

**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HARAPANAHALLI.**

**Present: SMT. B.G.SHOBHA, M.A., LL.B.,**  
Civil Judge & JMFC, Harapanahalli.

Dated this the 24<sup>th</sup> day of November 2020

**O.S. NO.115/2020**

**Petitioner/s:** Dyamalli Ramappa

**(Rept. by Sri. K.B.R., Advocate)**

**-V/s-**

**Respondent/s:** Meda Basappa and others

**(Rept. by Sri. S.B., Advocate)**

**I.A. No.I**

Applicant : Dyamalli Ramappa

**Vs.**

Respondents : Meda Basappa and others

**ORDERS ON I.A.NO.I FILED U/O 39, RULE 1 AND 2 R/W.**  
**SECTION 151 OF CPC**

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 read with section 151 of CPC with a prayer to grant an ad-interim temporary injunction restraining the defendant Nos.2 and 4 or their agents from constructing a illegal building as mentioned in plaint sketch marked as 'ABCD' over the suit schedule property till pending disposal of the suit.

2. Said application is accompanied with an affidavit sworn by the plaintiff wherein he has stated that the defendant Nos.2 and 4 are without obtaining valid license started to construct a house by violating rules and regulations. They are not the owners of the suit schedule property and said property exclusively belongs to the plaintiff. In this regard the plaintiff challenged the mutation of suit schedule property which stands in the name of defendant Nos.1 to 4 before the revenue authorities. Said revenue appeal was allowed and recorded his name in ROR with respect to the suit schedule property. He has given an objection on 04-01-2020 initially to stop the illegal construction made by the defendant Nos.2 and 4. The grama panchayath authorities have not taken suitable action in accordance with law and not stopped the illegal construction work of the defendant Nos.2 and 4. The plaintiff asked the grama panchayath Halavagal to grant katha extract, building license, building sketch and other relevant documents regarding construction of building of defendant Nos.2 and 4. In spite of repeated request they have not provided any documents till this day. Even after protest they have high handedly continued their construction work without having any right, title and interest over

the suit schedule property. The defendant Nos.2 and 4 by violating building bylaws of the grama panchayath and license regulations converted the agricultural land in to non-agricultural purpose. Before construction of said house the plaintiff requested them to not to construct a building over the suit schedule property, but they have stated that said property has been purchased by them. Further the plaintiff requested them where actually they have purchased property and suggested to construct the building over said purchased property, but they have initially agreed to stop the construction work and now they are trying to construct illegal building over the suit schedule property which is marked as 'ABCD' in the plaint sketch. They are bent upon to complete their new house construction without caring the rights of the plaintiff. All the efforts of the plaintiff to stop the illegal construction went in vain. The plaintiff is not in a position to resist the high handed activities of the defendants. He apprehends that at any time they may complete their illegal construction over the suit schedule property. If they have succeeded, the valuable rights of the plaintiff over the suit schedule property will be jeopardized and it will leads to multiplicity of proceedings which cannot be compensated by any other means. The

plaintiff is not in a position to protect his property without the assistance of this Court. The balance of convenience lies in his favour. If the temporary injunction is granted no prejudice will be caused to the defendants. On the other hand if the injunction is not granted he will be put to irreparable loss and injury. Hence prayed to allow the application.

**3.** The defendant No.2 resisted said application by filing memo stating that written statement filed by him may be treated as objection to said application. In his written statement he has denied the allegations of the plaintiff made in the plaint. Further contended that the suit schedule property is originally belonging to one Dyamalli Mallappa. Said Dyamalli Mallappa acquired said property through oral partition held between himself and his brothers. Thereafter on 18-06-1977 one Rudramma W/o Ramachandrappa has purchased said property through registered sale deed. By virtue of said sale deed katha was mutated in her name. Thereafter she became owner in possession of said property. After her death the katha was changed in the name of her husband by name Nevara Ramachandrappa. He is the only owner of the suit schedule property. Due to inconvenience he has sold the suit schedule

property to defendant No.1 on 02-01-2006 through registered sale deed. By virtue of said sale deed katha was changed in the name of defendant No.1. Since the date of purchase the defendant No.1 is owner in possession of said property. Said property is situated at Halavagal revenue village, Harapanahalli taluk in Sy.No.326/CP2, thereafter during the year 2006-07 as per order of ADLR it was poded as Sy.No.326/C2. Now said property is having Sy.No.326/C2. The defendant Nos.1 to 4 have constructed house in the suit schedule property since said house is in dilapidated condition, they are intending to construct new house, for which they have obtained construction license from Halavagal grama panchayath on 29-01-2020. As per said license they have constructed residential house in the land to an extent of east-west:14.6 feet and north-south:43 feet out of suit schedule property and residing therein. The remaining suit schedule property is vacant space. They have paid tax with respect to said house on every year. Said house is having old door No.122 and new door No.127. The grama panchayath authorities have given assessment and demand register extracts pertaining to said house. The remaining vacant site is belonging to defendant No.1 and his family and they are having right, possession over said site.

