



IN THE COURT OF THE CIVIL JUDGE & JMFC,
AT SIDDAPURA

PRESENT : **Sri. UMESHA M.P.,** B.A.L., LL.B.
CIVIL JUDGE & JMFC,
SIDDAPURA

DATED ON THIS THE 26th DAY OF JUNE - 2025
O S No. 14 / 2025

PLAINTIFF : **Smt. SEETHA W/o** Kamalakara Naik,
Aged about 70 years, Occ:Agriculturist,
R/o Neeragod, Neeragod Village,
Siddapura Tq, Uttara Kannada District
(BY PLEADER SRI.GSH/MNH)
-V/s-

DEFENDANT : **RAMAKRISHNA S/o** Ganapa Naik,
Aged about 45 years, Occ:Agriculturist,
R/o Vandane, Gubbagod Village,
Siddapura Tq, Uttara Kannada District
(BY PLEADER SRI.SKG)

PARTIES TO IA No.1

APPLICANT/PLAINTIFF : **Smt. SEETHA W/o** Kamalakara Naik,
Aged about 70 years, Occ:Agriculturist,
R/o Neeragod, Neeragod Village,
Siddapura Tq, Uttara Kannada District
(BY PLEADER SRI.GSH/MNH)
-V/s-

OPPONENT/DEFENDANT: **RAMAKRISHNA S/o** Ganapa Naik,
Aged about 45 years, Occ:Agriculturist,
R/o Vandane, Gubbagod Village,
Siddapura Tq, Uttara Kannada District
(BY PLEADER SRI.SKG)

**ORDERS ON I A NO. I**

The applicant / plaintiff has filed I.A.No.I U/o XXXIX Rule 1 and 2 of CPC, seeking temporary injunction against the defendant restraining him or his men and persons claiming under him from alteration or modification of the suit property and also from making new structure / construction in the suit schedule property, till disposal of the suit, in the ends of justice.

. In the accompanying affidavit the plaintiff has sworn to the fact that, she has filed this suit against the defendant for relief of permanent injunction and possession with respect to the suit property. It is further stated that, the above said house has been constructed long ago in the suit survey number. It is further stated that, an extent of 30' x 40' in the suit survey number was granted by the Government to the plaintiff under Ashraya Scheme for putting up residential house in the year 1992. It is further stated that, the plaintiff had constructed a house in the suit property in the year 1995 by obtaining necessary permissions from the competent Authorities. It is further stated that, there was a partition has taken place in the family of the plaintiff in the year 1997 and in the said partition, some ancestral properties and some encroached properties, situated at Neeragod Village were allotted to the share of the husband of the plaintiff. It is further stated that, the plaintiff had constructed a house in the encroached properties situated at Neeragod Village in the year 1997 by obtaining necessary permissions from the competent Authorities. It is further stated that, the plaintiff has permitted the defendant to reside in the suit property in the year



1997 and thereafter, the defendant not handed over the vacate possession of the same to the plaintiff. It is further stated that, the plaintiff is the absolute owner of the suit property. It is further stated that, the defendant has no manner of right, title and interest over the suit property. It is further stated that, the defendant is causing obstruction to the plaintiff with respect to the suit property. It is further stated that, the defendant without the consent of the plaintiff is trying to renovate the suit property. It is further stated that, recently on 18.02.2025 when the plaintiff has requested the defendant to hand over the vacant possession of the suit property and for which the defendant has refused to do so. Hence, this plaintiff has approaching this Hon'ble court for the relief of permanent injunction with respect to the suit property and also for possession of the same.

3. Per contra, the defendant has opposed the same by filing objections to IA No.1 contending that, the present application is not maintainable in law and on facts and circumstances of the case. It is further contended that, the plaintiff has sworn false facts in her affidavit. It is further contended that, the defendant has been unauthorized occupation of an extent of 06 guntas of forest land in Sy.No.98A of Gubbagod Village, Siddapura Taluk more then 40 years and he had constructed a house in the said land and he has started to constructed a RCC house in the said land in the year 2020. It is further stated



that, the defendant is making an application to the competent authority praying for regularization of unauthorized occupation of the above said extent and the said application is pending for adjudication. It is further contended that, the defendant is in lawful possession and enjoyment of the said property. It is further contended that, the plaintiff has not made out prima-facie case and the balance of convenience not lies in his favour. It is further contended that, the plaintiff has not come to the court with clean hands. It is further contended that, she has no prima-facie case and no balance of convenience in her favour. Hence, if the application is allowed great loss and injustice will be caused to the defendant. Hence, he prayed to dismiss the IA No.I with costs.

