

**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 27th day of Febraury, 2025

O.S. No.127/2024

**Plaintiff: Krishna S/o Rama Naik
(By Shri S K G Adv.)**

V/s

**Defendants: Nagesh S/o Rama Naik.
(By Shri R S H Adv.)**

I.A.No.I

Applicant : Krishna S/o Rama Naik

V/s

Opponent: Nagesh S/o Rama Naik.

**ORDER ON I.A.NO.I FILED UNDER ORDER 39 RULE 1
AND 2 C.P.C.**

The plaintiff has filed this application, seeking this Court to issue an order of temporary injunction,

restraining the defendants, from interfering with the peaceful possession and enjoyment of the plaintiff, over the suit schedule property by encroaching the western portion of the suit schedule property and also to restrain the Defendant from disrupting the Plaintiff's use of the well situate over the suit schedule property, pending disposal of the suit.

Schedule property.

Piece and parcel of the property bearing Sy.No.22/8, measuring 01-37-00, situated at Bikkalase Village, Kondli Hobli, Siddapur Taluk (nature : Tari and Adike Bhagayath), along with the 20 x 20 feet well situated over the same, bounded on :

East by : Sy.No.22/5

West by : Sy.No.22/4

North by : Sy.No.21A

South by : water stream.

2. In the accompanying affidavit, the plaintiff has sworn to the following averments :

The suit schedule property was originally granted to father of the Plaintiff and the Defendant, by the Land Tribunal. The property which was granted to their father was in Sy.No.22/4, measuring 03-34-00 and after the death of their father, they have divided the said property through a registered partition deed dated 31.10.2022, after

obtaining 11E sketch. In the division, the Plaintiff was allotted 01-37-00 of the property, which, after phodi, was renumbered as Sy.No.22/8, now the suit survey number. The boundaries were fixed through Hadbusth. The Plaintiff claims to have constructed a 20 x 20 feet well on the suit schedule property using his own funds, from which he draws water using a pump to irrigate his garden. The Plaintiff alleges that the Defendant, who has no legal right, title, or interest in the suit schedule property, is attempting to interfere with his peaceful possession and enjoyment by encroaching on the western portion of the suit property and disrupting the Plaintiff's use of the well. Hence, this application has been filed.

- 3.** On the other hand, upon his appearance, the Defendant filed his written statement along with a memo seeking to adopt the written statement as objections to the application. The Defendant has categorically denied all the averments made in the plaint. While the Defendant essentially admits that the properties originally belonged to their father and were divided between them through a registered partition deed dated 31.10.2022, following the preparation of the 11E sketch, and that after partition, phodi was effected and hadbusth was conducted, he disputes the Plaintiff's claim regarding the well.

- 3.2** The Defendant admits the extent of land divided between him and the Plaintiff from the original Sy.No.22/4 measuring 03-34-00, with 01-37-00 allotted to each. However, his primary contention relates to the Plaintiff's

claim that the 20 x 20 feet well is within the suit schedule property.

3.3 The Defendant specifically contends that after the partition per the 11E sketch, both parties were possessing and enjoying the properties allotted to them based on an understanding, and the actual measurement of the properties was not surveyed or finalized. When the Hadbusth was conducted, it was discovered that portions of the Plaintiff's land were in the Defendant's possession, and vice versa. The Defendant claims that he handed over the portion belonging to the Plaintiff as per the agreement, but the Plaintiff failed to reciprocate. The Defendant further contends that the well and acacia trees are located on the portion of land that is still due to be handed over to him. Therefore, he asserts that he has not interfered with the Plaintiff's possession and enjoyment of the suit schedule property, and the alleged well does not exist on the Plaintiff's portion of the property. Consequently, the Defendant has sought the dismissal of the application.

- 4.** Heard both sides and perused the material placed on record and the photographs.
- 5.** Upon hearing the arguments of both side and perusing the materials placed on record, the following points would arise for the consideration of this court:

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. What Order ?