The plaintiff has no manner of right and possession over the same. On 19-09-2018 the defendant Nos.1 to 4 have divided their family property through registered partition deed. As per said partition 0.04 cents each out of suit schedule property were fallen to the share of defendant Nos.2 and 4. In order to grab the suit schedule property, the plaintiff has obtained order from Assistant Commissioner on 08-07-2020 by giving false information in objection and got mutated in his name. The defendant No.1 immediately preferred appeal against order of Assistant Commissioner before District Commissioner, Bellari in appeal No.26/2020-21, the District Commissioner has stayed the order of Assistant Commissioner and said case is in the stage of enquiry. The plaintiff has suppressed said fact before this Court. The defendant Nos.1 to 4 have not encroached the property as shown by the plaintiff in sketch, said property is belonging to them. The plaintiff has prepared said sketch as per his convenience. The defendant No.1 had filed suit with respect to the suit schedule property in OS.No.128/2019 for declaration of title and permanent injunction and he had also filed another one suit in OS.No.32/2019 for permanent injunction before this Court. Said both suits are

pending, the plaintiff has suppressed said fact and filed this false suit. Hence prayed to dismiss the suit.

4. Heard arguments on both side.

5. On perusal of the pleadings, documents and application, the points that arise for my determination are:

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction ?
2. Whether the plaintiff proves balance of convenience lies more in his favour ?
3. Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted ?
4. What order ?

6. My answer on above points is as follows:

Point Nos.1 to 3 : In the negative;  
Point No.4 : As per the final order,  
for the following;

### **REASONS**

**7. Point No.1:-**On perusal of contention urged by both parties, it appears that this suit is filed for the relief of declaration of title and consequential relief of mandatory injunction with respect to the suit schedule property. The present application is filed by the him with a prayer to grant an ad-interim order of temporary injunction against the defendant Nos.2 and 4 restraining them from constructing a

illegal building as mentioned in the plaint sketch marked as 'ABCD' till disposal of the suit. In order to prove the allegation of the plaintiff he has produced as many as 23 documents. Out of them I have considered the documents which required for adjudication of this application. According to the plaintiff he has acquired suit schedule property through pavathi varasu. His father has acquired said property through oral partition and as per said oral partition ROR stands in his name from 1980-81 to 1993-94. He has produced re-settlement register extract which reveals that in the year 1976 the property bearing Sy.No.326/C measuring 2.06 acres was standing in the name of Dyamana Basappa. The RTC extracts from the year 1978 to 1982-83 reveal that 2.06 acres of land in Sy.No.326/C was standing in the name of Dyamalli Basappa, thereafter out of 2.06 acres the land to an extent of 1.98 acres was standing in the name of Dyamana Basappa and 0.08 cents was standing in the name of Nekara Rudramma W/o Ramachandrappa from the year 1988 to 1999. The another one RTC extract from the year 1999 to 2001 reveals that said 1.98 acres of land in Sy.No.326/C1 was standing in the name of Basappa Dyamalli. The another one RTC from the year 1990 to 2001 reveals that said 0.08 cents in Sy.No.326/C was

standing in the name of Rudramma Nevar. The RTC from the year 2001 to 2011 discloses that said 1.98 acres of land was standing in the name of Basappa Dyamappa S/o Hanumappa who is father of plaintiff. The RTC from the year 2012 to 2020 discloses that said 1.98 acres of land was standing in the name of B. Beerappa S/o Bilichodu Dilleppa who is defendant No.5 herein. The RTC from the year 2001 to 2004 pertaining to land measuring 0.08 cents discloses that said land is standing in the name of Rudramma Nevara. The RTC from the year 2005 to 2020 reveal that said 0.08 cents of land is standing in the name of Meda Basappa S/o Ningappa who is defendant No.1. The zerox copy of sale deed reveals that on 18-06-1977 one Dyamalli Mallappa has executed said sale deed in favour of Rudravva W/o Ramachandrappa with respect to the land measuring 0.08 cents out of Sy.No.236. In said sale deed the boundaries of said land is mentioned as east by land of his brother Dyamalli Basappa, west by remaining land in same survey number which retains for him, north by land of his brother Dyamalli Basappa and south by Government road. The another one sale deed reveals that on 02-01-2006 one Ramachandrappa S/o Hanumappa who is husband of Rudravva has executed sale deed in favour of Meda Basappa S/o

