

KABR220110492024



**IN THE COURT OF THE III ADDL. CIVIL JUDGE & JMFC, AT:
ANEKAL.**

**Present: Smt. Vinutha B.S. B.B.M., LL.B.,
III Addl. Civil Judge & JMFC.,
ANEKAL.**

Dated: This, the 15th day of January 2025

ORIGINAL SUIT NO. 840/2024

1	Sri.M. Babu Reddy, S/o Late A. Munireddy, Aged about 66 years, R/at: No.6/4, Hongasandra Village, Begur Hobli, Bangalore South Taluk, Bangalore-560068.
Plaintiff
	(By Sri.H.B.K Adv.)

V/s.

1	Sri. Mahesh R., Vice President, Karnataka Rashtra Samithi, R/at: Bendiganahalli Village, Attibele Hobli, Anekal Taluk, Bangalore-562107.
Defendant

(By Sri.K.C.R Adv)

ORDER ON IA-I U/o XXXIX R 1 & 2 R/w Sec 151 OF CPC

The plaintiff has filed the present application U/o XXXIX Rule 1 and 2 R/w sec.151 of CPC and thereby prayed to restrain the defendant No.1 or his agents, workmen or any one who claims rights through or under him from altering the nature of the suit schedule property till disposal of suit.

2. In the affidavit filed along with the present application the plaintiff has sworn to the facts that he has filed the present suit for the relief of permanent injunction against the defendant in respect of suit schedule property. The defendant No.1 is in practice to disturb the neighbor site owners by his unusual activities. On 05.11.2021 the defendant picked up quarrel with his neighbor landlord. The said neighbor owner namely Varun Malhotra has lodge a complaint against defendant No.1 on 06.11.2024 before Attibele police. In order to give trouble to the plaintiff the defendant No.1 has lodged a complaint before defendant No.2 alleging that the layout residence are not allowing his party to celebrate Kannada Rajyotsava and the public are not

allowed to pass through the layout. Like wise the small trader such as vegetable sellers, milk vans ect., are not allowed inside the layout. The neighbor landlords are unable to operate their agriculture activities. In fact none of the agricultural land owners have lodge any complaint against the existence of gate. On false complaint lodged by the defendant No.1 without making any inquiry the defendant No.2 has issued legal notice dated 28.10.2024 and on 16.11.2024 directing the layout authorities to demolish the compound and to remove the gate erected around the layout within 7 days. In fact the layout has been formed by providing all the necessary amenities such as road, park, drinking water, health facility along with security accessories, man power in order to maintain the smooth environment. The defendant No.1 jealously lodge a complaint before the authority on 21.10.2024. The defendant No.1 has no authority to question the ownership of layout or to direct them to alter the nature of the layout since the layout has been formed after fulfilling all the terms and conditions put forth by the norms of defendant No.2. But the defendant No.2 without making any inquiry blindly issued legal notice directing to remove the compound wall as the gate erected for the use of the

residence of layout. The said act of the defendant is illegal and not maintainable in the eye of law. On these grounds prayed to allow the application.

3. In the plaint the plaintiff has pleaded that, the plaintiff is the register general power of attorney holder in respect of property bearing Sy.No.57 measuring 16 acres 33 guntas, he converted the said land from agriculture to residential purpose vide order dated 28.03.2009. The suit schedule property is the self acquired property of one Lokesh and Nagabhushan who are the sons of Munireddy. They being the joint owners, were in peaceful possession and enjoyment of the suit property. The plaintiff is the younger brother of aforementioned owners. They have executed GPA in favour of plaintiff on 26.05.1989. The GPA holder in the capacity of the GPA as obtained conversion order and formed the layout there. There are 292 sites situated in the layout and they have sold to the intending purchasers. Now the defendant No.1 is causing interference to the plaintiff s and purchasers of the sites.