6. The findings to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per the order

For the following :

REASONS

7. **Point No.1 to 3** : 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 application and the averments of the written statement adopted as objections to the application, 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. The dispute essentially revolves around the ownership and possession of a well located on the suit schedule property, The suit schedule property was a part of the Sy.No.22/4,

which originally belonged to the father of both the Plaintiff and the Defendant. After their father's death, the property was divided between the Plaintiff and Defendant through a registered partition deed dated 31.10.2022, with the Plaintiff being allotted 01-37-00 acres, renumbered as Sy.No.22/8, and the Defendant receiving a similar portion. The Plaintiff claims to have constructed a well on his allotted portion, using it to irrigate his garden, and alleges that the Defendant, without any legal right, is attempting to encroach upon the western portion of his land and interfere with his use of the well. The Defendant, while admitting the partition, denies that the well is within the Plaintiff's portion.

9. In the written statement, the Defendant contends that after the partition and the preparation of the 11E sketch, both he and the Plaintiff were in possession and enjoyment of their respective portions of the property as per a mutual understanding. However, no formal survey or fixed measurement of the properties had taken place at that time. Subsequently, when the *Hadbusth* was conducted, it was discovered that the Plaintiff was in possession of portions of the land that rightfully belonged to the Defendant, and conversely, the Defendant was occupying part of the Plaintiff's share. The Defendant asserts that he has already handed over the portion of the land that belonged to the Plaintiff as per the *Hadbusth* findings, but the Plaintiff has failed to reciprocate by returning the portion of land owed to the Defendant. The Defendant

claims that the well, along with acacia trees, is located in this portion of land that the Plaintiff was supposed to hand over to him. Hence, the Defendant denies any interference with the Plaintiff's possession of the suit schedule property and argues that the well is not within the Plaintiff's portion, but it is situate over the portion belonging to the Defendant.

10. Upon careful perusal, it is evident that the entire dispute centers around the existence or non-existence of the 20 x 20 feet well within the suit schedule survey number. Both the Plaintiff and the Defendant assert conflicting claims, with each party contending that the well is located within their respective allotted portions. It is noteworthy that the registered partition deed dated 31.10.2022, submitted by the Plaintiff, contains no clause or reference regarding the alleged well. There is no mention in the deed of any arrangement or agreement concerning the well.
11. The ascertainment of the existence or non existence of a well over the suit schedule property cannot be made at this stage of the suit, it requires a detailed trial. the Hon'ble High Court of Karnataka reported in **ILR 1996 KAR 753**, between **Nagaraj Vs Krishna** wherein it is held that:

"13. Prima facie case what is meant --Prima facie case has always got to be distinguished from prima facie title. The prima facie case really means that there is a case which requires trial and that the case is not the one based on

erroneous and vexatious grounds. In the case of Krishna Moorthy v. Bangalore Turf Club, (1975) 2 Kant LJ 428, the material observations made in this regard in paragraphs 8 and 9 read as under:--

"The traditional theory underlying the grant or refusal of interlocutory injunctions has always been that the Court abstains from expressing any opinion upon the merits of the case until the hearing, but acts merely to minimise the sum total of irreparable damage to the litigants. However, in recent times the tendency has been to adopt a more robust attitude, and to be guided more and more by the apparent strength or otherwise of the plaintiff's case as revealed by the affidavits. Though this procedure has been commonly followed, and has become popular, the Court, however, should guard itself from "deciding the case" on motion. I am constrained to make this observation because, the lower Court in this case has virtually decided the case, while granting the interlocutory injunction. Such practice, if I may add, is wholly undesirable. The experience reminds me that the standard of justice done on motion is very often misled and different from that arrived at the trial of the case.

14. These observations clearly show that when deciding the question prima facie case, it is

generally not desirable and open for the Court to record to decision on the merits of the pleas taken in the suit. In paragraph 9, Hon'ble Mr. Justice Jagannatha Shetty, further observes.-

"Let me now turn to the merits of the contention. I do not want to reproduce hereunder the lengthy resolutions which are the subject-matter of the suit. I proceed on the assumption or basis that the plaintiff has made out a prima facie case in the sense that the case he has proved calls for an answer. In other words, his case may not be frivolous or vexatious, and might appear stronger on the balance of probabilities. But that by itself is no ground for any Court to issue injunction. What matters is the balance of convenience. It must be a major consideration. The Court must decide in whose favour the balance of convenience lies. A man who seeks the aid of the Court by way of interlocutory injunction must, as a rule, be able to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable, before the legal right can be established upon trial. The Court must pertinently put the question "Will the plaintiff suffer irreparable damage if no injunction is granted now?. "Last but not the least the Court always must look to the conduct of the plaintiff and will refuse to interfere even in cases where it

acknowledges his right unless his conduct in the matter has been fair and honest and in particular without acquiescence or delay."