Ningappa who is defendant No.1 with respect to the land measuring 0.08 cents out of Sy.No.326/CP2. In said sale deed the boundaries of said property is mentioned as east by land of Mallappa, west by land of Durgada Hanumappa, north by Dyamalli Yellavva and south by road. This boundary is not tallying wit the boundary mentioned in earlier sale deed dated 18-06-1977. The mutation extract reveals that said 0.08 cents of land in Sy.No.326/C was mutated in the name of Rudramma by virtue of sale deed dated 18-06-1977. Thereafter it was mutated in the name of N.Ramachandrappa who is her husband by virtue of pavathi varasu bearing MR.No.6/2005-06. Another one mutation extract reveals that thereafter said 0.08 cents of land was mutated in the name of Meda Basappa S/o Ningappa by virtue of sale deed bearing MR.No.200/05-06. The certified copy of sale deed dated 19-09-2003 reveals that one Dyamalli Basappa who is father of plaintiff has executed said sale deed in favour of Yellavva Bilichodu with respect to the land measuring 1.98 acres out of Sy.No.326/C1. The boundaries of said property is mentioned as east by G. Thathappa, west by land of Dyamalli Mallappa, north by land of Durgada Hanumappa and south by land of Akkasali Manappa. The certified copy of gift deed dated 29-12-2011 discloses that said

Bilichodu Yellavva has executed said gift deed in favour of B.Beerappa who is defendant No.5 herein with respect to the said land measuring 1.98 acres. In said gift deed the boundaries is mentioned as east by land of Thatheshappa, west by land of M.Basappa, north by land of K. Erappa and south by Government road. The boundaries mentioned in gift deed is not tallying with the boundaries mentioned in the sale deed dated 19-09-2003 which was purchased by Yellavva Bilichodu. The certified copy of partition deed discloses that there was a partition between Meda Basappa, Mylamma, M. Parashurama @ Ramappa and Geethamma. The photographs disclose that already the house is under construction, almost it was in final construction stage.

**8.** On the other hand to substantiate the contention of the defendant No.2 he has produced documents as many as 8 documents. He has also produced zerox copy of sale deed dated 18-06-1977. He also produced sale deed dated 02-01-2006 which reveals that one N.Ramachandrappa S/o Hanumappa has executed sale deed in favour of Meda Basappa S/o Ningappa with respect to the land measuring 0.08 cents in Sy.No.326/CP2. The boundaries of said property is mentioned as east by land of Mallapa, west by land

of Durgada Hanumappa, north by land of D. Yellavva and south by road. He also produced partition deed dated 19-09-2018 which reveals that it was held between Meda Basappa, Mylamma, M. Ramappa and Geethamma. The license reveals that the Halavagal grama panchayath authorities have issued said license on 29-01-2020 with respect to the land bearing door No.127 to an extent of east-west:14.6 feet and north-south:43 feet. The boundaries of said extent is mentioned as east by shop of Bilichodu Beerappa, west by land of Medar Parashuramappa, north by land of Bilichodu Beerappa and south by remaining land of Meda Basappa and road. The tax paid receipts disclose that Meda Basappa had paid tax with respect to the door No.127. The mutation extract reveals that 1.88 acres of land out of Sy.No.326/C1 was mutated in the name of Basppa Dyamappa and 0.08 cents in Sy.No.326/C2 was mutated in the name of Meda Basappa. The photographs produced by the defendants disclose that the construction of house work was completed.

**9.** The aforesaid documents produced by the both parties make clear that there is a dispute regarding ownership and possession over the suit schedule property. During the course of

arguments the counsel for plaintiff argued that in sale deed dated:18-06-1977 the survey number was wrongly mentioned as 326/C instead of 236/ABD, but boundaries are correctly mentioned. As on the date of execution of said sale deed the alienated property was not standing in the name of seller who is Nekar Rudravva. Dyamalli Mallappa has not challenged the mutation proceedings which was rejected. However whether survey number was wrongly mentioned in sale deed dated:18-06-1977 and whether alienated property was not standing in the name of Nekar Rudravva ? All these disputes cannot be decided at this stage. On the other hand during the course of arguments the counsel for defendants submitted that the boundaries mentioned in sale deed dated:18-06-1977 and sketch produced by the defendant are one and the same, as such the boundaries mentioned in sale deed is correct. On perusal of boundaries mentioned in sale deed dated:18-06-1977 and sketch produced by the plaintiff it discloses that in sketch there is survey number only mentioned and in sale deed the name of the persons is mentioned. As such at this stage dispute regarding boundaries cannot be decided, after ful-fledged trial only it can be decided.The main relief sought by the plaintiff in this application is to restrain

