

KABI510002432025



IN THE COURT OF CIVIL JUDGE & JMFC, KUDLIGI
Present: Smt. C.Mahalakshmi., B.A.L., L.L.M.
Civil Judge & JMFC, Kudligi
O. S. No.29/2025

Dated this 22nd day August 2025

Between:

M.Maralusiddappa & others ... Plaintiffs
VS

Basavaraja & others ...Defendants

I.A. No.I

M.Marulasiddappa & others ... Applicants/Plaintiffs
(By Sri. D.K Adv.,)

VS

Basavaraja & others ... Defendants/Opponents.

(D-1 to 3 & 7, 9 & 10 by Sri.K.B.S Adv.,)

(D-4 to 6 by Sri.J.K.R Adv.,)

(D-8 exparte)

ORDER ON I.A. NO.I FILED U/O XXXIX
RULE 1 & 2 of CPC

01. The plaintiffs has filed this application under Order XXXIX Rule 1 and 2 R/w Sec.151 of C.P.C. with a prayer to grant interim temporary injunction in favour of the plaintiffs

restraining the defendants from interfering over the suit schedule property till disposal of the case.

02. It is averred in the affidavit annexed to the application that they are the absolute owners of the suit schedule property and they have partitioned the above said property has been divided in to 4 piece and they have got mutated and in peaceful possession and enjoyment of the same. The suit schedule property is their ancestral property and they have inherited the same from their ancestors through registered partition, mutation was effected on 16.07.2014, they are in peaceful possession and enjoyment of the same without any body's obstruction or interference. The defendants have tried to interfere over the suit schedule property. Therefore, on 12.12.2023 they have approached the Tahasildar, Kudligi to conduct survey and mark boundaries and on 04.01.2024 the survey authorities have conducted the survey and also mahazar was conducted and sketch was prepared and submitted report on 06.01.2024 and on

20.02.2024 the defendants have given application to Tahasildar, Kudligi that some strangers are disturbing their possession and then Tahasildar visited the spot on 15.07.2024 and conducted the enquiry and perused the previous documents i.e., survey sketch and RORs etc., and the Tahasildar, Kudligi has given order on 24.07.2024 that the land owner of Sy.no.589 has encroached western side of their property and there is no way to reach the property of defendants. Upon the order of the Tahasildar, Kudligi the above said persons are disturbing their peaceful possession and on 13.11.2024 the plaintiff no.1 approached Tahasildar to give protection to him against the defendant to protect his land. The Tahasildar has given instruction to the CPI, Kudligi to give protection to his land and police have visited the spot and given warning to defendants. The defendants are interfering with the plaintiffs peaceful possession. Hence, the application and suit.

03. The defendant no.4 to 6 have filed objection and denied the averments made in the application and contended that the plaintiff has filed a false suit against the defendants with an intention to defeat and defraud the right of the defendants over the suit schedule property. The plaintiff has filed the present suit by suppressing the true material facts. The father of defendant no.4 to 6 i.e., Kaptral Basappa is the absolute owner of land bearing Sy.no.591/B measuring 0.12 acres situated at Hiregedal revenue village and he has purchased the same from one Channaveerappa through registered sale deed dated 24.12.1974 for a sum of Rs.300/-. From the date of purchase, the defendant no.4 to 6's father was in peaceful possession and enjoyment of the same. After the death of defendant no.4 to 6's father i.e., Kaptral Basappa, the defendant no.4 to 6 have succeeded the same. The originally land bearing Sy.no.591/B, Sy.no.591/C, Sy.no.591/D was belongs to defendant no.4 to 6's father vendors family (Channaveerappa family) The Mallal