- 12.** The above decision makes it clear that, this court has to refrain from giving a verdict in the case at this stage and has to only stick to ascertaining whether prima facie case is made out. This court after giving due consideration to facts and circumstances of the case is of the opinion that the plaintiffs have made out a prima facie case.
- 13.** Furthermore, the Defendant admits that the portion rightfully belonging to him, including the suit schedule property and the well, is currently in the Plaintiff's possession. Therefore, the Plaintiff's possession of the suit schedule property is not in dispute, and the balance of convenience lies in favor of the Plaintiff. However, the Defendant contends that the Plaintiff has dug a borewell near his house, from which he is drawing water, implying that the alleged well is not the only water source available to the Plaintiff. This claim requires a full trial and cannot be considered without supporting documentation.
- 14.** The Plaintiff, on the other hand, has produced several documents, including a photocopy of the Hadbusth survey sketch of the suit survey number, which clearly indicates that the Plaintiff is in possession of 01-37-00 acres. If, as the Defendant alleges, the Plaintiff were in excess possession of land, this would have been reflected in the survey sketch. The Defendant, apart from making bare

assertions, has failed to produce any documentary evidence to support his claims. Under Order 8 of the CPC, the Defendant is required to submit all documents upon which his defense is based. Yet, the Defendant has not even produced the Hadbusth that he claims shows the well is located within his portion of the land.

- 15.** The Plaintiff asserts that he recently constructed the well, while the Defendant claims that it existed earlier. However, the Defendant has provided no documentation to substantiate this claim. Therefore, at this stage of the suit, the court is of the clear opinion that the Plaintiff has established a prima facie case, and the balance of convenience lies in his favor.
- 16.** Nevertheless, the dispute primarily concerns the alleged well, which is a vital natural water resource, and many families rely on such wells for their daily water needs. Given that the Defendant strongly contends in his written statement that the well is located within his portion of the property and not in the Plaintiff's, this court cannot immediately grant an injunction preventing the Defendant from using the well to draw water. Doing so would effectively render a final judgment without first determining the actual facts of the case. Thus, the court is of the considered opinion that both parties should maintain the status quo regarding the well, meaning neither party shall interfere with the other's use and enjoyment of the well. However, the court is inclined to grant an injunction restraining the Defendant from encroaching on the western

portion of the suit schedule property. Accordingly, this court answers **Points No. 1 to 3** in the **Affirmative**.

- 17. Point No 4 :** In view of the finding on Point No.1 to 3, this court proceeds to pass the following:

ORDER

I.A.No. I filed by the plaintiff U/Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendants are restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, by encroaching the western portion of the suit schedule property, till disposal of the suit.

It is hereby directed that both the Plaintiff and the Defendant shall maintain status quo regarding the well situated within the suit schedule property. Neither the Plaintiff nor the Defendant shall interfere with the each other's use and enjoyment of the well.

It is made clear that the status quo is granted only with respect to the well and not any portion surrounding it.

(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 27th day of February, 2025.)

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

**(Order pronounced in the
open Court today vide its
separate order)**

ORDER

I.A.No. I filed by the
plaintiff U/Order 39 Rule 1 and
2 of C.P.C is hereby allowed.

The defendants are restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, by encroaching the western portion of the suit schedule property, till disposal of the suit.

It is hereby directed that both the Plaintiff and the Defendant shall maintain status quo regarding the well situated within the suit schedule property. Neither the Plaintiff nor the Defendant shall interfere with the each other's use and enjoyment of the well.

It is made clear that the status quo is granted only with respect to the well and not any portion surrounding it.

Issue framed.

For Plaintiff Evidence call on 24.03.2025.

**CIVIL JUDGE & JMFC
SIDDAPUR.**