



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 18th DAY OF SEPTEMBER - 2025

O S No. 112 / 2024

PLAINTIFF :: **Smt. THIMMI** W/o Jatya Gouda,
Aged about 73 years, Occ: Agriculturist-cum-
Homemaker, R/o Hulimane, Village: Kattekai,
Tq: Siddapur, Dist: Uttara Kannaa,
(BY PLEADER SRI.NYA)

-V/s-

DEFENDANTS :: 1. **GANAPATHI NAGA NAIK,**
Aged about 55 years, Occ: Agriculturist,
R/o Naramundige, Post: Bidrakana,
Tq: Siddapur, Dist: Uttara Kannada,

2. **NARAYAN NAGA NAIK,**
Aged about 50 years, Occ: Agriculturist,
R/o Naramundige, Post: Bidrakana,
Tq: Siddapur, Dist: Uttara Kannada,

3. **SHRIDHAR NAGA NAIK,**
Aged about 45 years, Occ: Agriculturist,
R/o Naramundige, Post: Bidrakana,
Tq: Siddapur, Dist: Uttara Kannada,
(BY PLEADER SRI.SKG)

PARTIES TO IA No. II

APPLICANT/PLAINTIFF: **Smt. THIMMI** W/o Jatya Gouda,
Aged about 73 years, Occ: Agriculturist-cum-
Homemaker, R/o Hulimane, Village: Kattekai,
Tq: Siddapur, Dist: Uttara Kannaa,
(BY PLEADER SRI.NYA)

-V/s-



- OPPONENTS/DEFENDANTS : 1. **GANAPATHI NAGA NAIK,**
Aged about 55 years, Occ: Agriculturist,
R/o Naramundige, Post: Bidrakana,
Tq: Siddapur, Dist: Uttara Kannada,
2. **NARAYAN NAGA NAIK,**
Aged about 50 years, Occ: Agriculturist,
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3. **SHRIDHAR NAGA NAIK,**
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R/o Naramundige, Post: Bidrakana,
Tq: Siddapur, Dist: Uttara Kannada,
(BY PLEADER SRI.SKG)

ORDERS ON I A NO. II

The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiff and against the defendants, their men claiming under them from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule properties, 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, she has filed this suit against the defendants for the relief of permanent injunction with respect to the suit properties. It is further stated that, the plaintiff is in possession and enjoyment of the suit properties. It is further stated that, the plaintiff had developed the suit properties. It is further stated



that, the defendants have no manner of right, title or interest in or over the suit schedule properties, the defendants are unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule properties of the plaintiff. It is further stated that, the acts of the defendants 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 properties.

3. Per contra, the defendants have opposed the same by filing objections to IA No.2 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 her affidavit. It is further contended that, the suit property is the tenancy land and this court has no jurisdiction to try this suit. It is further stated that, the plaintiff has no right, title and interest over the suit properties. It is further contended that, the plaintiff has no locus-standi to file this suit. It is further contended that, originally the suit properties were belonged to one Mittla Dyava Naik. It is further stated that, the father of the defendants by name Nagya Kanna Naik had taken the suit properties on 25.02.1950 on lease and the said lease agreement has been registered with the Sub-Registrar, Siddapur. It is further contended that, the defendants are in possession and enjoyment of the suit properties. It is further contended that, the plaintiff has no manner of right, title or interest in or over the suit schedule properties. 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, the plaintiff has no prima-facie case and no balance of convenience in her favour. Hence, if the present application is allowed great loss and injustice will be caused to the defendants. Hence, he prayed to dismiss the IA No.2 with costs.

4. I have heard the arguments of learned counsel for the plaintiff and the defendants on IA No.2. 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 NEGATIVE.

Point No.2 - In the NEGATIVE.

Point No.3 - In the NEGATIVE.

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



REASONS

POINT NO.1:

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

8. The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiff and against the defendants, their men claiming under them from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule properties, 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 defendants for the relief of Permanent Injunction with respect to suit



properties. It is further stated that, the plaintiff is in possession and enjoyment of the suit properties. It is further stated that, the plaintiff had developed the suit properties. It is further stated that, the defendants have no manner of right, title or interest in or over the suit schedule properties, the defendants are unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule properties of the plaintiff. It is further stated that, the acts of the defendants 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 properties.

