



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 15th DAY OF SEPTEMBER - 2025

O S No. 76 / 2024

PLAINTIFF : SUBRAYA SHASTHRI @ MAHABALESHWAR SHASTHRI.
Aged about 64 years, Occ:Agriculturist,
R/o Gunaganikeri, Honnavara,
Tq: Honnavara, Dist: Uttara Kannada
(BY PLEADER SRI.SMN)
-V/s-

DEFENDANT : BOMMA THIMMA NAIK,
Aged about 55 years, Occ: Agriculturist,
R/o Near Vajapayee Nagar, Haladakatta
Post: Kondli, Tq: Siddapur, Dist: Uttara Kannada
(BY PLEADER SRI.NYA)

PARTIES TO I A No. I

APPLICANT/PLAINTIFF: SUBRAYA SHASTHRI @ MAHABALESHWAR SHASTHRI.
Aged about 64 years, Occ:Agriculturist,
R/o Gunaganikeri, Honnavara,
Tq: Honnavara, Dist: Uttara Kannada
(BY PLEADER SRI.SMN)
-V/s-

OPPONENT/DEFENDANT : BOMMA THIMMA NAIK,
Aged about 55 years, Occ: Agriculturist,
R/o Near Vajapayee Nagar, Haladakatta
Post: Kondli, Tq: Siddapur, Dist: Uttara Kannada
(BY PLEADER SRI.NYA)

**ORDERS ON IA NO. I**

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 claiming under him from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property, in any manner pending disposal of suit by allowing this application in the interest of justice.

2. According to the plaintiff, in the accompanying affidavit it is sworn that, the plaintiff has filed this suit against the defendant for the relief of permanent injunction with respect to the suit property. It is further stated that, the plaintiff is the owner in possession of the suit property by virtue of Sale deed dated: 28.06.2024 and the khatha of the suit property was mutated into the name of the plaintiff vide MR No.H72/2023-24 and from the date of purchase of the suit property, the plaintiff is in possession and enjoyment of the suit property. It is further stated that, the defendant has no manner of right, interest or possession whatsoever over the suit schedule property. It is further stated that, on 16.07.2024 the defendant high handedly tried to enter upon the suit property with the assistance of some labourers and tried to remove the boundaries which was with great difficulty, the plaintiff prevented the said high handed act. It is further stated that, the defendant has no manner of right, title or interest in or over the suit schedule property, the defendant is unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiff. It is further stated that, the acts of the defendant is highly illegal and



high handed one. Hence, the plaintiff is constrained to file this suit is, for the relief of permanent injunction with respect to the suit property.

3. Per contra, the defendant has opposed the same by filing objections to IA No.1 contending that, the present application filed by the plaintiff 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 his affidavit. It is further contended that, the defendant is in possession and enjoyment of the Suit Sy.No.167/1 more than 50 years. It is further contended that, there is a road in between the suit property and the Sy.No.166/1,168/2,171 and 166/2. It is further contended that, the plaintiff had blocked the said water flow in order to form a lay-out in the suit property. It is further contended that, the defendant is in possession and enjoyment of the suit 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, the plaintiff has no prima-facie case and no balance of convenience in his favour. Hence, if the present 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 the 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?*
4. *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 Applicants / plaintiffs have 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, he has filed this suit against the defendants for the relief of Permanent Injunction with respect to suit property. It is further stated that, the plaintiff is the owner in possession of the suit property by virtue of Sale deed dated: 28.06.2024 and the khatha of the suit property was mutated into the name of the plaintiff vide MR No.H72/2023-24 and from the date of purchase of the suit property, the plaintiff is in possession and enjoyment of the suit property. It is further stated that, the defendant has no manner of right, interest or possession whatsoever over the suit schedule property. It is further stated that, on 16.07.2024 the defendant high handedly tried to enter upon the suit property with the assistance of some labourers and tried to remove the boundaries which was with great difficulty, the plaintiff prevented the said high handed act. It is further stated that, the defendant has no manner of right, title or interest in or over the suit schedule property, the defendant is unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiff. It is further stated that, the acts of the defendant is highly illegal and high handed one. Hence, the plaintiff is constrained to file this suit is, for the relief of permanent injunction with respect to the suit property. 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, he has filed this suit against the defendants for the relief of permanent injunction with respect to the suit property. It is further stated that, the plaintiff is the owner in possession of the suit property by virtue of Sale deed dated: 28.06.2024 and the khatha of the suit property was mutated into the name of the plaintiff vide MR No.H72/2023-24 and from the date of purchase of the suit property, the plaintiff is in possession and enjoyment of the suit property. It is further stated that, the defendant has no manner of right, interest or possession whatsoever over the suit schedule property. It is further stated that, on 16.07.2024 the defendant high handedly tried to enter upon the suit property with the assistance of some labourers and tried to remove the boundaries which was with great difficulty, the plaintiff prevented the said high handed act. It is further stated that, the defendant has no manner of right, title or interest in or over the suit schedule property, the defendant is unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiff. It is further stated that, the acts of the defendant is highly illegal and high handed one. Hence, the plaintiff is constrained to file this suit is, for the relief of permanent injunction with respect to the suit property. If the application is not allowed, the plaintiffs 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 RTC extract with respect to the suit property for the year 2024-2025, which is standing in the name of the plaintiff, online copy of M R No.H72/2023-2024 with respect to the suit property, which is standing in the name of the plaintiff, copy of Sale deed dated:28.06.2024 executed by one Danappa @ Basavaraj Muddappa Nyasanagi & others in favour of the plaintiff with respect to the suit property, copy of Village map, copy of Hissa sheet with respect to the suit property, copy of NOC No.16/2024-2025 dated:08.07.2024 issued by the office of the Tahasildhar, Siddapur in favour of the plaintiff with respect to the suit property, copy of MR No.H34/2022-2023 with respect to the suit property.

15. It is the specific case of the defendant that, the present application filed by the plaintiff 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 his affidavit. It is further contended that, the defendant is in possession and enjoyment of the Suit Sy.No.167/1 more then 50 years. It is further contended that, there is a road in between the suit property and the Sy.No.166/1, 168/2, 171 and 166/2. It is further contended that, the plaintiff had blocked the said water flow in order to form a lay-out in the suit property. It is further contended that, the defendant is in possession and enjoyment of the suit 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, the plaintiff has no prima-facie case and no balance of convenience in his favour. Hence, if the present 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. 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.

17. Admittedly, the plaintiff has filed the suit against the defendant seeking relief of permanent injunction with respect to the suit property.

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

19. 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. Further, the title and possession of the plaintiff over the suit property is based on registered sale deed bearing No. SDP-1-00277-2024-25 which is registered on 28.06.2024. This document being the registered document raises the presumptive value. The defendant has not placed any materials at this stage of litigation to establish the title or possession over the plaint schedule property.



21. Further, the RTC extract and MR extract with respect to the suit property which are produced by the plaintiff being the revenue record raise the presumptive value in respect of entries therein with respect to possession under the provisions of 133 of Karnataka Land Revenue Act. The name of plaintiff finds a place in column No. 9 and 12 of present RTC extract in respect of suit property. The plaintiff has been paying the revenue to the Government in relation to the property in question. 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 is 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:

22. 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.

23. 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:**

24. 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 allowed.

The defendant is hereby restrained by way of temporary injunction from interfering / causing obstruction to the plaintiff's peaceful possession and enjoyment of the suit property, in any manner till the disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Court Hall typist on computer, typed by her, corrected by me, signed and then pronounced in open court on the 15th day of SEPTEMBER - 2025)

(UMESHA M.P)
Civil Judge,
Siddapura