

KAUP400060372023



IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST  
CLASS AT BAINDURU.

PRESENT

Smt.Vidya, A.S. B.A., LL.B.  
Civil Judge & J.M.F.C., Baiduru.

Dated: This the 27<sup>th</sup> day of June, 2024.

O.S.No.611/2023

<b>Plaintiff:</b>	<b>Koushik</b> , aged about 23 years, S/o. Panduranga Mesta, R/at: Nadu Kotemane, Shiroor Village, Baiduru Taluk.
<b>Defendants:</b>	<b>1. Nagaraj Poojari</b> , Aged about 45 years, S/o. Krishna Poojari, <b>2. Netravathi</b> , Aged about 35 years, W/o. Nagaraj Poojari,  Both are R/at: Manjunath Nilaya, Goligundi, Go Shale Road, Shiroor Village and Post, Baiduru Taluk.
	<b><u>Rank of the Parties On I.A.II</u></b>
<b>Applicant/Plaintiff:</b>	Koushik
	<b>(Rep.by Sri. P.P.S.-Advocate)</b>
<b>Opponents/Defendants</b>	Nagaraj Poojari and another
	<b>(Rep.by Sri. M.S.A.-Advocate)</b>

<b>Provision</b>	<b>U/o.XXXIX Rules 1 and 2 R/w. Sec.151 of CPC.,</b>
<b>Relief sought for</b>	<b>To restrain the defendants from encroaching or trespassing into or causing any waste and damage over any portion of the suit 'A' and 'B' schedule property by interfering with the peaceful possession and enjoyment by the plaintiff.</b>
<b>Application dated</b>	<b>20-02-2023</b>
<b>Application No.</b>	<b>II</b>
<b>Objection filed on</b>	<b>23-03-2023</b>
<b>Order passed on</b>	<b>27-06-2024</b>

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

The plaintiff along with suit has filed IA No.II under section 94(e) and Order XXXIX Rules 1 and 2 R/w. Sec. 151 of CPC., seeking the relief of temporary injunction in favour of the plaintiff and thereby temporarily restraining the defendants, their people, agents, employees, heirs, administrators or any persons claiming under them from encroaching or trespassing into or causing any waste and damage over any portion of 'A' and 'B' schedule property by interfering with the peaceful possession and enjoyment by the plaintiff till the final disposal of the suit.

2. In the accompanying affidavit, applicant has stated that defendants and their people are trying to encroach over 'A' and 'B' schedule property and cause

waste and damage over the same in order to illegally form a road over the same.

With these averments the plaintiff has sought for allowing the application.

3. The defendants have stated that the written statement may be treated as objection to I.A.No.II.

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the applicant has made out prima facie case ?

Point No.2: Whether the plaintiff establishes that balance of convenience lies in his favour ?

Point No.3: Whether the plaintiff establishes that if temporary injunction is not granted, he will be put to great loss or hardship?

Point No.4: What order ?

6. The findings of this Court on the above said points are as under:

Point No.1 : In the Affirmative;

Point No.2 and 3 : In the partly Affirmative

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

### **REASONS**

7. **Point No.1:** This Court has already narrated the facts stated in the affidavit annexed to the application. On perusal of case file, it is seen that the plaintiff has sued the defendants for seeking the relief of Permanent Injunction.

8. The defendants have resisted the suit by filing written statement, taking defence to the plaintiff's claim.

9. The specific case of the plaintiff is that he is the absolute owner and is in actual possession and enjoyment of 'A' schedule property by virtue of sale deed. The plaintiff and his predecessors are having kumki privilege and the plaintiff and his predecessors have been in possession and enjoyment of the suit 'B' schedule property.

10. The defendants have filed their written statement and they took a stand that, the 2<sup>nd</sup> defendant filed the Form No.57 application before Land Grant Committee in respect of suit 'B' schedule property. The said application is pending before land grant committee.

11. This court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. The primary requirement in an injunction suit is possession. In a suit for permanent injunction the plaintiff has to prove his possession over suit schedule property. The burden of proving the same lies on the plaintiff.

12. This court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. In support of plaintiff's contention he has

produced the RTC in respect of suit 'A' schedule property. On perusal of same it is evident that the suit 'A' schedule property stands in the name of plaintiff. Further on perusal of photostate copy of Regt. Sale deed dt:03-08-2011, it appears that the plaintiff had purchased the suit 'A' schedule property from vendor by name Ravi @ Ravi Krishna. It is not in dispute that the plaintiff had purchased the suit 'A' schedule property and he is in actual possession and enjoyment of the same.

**13.** According to the plaintiff suit 'B' schedule property forms kumki to the suit 'A' schedule property. It is worth to note that the defendant has not disputed with regard to the suit 'A' schedule property. It is pertinent to note here that plaintiff has not produced the piece of evidence in order to show he has made improvements over the 'B' schedule property and he is in possession and enjoyment over the suit 'B' schedule property. As per commission report, the suit 'B' schedule property is a vacant land. The 2<sup>nd</sup> defendant's application is pending before land grant committee in respect of suit 'B' schedule property. Whether plaintiff or the defendants are in possession of suit 'B' schedule property is to be determined only after full-fledged trial. So the plaintiff claims he is in possession. On the other hand the defendants claims he is in possession of suit 'B' schedule property. When such being the fact the possession will be determined only after full-fledged trial. It is the question of fact. Therefore, the

plaintiff at this stage made out prima facie case or arguable case. As such, point No.1 is answered in the Affirmative.

**14. Point.No.2 and 3:** Point No.2 and 3 are inter-connected; hence in order to avoid repetition of facts, the above said points are taken together for common discussion.

**15.** Since both the parties are claims right over the suit 'B' schedule property. At this stage the documents produced by the plaintiff shows that he is in possession of suit 'A' schedule property and he claims that suit 'B' schedule property forms kumki privilege to the suit 'A' schedule property. On the other hand defendants claims that they are in possession and their application is pending before Land grant committee. Considering the factual contentions this court cannot presume the possession of the plaintiff over the suit 'B' schedule property, since it is an issue of fact. Hence the plaintiff is failed to prove the balance of convenience and irreparable injury over the same. Hence it is not fit case to grant injunction in respect of suit 'B' schedule property and the plaintiff is entitle for injunction in respect of suit 'A' schedule property. As such, point No.2 and 3 is answered partly affirmative.

**16. Point No.4:** For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

**ORDER**

I.A. No.II filed by the applicant under sec.94(e) and Order XXXIX Rule 1 and 2 R/w. Section 151 of CPC is hereby partly allowed.

The defendants, their people, agents, employees, heirs, administrators or any persons claiming under them are hereby restrained from encroaching or trespassing into or causing any waste and damage over any portion of suit 'A' schedule property by interfering with the peaceful possession and enjoyment by the plaintiff till the disposal of the suit by means of this temporary injunction.

For Compliance of Section 89 C.P.C.

Call on: 08-08-2024.

( Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this 27<sup>th</sup> day of **June, 2024** )

**(Smt.Vidya A.S)**  
**Civil Judge & J.M.F.C., Baiduru.**