



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
AT: MUNDGOD**

**PRESENT: Smt. Akshatha C.R.
B.B.A., L.L.B.(Hons.)
Civil Judge & J.M.F.C-Mundgod.**

ORIGINAL SUIT NO.150/2025

Dated: 18th Day of March 2026

Plaintiff:

Rukma Ramu Esappanavar,
Age: 42 years, Occ: Household,
R/o: Salgaon, Chigalli, Mundgod.

(By Sri.P.H., Advocate)

V/s

Defendants:

1. Savakka Virupakshappa Esappanavar
Age: 50 years, Occ: Household,
R/o: Salgaon, Chigalli, Mundgod
and 3 others

(By Sri.R.S.H, Advocate for D-1 to 4)

I.A.No.I

Applicant:

Rukma Ramu Esappanavar,
Age: 42 years, Occ: Household,
R/o: Salgaon, Chigalli, Mundgod.

V/s.



Opponents:

1. Savakka Virupakshappa Esappanavar
Age: 50 years, Occ: Household,
R/o: Salgaon, Chigalli, Mundgod
and 3 others

1	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC
2	Relief sought for	to prohibit the defendants and persons acting on their behalf from acting detrimental to her peaceful possession and enjoyment, by illegally putting up any construction in the suit schedule property, till the disposal of the suit.
3	The date on which the applications filed	18-12-2025
4	Number of application	I.A No.I
5	The date on which the objection is filed by the opponent	26-02-2026
6	The date on which the order is passed on the applications	18-03-2026

ORDERS ON I.A.NO.I

1. The plaintiff has moved this application under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C. seeking to prohibit the defendants and persons acting on their behalf from acting detrimental to her peaceful possession and enjoyment, by illegally putting



up any construction in the suit schedule property, till the disposal of the suit.

2. In the accompanying affidavit sworn to by the plaintiff it is stated that, she has been in the possession and enjoyment of the suit schedule property since long time. That it was standing in the name of her father-in-law namely Sri.Buddivantappa Esappanavar. He has demised on 11.03.2009. Subsequently, her name was effected in the records with the consent of the family members. In this manner she has been in its possession and enjoyment and has been paying the property tax to the local authority. Suit property is the House property bearing Salgoan Panchayath **House No.56B**. It is further stated that, one Smt.Kasturi Gurunath Devannanavar was earlier residing in adjacent **House bearing No.56C**. However, she has sold it in favour of the defendants last year and accordingly, they are residing therein. That there is a common roof for House No.56A to 56D and



there is no dissecting wall between House No.56B and 56C, rather there is an earthen wall, which bifurcates the properties. That the total extent of said houses being 2.5 Ankana (ಅಂಕಣ), they have been at the possession of 1.25 Ankana each. When the facts stood thus, on 12.12.2025 the defendants instantaneously without obtaining any permission, devised to put up the wall by encroaching more than 4 ft of land comprised in suit schedule property. When she questioned the same, she was told that they would construct as they want. Further she was threatened stating that they do not require anybody's permission, illegally put up the wall on her land, in just two days. Later she informed the same to the local authority. It is averred that defendants have unlawfully constructed the wall by trespassing into her property and without any authority, in the manner detrimental to her rights and the same has caused her irreparable loss. That, the same has constrained her to institute this suit against them.



3. Defendants protested the I.A. by filing objections. They partly concurred with the averments of the plaint. They admit that plaintiff has been in the possession and enjoyment of the suit schedule property. However, they refute the alleged cause of action. They contend that they have purchased the House bearing No.56/C from Smt.Kasturevva Gurunath Esappanavar and submitted the Relinquishment Deed to Salgoan Gram Panchayath and thereby obtained Form-9. It is how they have been residing in the said house. They further contend that plaintiff is residing at Salgoan Gram Panchayath Property No.134. As the plaintiff and her family members are not residing at the suit property it has reached dilapidated condition and the roof has subsided and as the rats and bandicoots made burrows to the earthen wall, it has collapsed. Besides, during Winter and Rainy season, rain water used to completely flow into their house, caused hardship and disturbed the entire arrangement. That apart, many a time dangerous



and poisonous reptiles and insects have entered their house through the burrows made by the rats and bandicoots and pulled them into trouble. They raised this issue many a time and requested the plaintiff to do the needful. However she did not bother for the same. Even when the Panchayath was convened before the elderly members regarding the repairs and renovation, plaintiff told that she is unable able to repair the house. She asked the defendants to repair it or fix it on their own or else she would sell such house in their favour and if they wishes they can take it. Accordingly, they came forward to purchase it and on 29.07.2024 negotiation took place and the sale consideration was finalized for Rs.3,50,501/- and in furtherance of the same, a sum of Rs.501/- was paid as an advance sale consideration. However, they faced financial constraint as such they were unable to purchase the house. Being angered by the same, plaintiff threatened them stating that, she would see they would reside in their house and that she would



