

KADG420040852024

**IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.**

Present : Shri.Manu Sharma S.P.,
B.A.LAW.LL.M.

Civil Judge and JMFC, Harapanahalli

Dated this 17th day of February, 2025

OS No.349/2024

PLAINTIFF/s

Smt. Gouribai
(Shri.C.N.N Adv.,)

-Vs.-

DEFENDANT/s

Shekranaik and others
(D-1 & 2 by Sri.V.M.N Adv.)
(D-3 by Sri.M.S.B Adv.)

ORDER ON IA No.I

PLAINTIFF/s/APPLICANT/s Smt. Gouribai

-Vs.-

DEFENDANT/s/OPPONENT/s Shekranaik and others

ORDER ON I.A.NO.I

Plaintiff has filed application U/Order 39 Rule 1 and 2 R/w Section 151 of CPC for restraining the Defendants from trespassing into the suit

schedule property and causing interference in the house construction work of the Plaintiff over the suit schedule property till disposal of the suit.

2. Application is supported by affidavit of Plaintiff.

3. Plaintiff has stated in the affidavit that she is owner in possession of the suit schedule property and she derived the same from her husband. She has further stated that her husband acquired suit schedule property in the family partition entered into between himself and his brothers. She has further stated that she is making construction in house site bearing Door No.495. She has further stated that suit schedule property is described as 'WXYZ'. Plaintiff further stated that she has acquired E-Swathu from the concerned panchayath. She has further stated that suit schedule property is situated in property bearing Sy.No.80 coming within the limits of Grama Tana. She has further stated that suit schedule property measures East – West 12.192 meters and North – South 6.7056 meters and it is vacant site in possession and enjoyment of the Plaintiff. Husband of the Plaintiff was residing in the said property after constructing the house. During his lifetime Mandala Panchayath has issued Door No.214 to the said house

in the name of her husband. She has further stated that her husband had been paying tax to the panchayath. She has further stated that aforesaid Mandala Panchayath was changed as Gramapanchayath in the year 1993. She has further stated that after it was changed as Gramapanchyath she has been paying tax to the Gramapanchayath. She has further stated that after death of her husband, brothers of her husband partitioned the property orally. She has further stated that 'WXYZ' shown in the hand sketch map fell into the share of her husband and she is constructing the house over the same. She has further stated that Defendants are not having any right title and interest over the suit schedule property but inspite of the same they are interfering in the construction work of the Plaintiff. Plaintiff has further stated that she is not having any property except suit schedule property. Plaintiff has further stated that she has already stored the construction materials in the suit schedule property. She has further stated that Defendants are interfering in the construction work to cause the financial loss to the Plaintiff. She has further stated that she has submitted complaint to PDO in that regard, but PDO has not taken any action. She has further stated that her son also gave complaint to police but police have not taken any action stating that dispute is civil in nature. Hence, the

application.

4. Defendant has filed memo to consider written statement as counter. In the written statement apart from denying the case of the Plaintiff Defendants have raised following contentions:-

Plaintiff has not produced documents to show her title over the suit schedule property. Plaintiff has not pleaded source of her title. Plaintiff has not pleaded how her husband or ancestors acquired title over the suit schedule property. Plaintiff has produced unregistered and incomplete documents. Plaintiff has not produced any documents to show that there was oral partition between her husband and his brother and suit schedule property fell into share of her husband in the said partition. Plaintiff has not produced any documents to show that she is having right to const the house in the suit schedule property. Plaintiff has relied only on revenue records and tax paid receipts which are not sufficient to show her title over the suit schedule property. Plaintiff has produced digital E-Swathu document which is not in accordance with section 22 of Indian Evidence Act. Suit filed by the Plaintiff for bare injunction without seeking declaration of title is not maintainable in the eyes of law. Plaintiff has not produced any approved plan or sketch

issued by Gramapanchayat or other competent authorities. Plaintiff has filed suit to defeat the rights of the Defendants. Plaintiff has not paid proper court fee and she has not produced any documents in support of her claim. Based on said contentions Defendants have prayed for rejection of application.