4. I have heard the arguments of learned counsel for the plaintiff and defendant on IA No.I. Perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration:

1. *Whether the plaintiff has established prima-facie case?*
2. *Whether the balance of convenience lies in favour of plaintiff?*
3. *Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?*
5. *What order?*



6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the AFFIRMATIVE.

Point No.2 - In the AFFIRMATIVE.

Point No.3 - In the AFFIRMATIVE.

Point No.4 - As per order for the following:-

REASONS

POINT NO.1:

7. The plaintiff has filed the suit against the defendant seeking relief of permanent injunction with respect to the suit property.

8. The Applicant / plaintiff has filed IA No.I under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to grant Temporary Injunction Order against the defendant, his men, agents and workers etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, in any manner pending disposal of suit by allowing this application in the interest of justice.

9. As per the provisions of Order 39 Rule 1 of CPC, where in any suit it is proved by affidavit or otherwise (a)that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his



creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case



in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiff that, she has filed this suit against the defendant for relief of permanent injunction and possession with respect to the suit property. It is further stated that, the above said house has been constructed long ago in the suit survey number. It is further stated that, an extent of 30' x 40' in the suit survey number was granted by the Government to the plaintiff under Ashraya Scheme for putting up residential house in the year 1992. It is further stated that, the plaintiff had constructed a house in the suit property in the year 1995 by obtaining necessary permissions from the competent Authorities. It is further stated that, there was a partition has taken place in the family of the plaintiff in the year 1997 and in the said partition, some ancestral properties and some encroached properties, situated at Neeragod Village were allotted to the share of the husband of the plaintiff. It is further stated that, the plaintiff had constructed a house in the encroached properties situated at Neeragod Village in the year 1997 by obtaining necessary permissions from the competent Authorities. It is further stated that, the plaintiff has permitted



the defendant to reside in the suit property in the year 1997 and thereafter, the defendant not handed over the vacate possession of the same to the plaintiff. It is further stated that, the plaintiff is the absolute owner of the suit property. It is further stated that, the defendant has no manner of right, title and interest over the suit property. It is further stated that, the defendant is causing obstruction to the plaintiff with respect to the suit property. It is further stated that, the defendant without the consent of the plaintiff is trying to renovate the suit property. It is further stated that, recently on 18.02.2025 when the plaintiff has requested the defendant to hand over the vacant possession of the suit property and for which the defendant has refused to do so. Hence, this plaintiff has approaching this Hon'ble court for the relief of permanent injunction with respect to the suit property and also for possession of the same. If the application is not allowed, the plaintiff will put into great loss and injustice. On the other hand, no loss or hardship caused to the other side. Hence he prayed to allow the application.

13. In the supporting affidavit, she has filed this suit against the defendant for relief of permanent injunction and possession with respect to the suit property. It is further stated that, the above said house has been constructed long ago in the suit survey number. It is further stated that, an extent of 30' x 40' in the suit survey number was granted by the Government to the plaintiff under Ashraya Scheme for putting up residential house in the year 1992. It is further stated that, the plaintiff had



constructed a house in the suit property in the year 1995 by obtaining necessary permissions from the competent Authorities. It is further stated that, there was a partition has taken place in the family of the plaintiff in the year 1997 and in the said partition, some ancestral properties and some encroached properties, situated at Neeragod Village were allotted to the share of the husband of the plaintiff. It is further stated that, the plaintiff had constructed a house in the encroached properties situated at Neeragod Village in the year 1997 by obtaining necessary permissions from the competent Authorities. It is further stated that, the plaintiff has permitted the defendant to reside in the suit property in the year 1997 and thereafter, the defendant not handed over the vacate possession of the same to the plaintiff. It is further stated that, the plaintiff is the absolute owner of the suit property. It is further stated that, the defendant has no manner of right, title and interest over the suit property. It is further stated that, the defendant is causing obstruction to the plaintiff with respect to the suit property. It is further stated that, the defendant without the consent of the plaintiff is trying to renovate the suit property. It is further stated that, recently on 18.02.2025 when the plaintiff has requested the defendant to hand over the vacant possession of the suit property and for which the defendant has refused to do so. Hence, this plaintiff has approaching this Hon'ble court for the relief of permanent injunction with respect to the suit property and also for possession of the same. If the application is not allowed,



the plaintiff will put into great loss and injustice. On the other hand, no loss or hardship caused to the other side. Hence he prayed to allow the application.

