

IN THE COURT OF THE PRL. CIVIL JUDGE AT: MALUR**O.S.No.503/2007*****Dated this the 2nd day of February 2015******PRESENT: Rajanna Sankannanavar,
B.A.,LL.B.(Spl.)
Prl.Civil Judge, Malur.******Plaintiff/s:*** *Sri. R.Gopal S/o Late Ramaiah, 62yrs.,
R/o Lakkur Village, Lakkur Hobli, Malur Taluk
(Sri.L.K.Adv for plaintiff)****V/s.******Defendant/s:*** *1. Sri. Venkatronappa, S/o Late Goparayappa,
75yrs.,
2. Sri.Gopal S/o Venkatronappa, 35yrs.,
3. Smt.Munirathnamma D/o Venkatronappa,30yrs.,
4. Sri. M.Narayanappa S/o Late A.Narayanappa, 45yrs.,
All the defendants are R/o Lakkur village,
Lakkur Hobli, Malur Taluk.
(Sri.M.M.R. Adv. for Deft-4, D.1-Dead,
D.2-D.3-Exparty)***ORDER ON: I.A.No.4*****Applicant's:*** *Sri.R.Gopal****V/s.******Respondents:*** *Sri. M.Narayanappa (D4)***ORDER ON I.A.No.4 U/O 39 Rule 1 and 2 R/w.sec.151 of C.P.C.**

The plaintiff's-applicant has filed I.A.No.4 under U/O 39 Rule 1 and 2 of C.P.C. prays to grant an ad-interim order of temporary injunction against the defendant No.4 and on behalf of him from putting up any structure/construction in the schedule property, till disposal of the suit. The facts of the accompanied affidavit of I.A.No.4 are as follows:-

2. *The suit schedule property is self acquired property of one Gopaiah. The Gopaiah S/o. Late Goparayappa had executed will in favour of me, after the demise of said Gopaiah, I have acquired the*

title, interest and in possession over the suit schedule property. The defendants have no right, possession over the suit schedule properties. The defendant No.1 to 3 have manipulated the records with respect of suit schedule property. Later without knowledge and consent of me they have sold the suit schedule property in favour of defendant No.4. Now the defendant No.4 is trying to constructing the building in the suit schedule property. And I have got a prima-facie case and balance of convenience lies in my favour, if this application is not allowed I will be put to great hardship. Hence he prays to allow the application.

3. *The defendant No.4 filed objection to I.A.No.4 same is as follows:-*

4. *The defendant No.4 denied all averments made in the affidavit. Further stated that, the boundaries shown in the plaint schedule and in the IA.No.4 schedule are totally different and are not tally with each other. The defendant No.1 and late Gopaiah are brothers and they are sons of Late Goparayappa. The property bearing Janjar No.281, property No.395 measuring East to West 42feets, North to South 78feets, was belongs to defendant No.3 and late Gopaiah. Subsequently, under partition effected them, the above property had fallen to the share of defendant No.3. Accordingly as per partitioned Lakkur Panchyath authorities had changed the katha in his name. Subsequently, out of the above said property. The defendant No.1 to 3 have out of totally measurement property alienated the property measuring East-West-42feets, North-South-38feets within specific boundary which is mentioned in the registered sale deed. Since from the date of sale deed the defendant No.4 is the owner and in possession over the suit schedule property. On the virtue of sale deed the Lakkur Grama panchyath authorities have changed the katha in the name*

of defendant No.4. Later defendant No.4 has laid a foundation measuring East-West:33feet, North-South:19feet out of the total extent of the suit schedule property. As such before filing the above suit by the plaintiff, the defendant has laid foundation and raised 8 pillars of 8 feet height on the said foundation and laid a Pandal on the 8 pillars in the suit schedule property. After filing of the above suit by the plaintiff, defendant-4 has not put up further construction on the suit schedule property. Hence the defendant No.4 prays to reject the application.

5. Heard the arguments of both side

6. The points that arise for my consideration are :

1. Whether the plaintiff has made out a prima facie in favour of him?
2. Whether the balance of convenience lies on applicant favour?
3. Whether the plaintiff put to hardship on refusal of T.I.?
4. What order?

7. My finding to the above points are as follows:

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 the following;

REASONS

8. **Point no.1:-** This suit filed by the plaintiff's against the defendant for relief of declaration of permanent Injunction over the suit schedule property on the virtue of un-regd. Will and the present application has been filed by the applicant-plaintiff's and prays to an-interim order against defendant No.4 from putting up any structure/construction in the suit schedule property. Firstly, Now this

suit stage for cross of PW.1. The applicant have taken specific contention in the affidavit that, the suit schedule property is self-acquired property of said Gopaiah S/o Late Goparayappa, but, except pleading there is no document produced by the applicant to showing that, the suit schedule property is self acquired property of said Gopaiah and also applicant has not been produced any material to show that the said Gopaiah was in possession and enjoyment of the suit schedule property. Secondly, the applicant has produced demand extracts and Land/House Tax assessment extract, by perusing the same prima-facie shows that, those documents are not standing in the name of said Gopaiah S/o Goparayappa. But, those documents standing in the name Venkataronappa who is the 1st defendant in this suit. Moreover, those documents are not title deeds with respect of suit schedule property, further those documents are assigning the tax and collecting the tax by concerned authority with respect of suit schedule properties. Further, the defendant No.4 has taken specific contention that, before filing of this suit by the plaintiff def.no.4 has been laid the foundation and raised the 8 pillars of 8 feets height and laid a pandal on the said 8 pillars in the suit schedule property. Further, stated that, after filing of the said suit, the defendant No.4 has not put up any further construction on the suit schedule properties. By looking to these contention taken by the defendant No.4, it is prima-facie shows that, the defendant no 4 has not tried to put up construction on the suit schedule property, by corroboration of same a defendant No.4 filed photo along with C.D. by perusing the same, it is clearly shows that, the defendant no.4 has been already put up raised 8 pillars and laid a pandal on the 8 pillars as stated by def.no.4. In the above all reason this court **answered point No.1 in the Negative.**

09. Point NO.2 and 3:- As these two issues are inter-related, hence these issues taken up together for discussion to avoid

repetition of reasons. This suit filed by the plaintiff for the relief of declaration and permanent injunction only in this nature of suit at this stage plaintiff has not been produce sufficient documents to show that the Gopaiah was in possession and enjoyment of suit schedule property and plaintiff has not been produced documents to show that he is in possession over the suit schedule property. secondly, applicant has not approached this court with clean hand and def.no.4 has specifically stated that he has not put up any construction over the suit schedule property, Such being the case balance of convenience is not lies in favour of applicant and If, I.A. is not allowed hardship no will be cause to applicant, if IA is allowed it will be cased to other side. **Hence I answered point No. 2 and 3 in the Negative.**

10. Point No.4: In view of the aforesaid reasons I proceed to pass the following:

ORDER

**The I.A.No.4 filed by the applicant-
plaintiff's U/o 39 Rule 1 and 2 of CPC is
hereby dismissed with cost of Rs.250/-**

(Dictated to the Stenographer Directly on the system and then corrected by me and then pronounced by me in the open court on this the 2nd day of February 2015)

**(Rajanna Sankannanavar)
Prl. Civil Judge and JMFC
Malur.**

*(Orders pronounced in the open
Court vide separate)*

ORDER

*The I.A.No.4 filed by the
applicant-plaintiff's U/o 39 Rule
1 and 2 of CPC is hereby
dismissed with cost of Rs.250/-*

Prl. Civil Judge, Malur.