach the Civil Court on the ground that, the matter is of civil in nature. As such, the plaintiff has filed the present suit for declaration of his title and permanent injunction. To protect his possession, the plaintiff is constrained to file the instant application for temporary injunction. The plaintiff has prima-facie case and balance of convenience lies on plaintiff's side and as such, the plaintiff is entitled for temporary

injunction. With these facts, the plaintiff prays to allow the instant application.

4. On the other hand, after appearance, the defendant has filed the written statement and also filed a memo to adopt the contents of written statement as objections to the present application. Hence, it is necessary to look into the contents of the written statement.

5. The defendant in his written statement has denied the entire case of the plaintiff and contended that, his father by name Sri. Rajappa S/o. Yashwantappa Mugali has purchased a residential house and open space bearing Tergaon Gram Panchayat Property N o.368 situated in Ward No.3 through a registered sale deed and now the said property is renumbered as Tergaon Gram Panchayat Property No.55 situated at Ward No.2.

6. It is further contended in the written statement that, Sri. Rajappa S/o. Yashwantappa Mugali was in possession and enjoyment of aforesaid property till his death and thereafter, his legal heirs continued the possession and enjoyment of the same. In the month of January, 2022, the defendant planned to construct a new house in the said property by demolishing black tiled old house and in that regard, he has got measured

the said property No.55 and at that time, he came to know that, about 3 ft. 3 inches X 58 ft. area of property No.55 has been encroached by the plaintiff. Thereafter, the defendant has requested the plaintiff to vacate the said encroached property but, the plaintiff has refused for the same and by having grudge, the plaintiff has filed the present false suit.

7. It is further contended in the written statement that, the plaintiff has no manner of rights or interest in the property which has been described in the plaint and he has filed the present suit by falsely claiming that, the defendant has encroached the suit property. After the death of Sri. Rajappa S/o. Yashawantappa Mugali, his legal heirs i.e. Sri. Yashwant, Bharamappa, Ramchandra and the defendant became the joint owners of the same but, the plaintiff has not arrayed other three brothers of the defendant in the present suit and as such, the present suit is bad for non-joinder of necessary parties. The present suit is filed by the plaintiff only to harass the defendant who has no men and money power. As such, the instant application is liable to be rejected. With these facts and pleadings, the defendant prays to reject the instant application.

8. Heard on both sides. Perused the entire materials. The plaintiff in support of his case has relied upon documents such as House

Tax Extract of Property bearing No.56 of Tergaon Gram Panchayat and 8 Photographs.

**9.** On the other hand, the defendant in support of his case has relied upon documents such as Certificate dated 17.02.2023 issued by Tergaon Gram Panchayat , another Certificate dated 21.02.2023 issued by Tergaon Gram Panchayat, House Tax Extract of the year 1951-52 in respect of Property No.368, House Tax Extract of the year 1961-62 in respect of Property No.366, House Tax Extract of the year 1970-71 in respect of Property No.54, House Tax Extract of the year 1981-82 in respect of Property No.54, House Tax Extract of the year 1997-98 in respect of Property No.55, xerox copy of Aadhaar Card of defendant and xerox copy of registered sale deed dated 04.03.1968.

**10.** Under the above circumstances, the following points arise for the consideration of the Court:

POINT NO.1: Whether the 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, the plaintiff would be put to untold hardship and irreparable loss?

POINT NO.4: What Order?

**11.** 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:**

**12. 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.

**13.** The present application is filed by the plaintiff for temporary injunction to restrain the defendant or anybody acting on his behalf from trespassing into the suit schedule property or from disturbing the peaceful possession and enjoyment of the suit schedule property by the plaintiff till final disposal of the suit.

**14.** According to the plaintiff, the suit schedule property is his ancestral property and he is in possession and enjoyment of the same from decades together. The plaintiff contends that, the suit schedule property is comprised with a residential building and open space measuring East-West 160 ft. and North-South 16.6 feet. The plaintiff further contends that, he has constructed a toilet, fire wood shed and manure pit in the backyard of the suit schedule property and enjoying the same.

**15.** The primary burden is on the plaintiff to prove that, the suit schedule property is totally measuring East-West 160 ft. And North-South 16 ft. 6 inches. In support of the same, the plaintiff has not produced any documents. Though the plaintiff has relied upon House Tax Extract of Property No.56 but, the same would not reflect the measurement and boundaries of the suit schedule property. Apart from this, the plaintiff has relied upon eight photographs. The said photographs would not assist the plaintiff either to show measurement or boundaries of the suit schedule property. At this stage, the said photographs cannot be considered for the purpose of showing the extent and boundaries. Even the plaintiff has not pleaded the source of title to his ancestors. The plaintiff has simply pleaded that, the suit schedule property is his ancestral property but, not

given any explanation as to the source of title and on what basis, he is claiming that, the suit schedule property is measuring East-West 160 ft. and North-South 16 ft. 6 inches. Admittedly, the defendant has denied the description of the suit schedule property. When such being the case, it is the duty of the plaintiff to produce the cogent documents to show the measurement and boundaries of the suit schedule property.

**16.** On the other hand, the defendant has contending that, himself and his three brothers are the owners of the property bearing No.55 (old No.368) on the basis of a registered sale deed of the year 1968. In support of the same, the defendant has produced xerox copy of the registered sale deed dated 04.03.1968 which discloses that, the father of the defendant has purchased old property No.368 measuring East-West 50 ft. and North-South 17 ft. 3 inches and a backyard measuring East-West 71ft. and North-South 17 ft. 3 inches. Now the defendant contends that, the plaintiff has encroached about 3ft. 3 inches X 58 ft. area out of total extent by the plaintiff and in that regard, the defendant has also filed counter claim. The defendant has also relied upon an old tax extract pertaining to his property. When the documents relied upon by the plaintiff and defendant are taken into consideration, Court opines that, the

plaintiff has failed to produce cogent documents to discharge his initial burden. As already stated above, the plaintiff has not produced any title documents to show the measurement and boundaries of the suit schedule property and he has also not pleaded as to on what base, he has furnished the boundaries of the suit schedule property.

17. Therefore, at this stage, without holding any trial, the allegation made by the plaintiff cannot be believed. Merely on the basis of tax extract of the suit property and photographs, Court cannot come to the conclusion that, the defendant is attempting to disturb the possession of the plaintiff over the suit schedule property as alleged in the plaint and as alleged in the affidavit filed in support of the instant application. Hence, Court opines that, the plaintiff has failed to make out a prima-facie case and no balance of convenience lies on the side of the plaintiff. Having considered to the entire materials, Court does not finds any grounds to grant temporary injunction to the plaintiff. As such, the Points No.1 to 3 are answered in the **NEGATIVE**.

18. **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 under Order

39 Rule 1 and 2 of C.P.C is hereby rejected.

No order as to costs.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the **27<sup>th</sup> Day of September, 2023**)

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