the defendant Nos.2 and 4 from constructing building illegally over the suit schedule property till disposal of the suit. But the photographs produced by the both parties disclose that the construction of building work was already completed. As such restraining of defendant Nos.2 and 4 do not arise at all. Whether plaintiff is owner of suit schedule property ? Or whether the defendants have constructed house by encroaching property of the plaintiff ? are the points for consideration. Said fact cannot be decided at this stage, it requires full-fledged trial. If construction of building work is in the initial stage, the matter would be different and in the instant suit as per photographs already construction work was completed.

**10.** Moreover the contention of the defendant No.2 discloses that there was a suit in OS.No.128/2019 and 32/2019 are pending before this Court with respect to the suit schedule property. During the course of arguments the counsel for plaintiff argued that the plaintiff is not a party to said suits. However when there are suits are pending on same suit schedule property, in this suit injunction cannot be granted. The arguments of counsel for plaintiff makes clear that though the plaintiff is not a party to said suits, he is

having knowledge about pending of suits with respect to the suit schedule property. Under such circumstances the plaintiff would have pleaded regarding pending of suits with respect to the suit schedule property in the plaint. The non-mentioning of said fact discloses that he has suppressed said fact. If at all he comes with clean hand he would have disclosed said fact. Moreover the temporary injunction is a equitable remedy. Under such circumstance the party who approaches the Court he has to come up with clean hand without suppressing the material fact. In the instant suit the plaintiff suppressed the material as discussed above. Under such circumstance the relief sought by the plaintiff in this application cannot be granted. Moreover he has failed to establish prima facie case when there is a construction work was completed restraining of defendant Nos.2 and 4 do not arise at all.

**11.** However it is principle of law that the grant of interlocutory injunction is discretionary remedy and in exercise of judicial discretion granting or refusing to grant injunction, the Court will have to take following principles.

1. Whether a person seeking temporary injunction has made out prima facie case?

2. Whether balance of convenience lies in his favour i.e. whether it could cause greater inconvenience to him if injunction was not granted?
3. Whether a person seeking temporary injunction would suffer irreparable injury if injunction was not granted.

Among aforesaid conditions at least two conditions should be satisfied by the party. Mere proof of one of the three conditions does not entitle for the party to obtain temporary injunction. In view of aforesaid discussion I am of the opinion that in the instant suit the plaintiff has failed to establish prima-facie case. Accordingly point No.1 is answered in the **negative**.

**12. Point Nos.2 and 3:-** These two points are considered together as they require same set of discussion and pleadings.

When the plaintiffs failed to prove the existence of prima-facie case, considering balance of convenience and irreparable loss does not arise at all. In view of the principles enunciated in a decision reported in **ILR 1989 Karnataka 1701 between Gowrishankara Swamigalu V/s. Sri Siddagangamutt and others**. The proposition that 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 question of balance of convenience and

irreparable loss need not be considered, since the plaintiff would fall at the very threshold. The relief of injunction is remedy in equity. Hence such relief must be bestowed only on those who come up with clean hands. In view of the above discussion this Court is of the opinion that balance of convenience does not lies in favour of the plaintiff. He would not be put to irreparable loss or injury, if the temporary injunction is not granted. Therefore this Court is of the opinion that the application filed by the plaintiff is liable to dismissed. Accordingly point Nos.2 and 3 are answered in the **negative.**

**13. Point No.4**:- In view of above discussion, I proceed to pass the following;

## **ORDER**

**IA.No.I filed by the plaintiff U/O. 39  
Rule 1 and 2 R/w section 151 of CPC is  
hereby dismissed.**

*(Dictated to stenographer, after her transcription, corrected and then pronounced by me in the open Court on 24<sup>th</sup> day of November, 2020.)*

**(B.G. SHOBHA)  
Civil Judge & JMFC,  
Harapanahalli.**

**(Order pronounced in the open Court  
vide separately)**

**ORDER**

**IA.No.I filed by the plaintiff  
U/O. 39 Rule 1 and 2 R/w section  
151 of CPC is hereby dismissed.**

**Civil Judge & JMFC,  
Harapanahalli.**