Channaveerappa and their brothers have partitioned in the above said property and Sy.no.591/B was fallen to the share of Mallal Channaveerappa and in the above said Sy.no.591/b measuring 0.12 cents was purchased by defendant no.4 to 6's father. From the date of purchase, defendant no.4 to 6 father used the above said way to reach the Sy.no.591/b and the same was continued even to this day. Now the plaintiffs after obtaining the mutation with respect Sy.no.591/D started to cause obstruction to the defendant no.4 to 6 easementary right of way to reach the Sy.no.591/B property, as such defendant no.4 to 6 have filed suit against the present plaintiffs in O.S.no.376/2024 for declaration of defendant no.4 to 6 easamentry right way in Sy.no.591/d, 591/C to reach Sy.no.591/B. The plaintiffs are never in possession of way situated in Sy.no.591/D, 591/1 to reach Sy.no.591/2. The entire village are in the opinion that the plaintiffs property begins after the way, but the plaintiffs are claiming that their property covers the way as per the alleged survey report issued

by the authorities. The plaintiffs have intentionally and deliberately not disclosed the existing fact and plaintiffs intentionally and deliberately suppressed the previous litigation proceedings and the order passed by this court. The plaintiffs are not the absolute owner and not in possession and enjoyment of the suit schedule property. The plaintiff has not properly identified the suit schedule property, as such liable to be dismissed for want of better particulars. Hence, they prayed to reject the application.

04. Heard. Perused the I.A.No.I and the documents produced along with the I.A. No.I.

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

- 1. Whether the plaintiffs proves prima-facie case in their favour?**
- 2. Whether the plaintiff proves the balance of convenience lies in their favour?**
- 3. Whether the plaintiffs would suffer irreparable loss and injury if the**

prayer of interim injunction is not granted?

4. What order?

06. My answers to the above points are as under :-

Point No.1-3 : In the Negative.

Point No.4 : As per my final order for the Following:

:: R E A S O N S ::

07. Point No.1:- The present suit is filed by the plaintiffs seeking the relief of permanent injunction against the defendants. The case of the plaintiff is stated above.

08.It is well settled principle of law that for grant of temporary injunction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In **Dalpat Kumar V/s Pralhad Singh reported in AIR 1993 SC 276** the Hon'ble Apex Court explained these factors as follows;

i. There is a serious disputed question to be tried in the Court and that an act, on the facts before the Court, there is

probability of his being entitled to the relief asked for by the plaintiff/defendant.

ii. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and

iii. That the comparative hardship or mischief or inconvenience which is likely to offer from withholding the injunction will be greater than that would be likely to acted from granting it.

09. On careful scrutiny of the documents placed by the plaintiff at this stage, it appears that the case of the plaintiff is with respect to declaration and injunction. However, it is pertinent to note that when the plaintiffs seek for relief of declaration and injunction, the identification of the suit schedule properties is very much importance. However, when one sees the schedule of the suit along with rough sketch, partition deed and plaint averments which states that the western side of the suit schedule property has been encroached by the owners of Sy.no.589, it is clear that the identity of the property is disputed. Whereas boundaries

shows that Sy.no.589 is situated on the northern side. When the very identity of the suit schedule property is disputed, the interference from the defendants cannot be ascertained. Moreover, there is no prima-facie material to show that the defendants are trying encroach the suit schedule property. Therefore, it appears that there is no prima-facie case in favour of the plaintiffs. Hence, it is has to be observed that there is no prima-facie case in their favour. Therefore, it can be held that the plaintiff has not made out prima-facie case. Therefore, point no.1 has to be answered in the **Negative**.

10. Point no.2 and 3:- These points are interconnected, as such they are taken up together for discussion in order to avoid repetition of facts. However, from the materials provided by the plaintiffs and as discussed above, it is prima-facie appearing that the plaintiffs have not proved prima-facie case. Therefore, the question of balance of convenience and irreparable loss does not arise at all. Hence, the point no.2 and 3 have to be answered in the **Negative**.

11 Point No.4:- In view of reasons and findings given on the aforesaid points, I proceed to pass the following:-

:: O R D E R ::

I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is hereby rejected.

No order as to costs.

(Dictated to the stenographer, directly on the computer, typed by him, corrected by me signed and then pronounced by me in the Open Court on this the **22nd day of August 2025**)

**(Smt. C.Mahalakshmi)
Civil Judge and JMFC., Kudligi**