not allow them to live peacefully and that they would be made to wandered to the Court. Besides they were also threatened with life. In this manner, she herself and her men have been consistently harassing them. Notwithstanding the same, the defendants as per her directions and consent, they constructed the wall at the place of earthen wall and regarding the repairs they have also obtained No Objection Certificate from the local authority. They vehemently contend that they only have left 1 ft space in their land and constructed the wall as such they have not encroached 4 ft of land as alleged by the plaintiff. *Interalia* defendants sought to dismiss the I.A with costs.

4. Heard both the sides. Perused the documents placed fore of this court.

5. In view of the aforesaid assertions and contentions, the following points arise for the consideration of this Court.



(1) Whether the plaintiff has made out a prima facie case?

(2) Whether balance of convenience leans in favour of the plaintiff?

(3) Whether dismissal of this application would cause irreparable loss to the plaintiff?

(4) What order?

6. Answers to the above points are as follows:

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.

REASONS

7. **POINT NO.1 TO 3:** Since these points are interconnected with each other they are taken together for common discussion for the sake of brevity and convenience. The plaintiff has filed this application seeking to restrain the defendants and persons acting on their behalf from causing interference to her peaceful possession and enjoyment by undertaking the unlawful construction. Given these facts the plaintiff has produced Tax paid



receipts, House/Property Tax Register extract pertaining to Property No.56/B standing in her name, copy of her Aadhar Card, Election ID card, few photographs of the construction put up by the defendants and the office copy of the letter addressed by her to President and PDO, Salgaon Gram Panchayat.

8. Similarly, defendants have produced Sale Agreement dated 28-03-2025, one consent affidavit, minutes of the Panchayat held on 29-07-2024, endorsement and certificate issued by Salgaon Gram Panchayat, photocopy of Tax paid receipt, House/Property Tax Register extract pertaining to Property No.56/C standing in the name of defendant No.1, No-objection certificate issued by Salgaon Gram Panchayat, few photographs, CD and another photograph of the house where the plaintiff is alleged to be residing.

9. To put it in simple words, it is the case of the plaintiff that, (1) the defendants have constructed the dissecting wall by encroaching 4 feet of her land comprised in the suit schedule



property, (2) they are so constructing such wall unlawfully without obtaining any permission from the local authority. On overall appreciation of the materials available on record it can be seen that, no doubt ownership of the house bearing No. 56/C is not transferred to the defendants by virtue of any Registered Deed as required by the provisions of Registration Act. Nonetheless, they have produced Tax paid receipts and property tax extract which reflects that, they are in the possession of such house. Even the parties are not at variance on that aspect. Certainly, the defendants have not produced any permission obtained from the local authority for repairs and renovation of their house. It is not that, one should obtain permission from the local authority for the construction of the new house. Even for the repairs and renovation, no matter how trivial it is, they have to obtain permission. The endorsement scribed by the Competent Official of the local authority behind the objection filed by the plaintiff that, defendants have not obtained any permission for the construction, makes it clear that, they have put up the construction unlawfully. This Court opines that,



violation of the building rules does not come within the purview of the jurisdiction of this Court. As regards the violation of the building rules is concerned, the plaintiff has to approach the competent authority.

10. To speak on the point of encroachment, no amount of documents can justify the encroachment or the non-encroachment. Although the plaintiff alleges that, the defendants have constructed the wall by encroaching 4 feet of land comprised in suit schedule property, having regard to the pleadings of the defendants, it is pertinent to note here that, it is not her case that, the defendants have constructed the dissecting wall at the place 4 feet beyond the earlier earthen wall which existed between their houses. Moreover, the plaintiff has not made clear as to why she was sleeping over her rights until the defendants have constructed wall to that extent depicted by the photographs produced by her at the time of filing of the suit. Besides, the defendants have specifically averred the problems with which they confronted owing to the burrows made by the



rats and bandicoots. Thus, having regard to the facts of the case it appears that, balance of convenience and irreparable damages leans in favour of defendants. Accordingly, Point No.1 to 3 are answered **in the Negative as against the Plaintiff.**

11. **Point No.4:** In light of answering point No.1 to 3 as aforesaid, this Court proceeds to pass the following.

ORDER

I.A. No.I filed by the plaintiff U/O. XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby dismissed.

Costs are made easy.

(Typed by me on my laptop, corrected, signed by me and then pronounced the Order in the open Court on this the **18th day of March 2026**)

**Civil Judge and
JMFC, Mundgod.**