13. In the supporting affidavit, she 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 in possession and enjoyment of the suit properties. It is further stated that, the plaintiff had developed the suit properties. It is further stated that, the defendants have no manner of right, title or interest in or over the suit schedule properties, the defendants are unnecessarily interfering with the peaceful possession and enjoyment of the suit schedule properties of the plaintiff. It is further stated that, the acts of the defendants 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 properties. 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 copy of RTC extract with respect to Sy.No.200/4, measuring 09 gunats 08 annas of land, situated at Bidrakan Village, Siddapur Tq, for the year 2023-2024, which is standing in the joint names of the plaintiff and one Kanne S/o Jatta and Government, copy of RTC extract with respect to Sy.No.231/5, measuring 04 gunats 12 annas of land, situated at Bidrakan Village, Siddapur Tq, for the year 2023-2024, which is standing in the joint names of the plaintiff and one Kanne S/o Jatta and Government, attested copy of Hissa-sheet with respect to Sy.No.231/5 of Bidrakan Village, Siddapur Tq, attested copy of Hissa-sheet with respect to Sy.No.200/4 of Bidrakan Village, Siddapur Tq.

15. It is the specific case of the defendants 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 her affidavit. It is further contended that, the suit property is the tenancy land and this court has no jurisdiction to try this suit. It is further stated that, the plaintiff has no right, title and interest over the suit properties. It is further contended that, the plaintiff has no locus-standi to file this suit. It is further contended that, originally the suit properties were belonged to one Mittla Dyava Naik. It is further stated that, the father of the defendants by name



Nagya Kanna Naik had taken the suit properties on 25.02.1950 on lease and the said lease agreement has been registered with the Sub-Registrar, Siddapur. It is further contended that, the defendants are in possession and enjoyment of the suit properties. It is further contended that, the plaintiff has no manner of right, title or interest in or over the suit schedule properties. 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, the plaintiff has no prima-facie case and no balance of convenience in her favour. Hence, if the present application is allowed great loss and injustice will be caused to the defendants. Hence, he prayed to dismiss the IA No.2 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 defendants seeking relief of permanent injunction with respect to the suit properties.

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. It is to be noted that, the right of parties in suit property is to be decided after conclusion of trial. Further, the acquisition and nature of the suit properties has been disputed by the learned counsel for the defendants. Further, the possession of the suit properties has been disputed by the learned counsel for the defendants. Hence it is shown that, balance of convenience lies in favour of defendants and not plaintiff. Taking in consideration of nature of suit and rights of plaintiff to be decided in present suit in respect of suit properties, if ad-interim temporary injunction as prayed for granted, the defendants will be put to hardship and injury. On the other hand no hardship or injury would be caused to plaintiff if temporary injunction as prayed for is not granted. The plaint averments, affidavit annexed to I.A.No.2 is inconsistent and inconformity with documents placed on record. Therefore based on these documents, it can be safely held that, the plaintiff has not made out prima-facie case and balance of convenience do not lies in their favour for grant of temporary injunction. Hence I answer point No.1 in the Negative.

POINTS NO.2 & 3:

21. 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.

22. Under these circumstance, the balance of convenience is does not lies in favour of the plaintiff and in favour of the defendants. Therefore for the reasons discussed above, this Court is of the considered view that, the balance of convenience do not lies in favour of the plaintiff and irreparable loss and injury would not be caused to plaintiff if a temporary injunction is refused. Hence I answer points No.2 & 3 in the Negative.

Point No.4:

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

ORDER

I.A.No.2 filed by the plaintiff under the provisions of Order 39 Rule 1 and 2 of CPC is hereby dismissed.

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

(Dictated to the Court hall typist directly on Computer, typed by her, order corrected and signed by me, then pronounced by me in the Open Court on this the 18th day of SEPTEMBER – 2025)

(UMESHA M.P)
Civil Judge,
Siddapura