

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present : SMT. SHRUTHI SHREE S, *B.A. LL.B.*  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**

**Dated this the 29<sup>th</sup> day of November, 2023**

**Original Suit No. 154/2023**

**Parties to I.A. No. II:**

**Applicant/s:** 1) Sheshamma Shedthi, 88 years,  
D/o Late Chandamma Shedthi.  
  
2) V. Prabhakar Shetty, 57 years,  
S/o Sheshsamma Shedthi,  
Agriculturist, Gudarmakki,  
Vakwadi Village and Post,  
Kundapura Taluk, Udupi District.  
**(By Advocate Sri. M.J.S.)**

*//Vs//*

**Opponent/s:** Rathnavathi Poojarthi, 48 years,  
W/o Shankar Poojary,  
Mathrashree Nilaya,  
Vakwadi Village and Post,  
Near Post Office,  
Kundapura Taluk, Udupi District.  
**(By Advocate Sri. S.S.N.)**

**Parties to the suit:**

**Plaintiff** : 1) Sheshamma Shedthi and another  
**V/s**  
**Defendant** : Rathnavathi Poojarthi

i.	Provision under which the application is filed	Order XXXIX Rule 1 and 2 R/w Sec. 151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	05-04-2023
iv.	Number of the application	I.A. No. II
v.	The date on which the objections are filed by different opponents	21-07-2023
vi.	The date on which the orders were passed on the said application	29-11-2023

### **ORDER ON I.A. NO. II**

Plaintiff has filed I.A. III under order XXXIX Rule 1 and 2 of CPC seeking to restrain defendant from constructing any building, structure in any portion of suit 'B' schedule property or changing its landscape in any manner pending disposal of the suit.

2. In the accompanying affidavit it is contended that plaintiff are absolute owners of suit 'A' schedule property on Mooli right which consist of coconut trees but defendant owns 0.07 acres in the same survey number but it is entirely a different plot and accordingly for demarcation and podi process, plaintiff No.1 submitted application before ADLR, Kundapura but they have exceeded their jurisdiction and passed frivolous

orders but using the same defendant is constructing a new compound wall over suit 'A' schedule property. In that regard complaint was filed before Kundapura Police and as the matter is civil in nature, they have declined to interfere. Therefore plaintiffs are before this Court seeking to restrain defendant or anybody acting on her behalf from putting up any construction of compound wall over 'A' schedule property and that they have already encroached portion of property as above stated for 0.06 acres and they are liable to surrender possession of the same to the plaintiff. In the interim if defendant or her people illegally cause to put up any new structure or waste and damage to suit 'A' schedule property, such action cannot be compensated in terms of money. Therefore seeks to grant relief through this application as sought for.

3. Per contra defendant has filed counter claim by way of written statement seeking to declare her right, title and interest over suit 'B' schedule property measuring 0.04 acres of Sy. No. 75/2 situated in Vakwadi Village, Kundapura Thaluk. It is the contention of defendant that the said property absolutely belongs to her, 'B' schedule property is in her possession since 26-11-1999 but plaintiff being aware of the said fact, has falsely pleaded the averments and she has made vast

improvement in the said property by constructing compound wall over 3 sides of 'A' schedule property excluding northern side where wooden fence is installed. There are several other fruit yielding trees along with two coconut trees and 21 arecanuts which is grown and yielded by defendant. Therefore enquiry before ADLR has nothing to do with possession and enjoyment of the defendant in 'B' schedule property. But the old compound which was in dilapidated condition was renovated and plaintiff's family members raised objection for the same and threatened to cut limbs of defendant if she approaches to renovate the compound wall for which false complaint was lodged before Kundapura Police Station but on 26-05-2023, plaintiff attempted to close drainage situated over eastern portion of counter claim 'B' schedule property and also tried to block free flow of rain water from the said property. Thereafter plaintiffs men assaulted defendant by filthy language and there was complaint lodged before Kundapura Police Station. Therefore contends that plaintiff is not entitled for any relief as sought for and accordingly seeks to reject the application.

4. Heard arguments from both the sides on I.A. No. II and perused materials available on record.

5. The points that would arise for my consideration are as under:

**POINTS**

- 1) Whether the applicants/plaintiffs have made out prima facie case in their favor to allow I.A. No. II?
- 2) Whether the applicants/plaintiffs have made out the balance of convenience in their favor to allow I.A. No. II?
- 3) Whether the applicants/plaintiffs prove that they would suffer irreparable loss and hardship if temporary injunction order has not been passed in I.A. No. II?
- 4) What order?

