

**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 01<sup>st</sup> day of June, 2024**

**O.S. No. 95/2022**

**Plaintiff: Laxman Ishwar Gowda S/o Ishwar  
Gowda**

**(By shri N R T Adv.)**

**V/s**

**Defendant: Subraya Narayana Gowda S/o  
Narayana Gowda**

**(By shri GSH/MNH Adv.)**

**I.A.No.I**

**Applicant : Laxman Ishwar Gowda S/o Ishwar  
Gowda**

**V/s**

**Opponent: Subraya Narayana Gowda S/o  
Narayana Gowda**

**ORDER ON I.A. No.I**

The Plaintiff has filed I.A No. I, U/O XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908, seeking to restrain the defendant, his agents, servants, assignee's or any person claiming under him from constructing the residence over the suit schedule property.

**2)** In the affidavit filed in support of the I.A.No.I, the plaintiff has stated that, he is the absolute owner of the suit schedule property

i.e. Sy.No. 75/7 and it is his granted land and that the Defendant is the owner of Sy. NO.75/5. Such being the case the defendant is unlawfully interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, by trying to trespass and cut the areca nut crops and derive the income from that. Hence he has filed the present suit seeking to restrain the defendant from cutting the areca crops grown over the suit schedule property belonging to the plaintiff. Hence prayed to pass order in accordance with I.A.No.I.

**3)** On the other hand, the Defendant has filed his a memo to adopt the written statement filed as objections to I.A.No.I, wherein he has strongly objected the application and has denied the entire plaint and affidavit averments. It is the case of the Defendant that originally the land bearing Sy.No.75 belonged to the father of plaintiff and defendant. Such being the case there was a partition effected amongst them and in accordance with partition the Defendant was given 00-02-00 Guntas of land in Sy.No.75 and the Plaintiff was given 00-04-00 Guntas of land in Sy.No.75. However, the said land was not surveyed and phoded. Further that the above land was phoded by the ADLR, Siddapur and the same was challenged by the Defendant before the DDLR, Karwar, accordingly the said phody order was set aside vide order dated 04.01.2023 and the ADLR was directed to conduct fresh phody proceedings. Thus as on today the Sy.No.75 is not sub divided. Further that, as the phody has been set aside by the DDLR, the present suit of the plaintiff based on the said phody proceedings is not maintainable and the plaintiff is not in possession and enjoyment of suit schedule property as per the boundaries mentioned therein. Hence sought to dismiss the suit and the application along with cost.

4) Upon perusal of the applications, objections and the material available on record, the following points arise for my consideration:-

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

5) Heard the arguments and perused materials on the record.

6) My answer to 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- As per final order, for the following.

### **REASONS**

7) **Point No.1 to 3:** As these points are interlinked with each other, this court shall take these points together for common discussion, in order to avoid repetition of facts and circumstances and for the sake of brevity.

8) The plaintiff has filed the above suit against the defendant seeking the relief of permanent injunction with respect to the suit schedule property. The plaintiff has alleged that, the defendant is trying to trespass the suit schedule property belonging to the plaintiff and cut the areca crops and make unlawful gains. Accordingly sought to restrain them by way of permanent injunction from interfering with the peaceful possession and enjoyment of the

plaintiff over the suit schedule property and not to trespass and cut the areca crops over the suit schedule property.

**9)** In I.A.No.1 the plaintiff has sought to restrain the defendant, his agents, servants, assignee's or any person claiming under him from constructing the residence over the suit schedule property. However the plaintiff nowhere in his plaint or in the affidavit has averred with regard to the Defendant trying to construct a house over the suit schedule property.

**10)** In the plaint or the affidavit, plaintiff has only averred that he is the absolute owner of the suit schedule property and the Defendant without possessing any manner of right, title or interest over the same is trying to interfere with the peaceful possession and enjoyment of the plaintiff and is trying to cut the areca crops grown over the suit schedule property. However the plaint and the affidavit is silent with the aspect of the Defendant trying to construct a residence over the suit schedule property in support of the application sought by the Plaintiff.

**11)** The Plaintiff has not produced any documents to prima facie show that the Defendant is trying to construct a house over the suit schedule property, as well. In the absence of averments and the documents, the application filed by the plaintiff to restrain the Defendant from constructing a house over the suit schedule property cannot be considered at all. Hence this court is of the considered opinion that the plaintiff has not made a prima facie case in order to allow the I.A.No.1. The Hon'ble High court of Karnataka in its decision between **Gowrishankara Swamigalu V/s Siddaganga Mutt** reported in **ILR 1989 KAR 1701 : 1989 (2) KAR L.J 548**, has held that :-

*25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all*

*clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction "would come into play and will also have to be evaluated before granting or refusing the injunction.*

**12)** In view of the above judgment of the Hon'ble High Court of Karnataka, as the plaintiffs have failed to establish prima facie case, the question of delving on the aspect of balance of convenience and irreparable loss does not arise at all. Therefore looking from any angle the plaintiff has failed to establish prima facie case at this stage of the suit, to grant a Temporary injunction against the Defendant as sought for in the application. Hence this court answers Point No. 1 to 3, in the **NEGATIVE**.

**13) Point. No. 4:** In view of above discussion and the answer given to Point No.1 to 3, 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.

No order as to cost.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this 01<sup>st</sup> day of June 2024)

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

**(Vide Separate Order Passed and Pronounced in the Open court)**

**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.

No order as to cost.

**Civil Judge and JMFC  
Siddapur**