

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT  
SIDDAPUR.**

**PRESENT**

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,  
CIVIL JUDGE & JMFC,  
SIDDAPUR.**

**Dated this the 21<sup>st</sup> day of April, 2025**

**O.S. No.33/2024**

**Plaintiff: Dattatreya Naga Naik  
(By Shri S M H Adv.)**

**V/s**

**Defendants: Indira Parameshwar Naik and  
others  
(By Shri BLN Adv.)**

**I.A.No.I**

**Applicant : Dattatreya Naga Naik**

**V/s**

**Opponent: Indira Parameshwar Naik and  
others**

**IA No. IV**

**Applicant :**       **Indira Parameshwar Naik and  
                          others**

**V/s**

**Opponent:**       **Dattatreya Naga Naik**

**ORDER ON I.A.NO.I and IV FILED UNDER ORDER  
XXXIX RULE 1 AND 2 AND UNDER ORDER XXXIX  
RULE 4 OF CODE OF CIVIL PROCEDURE, 1908.**

The plaintiff has filed I.A.No.1 under Order XXXIX Rule 1 and 2 of CPC, seeking this Court to issue an order of temporary injunction, restraining the defendants No.1 and 2, their henchmen, agents and any persons claiming under them, from trespassing and completing the construction of the building, pending disposal of the suit.

The Defendant No.1 has filed I.A.No.IV, under Order XXXIX Rule 4 of CPC, seeking this court to set aside the order of granting ex-parte temporary injunction against him.

**2. In the accompanying affidavit to I.A.No.I and in the objections filed to I.A.No.4, the plaintiff has made the following averments :**

**2.1** The Plaintiff resides with his family on the suit schedule property. Defendants No.1 is the wife of Defendant No.2, who live with their family in their

ancestral joint family house. Due to disputes over household matters and ongoing litigation related to the same, the Plaintiff began residing separately with his family by constructing a house on the suit schedule property, which is government land currently in his possession.

**2.2** With an intent to harass the Plaintiff, Defendants No.1 and No.2 began constructing a house adjacent to the suit schedule property, claiming they would receive financial assistance from Defendant No.3 under the government's Ashraya Yojana scheme. Although Defendant No.2 owns property, the application for the scheme was filed in Defendant No.1's name, who owns no property. Defendant No.3 unlawfully disbursed the funds in Defendant No.1's name. When the Plaintiff raised objections before the Tahsildar, the official directed Defendant No.3 to reassess the application. However, the funds had already been disbursed.

**2.3** On 08.01.2024, Defendants No.1 and No.2 began bringing construction materials to the site. The Plaintiff objected, stating they were encroaching on the suit schedule property. Ignoring his protest, they began construction over a well located on the Plaintiff's property, thereby interfering with his possession. The Plaintiff approached the police, but was advised to seek remedy through the civil court, as the matter is civil in nature. Hence, this application.

**2.4** In the objections filed to I.A.No.IV, the Plaintiff has denied the contentions made in the application and contended that, the Defendant No.2 with an intent to harass the Plaintiff, has obtained unlawful funds from the government in the name of Defendant No.1 and is constructing the house in such a way as to cause harm to the building constructed by the Plaintiff. Hence the Defendant No.1 and 2 have no lawful rights to construct the house. Hence the I.A.No.IV made to continue their unlawful acts, deserves to be rejected.

**3. In the accompanying affidavit to I.A.No.IV and in the objections filed to I.A.No.I, the Defendant No.1 and 2 have made the following averments :**

**3.1** The Defendant No.2 and the Plaintiff are brothers and their father Naga Naik, had a house bearing No.54, within the Sheluru Village Panchayat. All the members of the joint family were residing the said house. In the year 1989 since there were internal disputes in the family, the Defendant No.1 and 2 started residing separately in the room available on the right side of the House No.54 and the Plaintiff was residing along with his family in the old house. Subsequently the separate residence of the Defendant No.1 and 2 was renumbered as 54/3.