6. My answer to the above points are as follows:

**Point No.1 : In the Affirmative**

**Point No.2 : In the Affirmative**

**Point No.3 : In the Affirmative**

**Point No.4 : As per final order,  
for the following:**

## REASONS

7. **POINT NOS. 1 to 3:** These points are interlinked with each other, to avoid the repetition of facts, I have taken together for common discussion.

8. In support of contention taken by plaintiff through this application, they have relied upon sale deed dated 23-11-1999 which reveals that 0.07 acres of land was purchased by defendant in Sy. No. 75/2, copy of order in podi proceedings, RTC of suit Sy. No. 75/2 reflecting names of both plaintiffs and defendant as on date of filing of the suit, copy of NCR issued by Kundapura Police and photographs. It is contention of plaintiff that they have purchased 'A' schedule property comprising of 0.15 acres of land but defendant has encroached 0.06 acres of land out of 0.15 acres that is to mean plaintiffs are now in possession of 0.09 acres of land in Sy. No. 75/2. Further sale deed dated 23-11-1999 produced by plaintiffs reveal that 0.07 acres in Sy. No. 75/2 was purchased by defendant. Hence it is contention of plaintiffs that defendant is in possession of 0.13 acres out of total 0.22 acres of land in Sy. No. 75/2. RTCs reflect possession of plaintiffs in 'A' schedule property and possession of defendant in 0.07 acres. However it is alleged

by plaintiff that defendant being adjacent owner of a plot in suit Sy. No. 75/2, he has encroached portion of property belonging to plaintiffs. None of the document reveals that such encroachment as already occurred.

9. Counter claim of defendant that she is in possession and enjoyment of 0.07 acres in Sy. No. 75/2 which was purchased by her on 26-11-1995. Further also alleges that out of 0.07 acres, plaintiff claims counter claim 'B' schedule property measuring 0.04 acres to be in their possession. Accordingly has sought for declaration her title for whole extent of 0.07 acres based on sale deed dated 26-11-1999. Defendant has not placed any relevant materials on record to appreciate that plaintiffs are claiming 0.04 acres out of her 0.07 acres. Similarly plaintiffs have not placed sufficient material to appreciate that defendant has encroached suit 'B' schedule property measuring 0.06 acres.

10. However revenue entries in RTC reveals 0.15 acres to be in possession of plaintiff, 0.07 acres to be in possession of defendant. At this interim stage it is not possible to ascertain if the exact portion of alleged encroachment or claim as contended by each other is exactly 0.06 acres or 0.04 acres which are 'B' schedule properties in both suit and counter

claim. However suit 'B' schedule property being higher extent of 0.06 acres seems to deserve more consideration. Further it is necessary to emphasize that defendant though alleges that 0.04 acres out of her purchase of 0.07 acres is claimed by plaintiff, plaintiffs allege 0.06 acres out of 0.15 acres of land to be encroached by defendant. Perusal of boundaries to 'A' and 'B' schedule properties in both plaint and counter claim reveals that towards west of suit 'A' schedule property measuring 0.15 acres, exist property of defendant measuring 0.07 acres. The land and boundaries between these two plots seems not to be demarcated according to measurements and there remain gray area where it is necessary to ascertain in the due course of trial as to exact extent of encroachment if any or claim of property by plaintiff belonging to defendant, if any. Also both boundaries provided to the properties does not define or clarify the actual extent of alleged encroachment or claim. Therefore pending disposal of the suit for ascertaining alleged extent of encroachment or claim, suit 'B' schedule property being higher extent of land of 0.06 acres than counter claim 'B' schedule property of 0.04 acres, deserves more consideration for it to be protected in its actualities than it being changed with its topography by construction or putting up any structures. Therefore pending disposal of the suit, it is necessary that

defendant does not alter or change any topography of suit 'B' schedule property which seems to include her counter claim 'B' schedule property also. Accordingly all prima-facie ingredients at this juncture more likely falls on suit 'B' schedule property than the counter claim 'B' schedule property. Hence this application deserves consideration. Hence for all the above stated reasons, **POINT No. 1 TO 3** are answered **IN THE AFFIRMATIVE.**

**11. POINT NO.4:** In view of findings on point No. 1 to 3, I proceed to pass the following:

## **O R D E R**

I.A. No. II filed by the applicant/plaintiff under order XXXIX Rule 1 & 2 of CPC is hereby allowed.

Consequently, defendant or anybody acting on her behalf are hereby restrained from putting up any building like structure or changing landscape of suit 'B' schedule property pending disposal of the suit.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **29<sup>th</sup> day of November, 2023**)

**(Smt. Shruthi Shree S.)  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**