5. Based on application and counter, following points arise for my consideration:-

- 1] Whether Plaintiff has made out prima facie case for grant of temporary injunction?
 - 2] Whether balance of convenience lies in favour of Plaintiff in the present case?
 - 3] Whether Plaintiff suffers irreparable loss and hardship if temporary injunction is not granted?
 - 4] What Order?
6. Heard arguments and perused records of the case.
7. My findings on above points are as here 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 following:-

REASONS

8. Point No.1:- Here Plaintiff has sought for temporary injunction to restrain the Defendants from causing interference in the

construction work over the suit schedule property. Plaintiff has stated that she has acquired suit schedule property from her husband and her husband has acquired the same in the oral partition between him and his brothers and suit schedule property fell into his share in the same. In support of her claim Plaintiff has produced E-Swathu standing in her name issued by the panchayath. She has also produced copy of tax paid receipts and and she has also produced documents to show that suit schedule property situated within gramatana limits. Further Plaintiff has also produced photographs. Per contra, Defendants in their objection have disputed the very title of the Plaintiff. It is to be noted that Plaintiff is claiming her right to make construction over the suit schedule property on basis of her title over the same. Therefore, it is incumbent upon the Plaintiff to produce prima-facie documents to show her title over the suit schedule property. But here Plaintiff except E-Swathu document has not produced any other documents to show her source of title over the suit schedule property. Plaintiff has not produced any documents standing in the name of her husband or his ancestors pertaining to the suit schedule property. Plaintiff has also not produced any documents to show that her husband had joint right with his brothers over the suit schedule property or to show that earlier suit

schedule property was standing in the name of ancestors of husband of Plaintiff. Plaintiff has not explained with documents as to how title has flown upon her. Although Plaintiff has stated that suit schedule property fell into share of her husband in oral partition entered into between her husband and his brothers she has not produced at this stage any documents to show that said oral partition has been acted upon by producing the supportive revenue records entered into on the basis of oral partition. She has not given sufficient details about oral partition by explaining which other properties were the subject matter of the said partition and she has also not given the details of property allotted to the respective share of brothers of her husband. Moreover, plaintiff has not even pleaded the date of oral partition. So here no prima facie materials are forth coming on record to show that husband of Plaintiff acquired suit schedule property under oral partition. However, documents viz., tax paid receipts, photographs etc., are not sufficient to show prima facie title of the Plaintiff over the suit schedule property. It is also relevant to note that although E-Swathu indicates prima-facie possession of the Plaintiff over the suit schedule property, in view of the fact that Plaintiff has asserted her right based on her title she ought to have produced prima-facie documents with respect to flow

of title on her in respect of the suit schedule property. Moreover, it is also relevant to note that as per decision of Hon'ble Supreme Court of India reported in 2011 (6) SCC 617 interim relief that is identical to the final relief sought cannot be granted. In the present case also relief claimed in the present application is identical with the main relief and hence in the light of said decision interim relief cannot be granted. Therefore, it is to be held that Plaintiff has not made out prima-facie case for grant of temporary injunction at this stage. Hence, I answer Point No.1 in the Negative.

9. Point No.2 and 3:-As these two points are interconnected they are taken up together for common discussion in order to avoid repetition. As already discussed, Plaintiff has not made out any prima-facie grounds to grant of temporary injunction. Therefore, it is not possible to hold that balance of convenience lies in favour of Plaintiff. Under such circumstances, it is also equally not possible to come to conclusion that if temporary injunction is not granted Plaintiff would be put to irreparable loss or hardship. Hence, I answer point No.2 and 3 are in the Negative.

10. Point No.4:- For the reasons stated above I am of the opinion that, application filed by Plaintiff is to be rejected. In the result, following:-

ORDER

Application filed by Plaintiff under
Order 39 Rule 1 and 2 read with section
151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer transcribed and typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this 17th Day of February 2025.)

(Manu Sharma S.P)
Civil Judge and JMFC.,
Harapanahalli.