**3.2** The said 54/3, was in dilapidated state and varale (wheatish worms which eat the wood from the inside) were eating up the wooden slabs. Since 1989 the

house No.54/3 is in the name of Defendant No.2. Hence the Defendant No.2 by obtaining funds under “Basava Vasathi Yojane” in the name of Defendant No.1 in the year 2021-2022, has demolished the 54/3 house and constructed a house on 14 x 18 feet extent and are residing in it along with their children. The said house is constructed on Sy.No.136 measuring 00-05-00 out of 03-31-00, which is in exclusive possession of Defendant No.1 and 2. The house constructed by the Defendant No.1 and 2 is around 3 feet away from the house of the Plaintiff. The Plaintiff has been harassing the Defendant No.1 and 2 by one way or the other, since a long time. Further they have not encroached on any additional areas of the land, while constructing the house. Hence sought to dismiss the I.A.No.I and allow the I.A.No.IV.

4. Heard both sides and perused the materials placed on record, by both the parties.
5. Upon hearing the arguments of both side and perusing the materials placed on record, the following points would arise for my consideration:

#### **POINTS**

1. Whether the plaintiff has made out a prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable loss or hardship, if injunction is not granted?

4. Whether the Defendants No.1 and 2, establish grounds to vacate the ex-parte ad-interim order or temporary injunction dated 10.04.2024?
5. What Order?

6. The findings to 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 : In the **Affirmative**  
Point No.5 : As per the order

For the following :

### **REASONS**

**7. Point No.1 to 4 :** Since these three points are interrelated and interconnected with each other, they are taken up for common discussion to avoid repetition of facts. Further, as the averments made in the affidavit annexed to the applications and the averments of the written statement adopted as objections to the I.A.No.I, are detailed at the inception of this order, this court shall without repeating the same, delve into the dispute on hand by appreciating the facts and circumstances of the case.

**8.** At the outset, the I.A.No.I filed by the Plaintiff, seeks a very general relief of injunction, for better understanding the application is extracted as follows: -

Restraining the defendants No.1 and 2, their henchmen, agents and any persons claiming under them, from trespassing and completing the construction of the building,

**9.** The Plaintiff seeks to restrain Defendants No. 1 and 2 from trespassing and continuing with the construction of a building. However, the application does not specify the location of the alleged construction. There is no schedule attached to the application, nor does it state that the Defendants are constructing on the suit schedule property. In such circumstances, this Court cannot issue a blanket order restraining Defendants No. 1 and 2 from undertaking any construction whatsoever, as doing so would result in injustice and cause harm to them.

**10.** Although Defendant No. 2 is the brother of the Plaintiff, this fact is not stated in the Plaint. Defendant No. 2 has contended that he and the Plaintiff, who are brothers, along with their father Naga Naik, were all residing in House No. 54. However, due to family disputes in the year 1989, they began living separately. Defendant No. 2, along with his wife Defendant No. 1 and their children, started residing in the building on the right side of House No. 54, while the Plaintiff continued to reside in the original house. Consequently, the house occupied by Defendant No. 2 was re-numbered as 54/3.

**11.** This fact has been completely concealed by the Plaintiff. In the affidavit annexed to the application, he claims that after they decided to live separately, he constructed a house on the land in his exclusive possession, and that Defendants No. 1 and 2 continued to reside in the original family house.

**12.** If the Plaintiff had in fact constructed a new house on the suit schedule property, and Defendants No. 1 and 2 were residing in the old house, then it raises the question: why was the house number of Defendants No. 1 and 2 changed to 54/3, while the Plaintiff's house continued to bear the number 54?

**13.** Furthermore, the Plaintiff has not clearly stated where Defendants No. 1 and 2 are carrying out the construction. In one instance, he claims that they are constructing over his well, while in another, he vaguely asserts that the construction is affecting his house. In the objections filed to the vacation application, he alleges that Defendants No. 1 and 2 unlawfully obtained government funds in the name of Defendant No. 1, despite her not owning any property, and therefore, the construction must be restrained as it is illegal.

**14.** Taken as a whole, considering the averments in the plaint, the statements in the annexed affidavit, and the objections, it is evident that the Plaintiff has presented his case inconsistently, altering his contentions and grounds at each stage. None of the pleadings clearly explain how the construction by Defendants No. 1 and 2 is affecting him or whether they are encroaching upon the suit schedule property.