14. The Plaintiff has placed the copy of RTC extract with respect to land bearing Sy.No.98A of Gubbagod Village, Kodkani Hobli, Siddapura Tq, for the year 2024-2025 which is standing in the name of Sarkara Gudda, copy of construction license / Receipt form No.3 bearing No.00055/1527008006/24-25 dated:27.06.2024 issued by the PDO, Kyadagi Grama Panchayath to the plaintiff with respect to PID NO. 152700800600600102, copy of grant certificate dated:15.07.1992 issued by the Tahasildhar, Siddapura to the plaintiff with respect to the suit property, copy of tax paid receipt bearing No.496695 dated:27.01.1995, copy of DCB register extract for the year 1997-1998 issued by the Secretary, Kyadagi Grama Panchayath to the plaintiff, copy of letter dated:03.02.2025 issued by the plaintiff to the PDO, Kyadagi Grama Panchayath to the plaintiff with respect to the suit property, 07 photographs, a CD.

15. It is specific case of the defendant that, the plaintiff has filed this false suit by suppressing true and material facts of this case. It is further contended that, the present application is not maintainable in law and on facts and circumstances of the case. It is further contended that, the plaintiff has



sworn false facts in her affidavit. It is further contended that, the defendant has been unauthorized occupation of an extent of 06 guntas of forest land in Sy.No.98A of Gubbagod Village, Siddapura Taluk more then 40 years and he had constructed a house in the said land and he has started to constructed a RCC house in the said land in the year 2020. It is further stated that, the defendant is making an application to the competent authority praying for regularization of unauthorized occupation of the above said extent and the said application is pending for adjudication. It is further contended that, the defendant is in lawful possession and enjoyment of the said property. It is further contended that, the plaintiff has not made out prima-facie case and the balance of convenience not lies in her favour. It is further contended that, the plaintiff has not come to the court with clean hands. It is further contended that, she has no prima-facie case and no balance of convenience in her favour. Hence, if the application is allowed great loss and injustice will be caused to the defendant. Hence, he prayed to dismiss the IA No.I with costs.

16. The defendant has placed the 02 photographs, a CD and a pendrive.

17. ***In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-***

“An injunction cannot be granted:-



- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.



- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

18. Admittedly, the plaintiff has filed the suit against the defendant seeking relief of permanent injunction with respect to the suit property and also for possession of the same.

19. It is to be noted that, the right of parties in suit properties is to be decided after conclusion of trial.

20. Admittedly, the person who sought the relief of permanent injunction has to prove the possession and enjoyment of the plaint schedule property on the date of filing of the suit with correct measurement, description including boundaries.

20. Admittedly, the plaintiff is the owner in possession of the suit property. The defendant has not placed any materials at this stage of litigation to establish the title or possession over the plaint schedule property. The plaint averments, affidavit annexed to I.A.No.1 are very much consistent and in conformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiff at this stage of litigation. Therefore based on these documents, it can be safely held that, the



plaintiff has got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

POINTS NO.2 & 3:

23. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiff will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiff.

24. The defendant has not placed any materials at this stage of litigations, to prove of his title or possession over the plaint schedule property. Under these circumstance, the balance of convenience is lies in favour of the plaintiff and not in favour of the defendant. Under these circumstances, the very apprehension of plaintiff that, the defendant begun to cause obstruction to the plaintiff's peaceful possession and enjoyment of the suit property is quite probable and there are no reasons to disbelieve the apprehension of the



plaintiff at this stage of the litigations. Under these circumstance, there is every likely would of causing injury to the plaintiff in relation to the property in question. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiff. Therefore if the injunction is refused, it is who the plaintiff would be put to irreparable loss and injury and not the defendant. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience also lies in favour of the plaintiff and irreparable loss and injury would be caused to plaintiff if a temporary injunction is refused. Hence I answer points No.2 & 3 in the affirmative.

POINT NO. 4:

25. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

ORDER

I.A.No.1 filed by the plaintiff under the provisions of Order 39 Rule 1 and 2 of CPC is hereby partly allowed, modifying the orders as sought for by both parties, directing them to



maintain status quo as on date of filing a suit till
disposal of suit.

No order as to costs.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 26th day of JUNE - 2025)

(UMESHA M.P)
Civil Judge,
Siddapura