**15.** Moreover, both the Plaintiff and Defendants No. 1 and 2 have produced documents indicating that Defendants No. 1 and 2 obtained government funds during the year 2021–22. Under the said scheme, the funds are not disbursed in a single installment but in multiple stages. At each stage, the applicants are required to upload photographs as proof of construction progress on the designated portal, such as after completion of the foundation, walls, windows, and doors, before the corresponding funds are released.

**16.** According to the Plaintiff's own contention, the entire amount of funds has been disbursed to Defendants No. 1 and 2, which in itself indicates that the construction is complete. Defendants No. 1 and 2 assert that they have completed the construction of the house and are residing there with their family. They have also produced photographs of the house, which clearly show a fully constructed structure with a visible gap between their house and the adjacent one. The fact that the Plaintiff has sought mandatory injunction to remove the structure, itself shows that the house has already been constructed. When the house is already fully constructed and the Defendants are in residence, the question of restraining further construction does not arise.

**17.** Moreover, the suit schedule property or the property on which the house has been constructed, is government land. The Plaintiff has not produced any documents to establish his independent right or possession over the suit schedule property. He has merely submitted a copy of a complaint filed

before the Tahsildar, alleging that Defendants No. 1 and 2 are constructing a house over his well situated in Sy. No. 136. In response, the Tahsildar has only issued an endorsement acknowledging receipt of the complaint. However, there is neither an order nor a report from the Tahsildar addressing the said issue. Moreover, the suit schedule of the plaint does not disclose any well be within it. If the suit schedule does not disclose a well, then how can the Plaintiff claim the Defendants No.1 and 2 to have encroached upon the same, even for the sake of arguments, if the defendants No.1 and 2 have encroached upon his well, he ought to have made a separate schedule showing the encroached area specifically, since he has sought mandatory injunction of demolishing the construction and if they are yet to construct, he ought to have mentioned the same in the schedule and specifically contended on the point and produce documents or photographs of the same.

**18.** The Plaintiff has produced the order granting funds in the name of Defendant No. 1, along with information furnished by the Gram Panchayat regarding the disbursement of funds and the documents submitted by Defendant No. 1 to obtain the same. However, the Plaintiff has no right or authority to challenge the legality of the said order unless the grant pertains to his property. The grant was issued to Defendant No. 1 for the purpose of constructing a house; it does not specify that the house must be constructed on property belonging to the Plaintiff. In such circumstances, this Court is unable to comprehend how the Plaintiff is affected merely by the fact that

Defendant No. 1 has obtained government funds for construction.

**19.** The entire suit appears to have been filed with an ulterior motive, primarily arising out of personal disputes between the brothers, the very fact of the plaintiff not disclosing the Defendant No.2 to be his brother in the plaint or in the affidavit annexed to the application, establishes the same. If the construction genuinely affected the Plaintiff, he would have clearly stated how it impacts him and would not have concealed the material facts as noted above. The Plaintiff has not approached this Court with clean hands. Furthermore, the construction in question is already complete, leaving nothing to be restrained. The Plaintiff has also failed to establish his possession over the suit schedule property.

**20.** Accordingly, the Plaintiff has not made out a prima facie case, and the balance of convenience does not lie in his favour. Granting a temporary injunction in these circumstances would undoubtedly prejudice Defendants No. 1 and 2, who are currently residing in the said house. Therefore, the Plaintiff is not entitled to the relief sought, and the ex-parte ad-interim injunction granted on 10.04.2024 deserves to be vacated. Accordingly this court answers **Point No.1 to 3** in the **Negative** and **Point No.4** in the **Affirmative**.

**21. Point No.5 :** In view of the finding on Point No.1 to 4, this court proceeds to pass the following:

**ORDER**

I.A.No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 is hereby dismissed.

I.A.No. IV filed by the Defendant No.1 and 2 under Order XXXIX Rule 4 of Code of Civil Procedure, 1908 is hereby allowed.

The order of ex-parte ad-interim temporary injunction, dated 10.04.2024, stands vacated.

Issues framed, for Plaintiff evidence, call on 10.06.2025.

(Dictated to the Stenographer directly on the computer, computerized by him and order then, revised and corrected by me, print out taken by him and then pronounced in the open court on this the 21<sup>st</sup> day of April, 2025.)

**(BHARATH CHANDRA K.S)  
CIVIL JUDGE & JMFC  
SIDDAPUR.**