4. Per contra the defendant in his written statement/objection has taken the defense that the suit of the

plaintiff is itself not maintainable on the ground that as per the admission of the plaintiff he has released an extent of 30,852 square meters for public utility roads and other civic amenities. The defendant being the resident of the said layout he has all rights to ingress and egress and use the public civil amenities released and relinquished for the purpose of public usage. Therefore the defendant and other public can not be restrained to use and enjoy the civic amenities relinquished by the developer. Defendant lodged a complaint before the Anekal Planning authority against the owners of the association for removal of illegal gates closed permanently for public usage by this defendant in the interest of public by considering the complaint placed by the defendant the said planning authority issued a notice to the plaintiff directing him to remove the same and allow the public to use the roads situated there. This fact triggered the plaintiff and obstructed to celebrate Kannada Rajyotsava festival inside the layout. On this grounds the defendant prays that the suit of the plaintiff is not maintainable. The defendant in his written statement have admitted the ownership of the plaintiff over the suit schedule property there after he also admits that plaintiff is

the GPA holder of his 2 brothers and he formed layout all these facts are admitted by the defendant. But the defendant says that, the plaintiff and owners associations have illegally installed a CC Tv camera without obtaining any sanction from local body and appointed a security body and installed a main gate from the main entries towards the eastern side of the suit schedule property by encroaching the public road relinquished by the plaintiff. On these grounds prayed to dismiss the application filed by the plaintiff.

5. From the above pleadings following points are arisen for court consideration.

P O I N T S

- i) *Whether the plaintiff has made out prima-facie case?*
- ii) *Whether the balance of convenience lies in favour of the plaintiff?*
- iii) *Whether irreparable loss and hardship would be caused to the plaintiff if temporary injunction is not granted?*
- iv) *What order?*

6. Heard the learned counsel for the plaintiff and the defendant peruse the materials placed on record. Having considering the pleadings, documents placed by both the parties

and argument canvased by the advocates of both the parties the
aforementioned points or answered as follows.

Point No.1: In the Affirmative,
Point No.2 : In the Affirmative,
Point No.3 : In the Affirmative,
Point No.4 : As per the final order

for the following;

REASONS

7. Point No.1: On perusal of the written statement filed by the defendant it is noticed that, defendant has admitted the major claim of the plaintiff. To be particular the defendant has admitted the ownership of the plaintiff's brother he has also admits that plaintiff is the GPA holder he has converted the property from agriculture to residential purpose. All these facts are considered as judicial admissions. As per sec.58 of Indian Evidence Act, admitted facts need not be proved hence court will not look into the documents pertains to the aforementioned facts.

8. It is the only defense of the defendant that, the plaintiff has constructed a gate around the suit schedule property which causing disturbance to the public at large to ingress and egress

into the neighboring properties. And it is also defense of the defendant that he has lodge a complaint before the concerned authorities for constructing the gate by encroaching the property which is left to the civic amenities. The concerned authorities have issued notice to the plaintiff to remove the gate put up there. No doubt the plaintiff without obtaining permission from the concerned authorities have put up the gate in the suit schedule property by encroaching the road which is left for the civil amenities but the defendant has already taken steps by filing the complaint before the concerned authorities. No where in the written statement the defendant has said that because of the compound wall put up by the plaintiff his civil rights are disturbed or it is causing interference to him which means no civil rights of the plaintiff are affected. Under such circumstances he can not direct the plaintiff to remove the compound wall because it is concerned authorities who has to issue direction to the plaintiff to remove the gate situated in the suit schedule property. At the time of canvassing the argument the plaintiff counsel has addressed that in order to avoid the illegal activities and to avoid the trespassers or the rowdy element into the suit schedule

property he has put up the gate in the suit schedule property. But in his argument the counsel has said that by taking proper permission from the concerned authorities he has put up the compound wall, which is against the law. But this court has no jurisdiction to say that the gate put up by the plaintiff is against the law hence he has to remove it. It is concerned authority who has to take action. Hence as stated supra the defendant can not take law into his hand. The ultimate option left to the defendant is to file complaint before the concerned department which is already done. Hence he can not cause interference to the plaintiff or he can not direct the plaintiff to remove the gate put up in the suit schedule property until and unless it cause obstruction or damages to his civil rights. Accordingly plaintiff has succeeded in proving that he has prima facie case and balance of convenience also lies in his favour if an order of injunction is not granted there might be chances of causing obstructions by the defendant which cause irreparable losses to the plaintiff on these grounds points No.1 to 3 are answered in the **Affirmative**.

9. Point No.4:- In the light of about discussion and reason made out under point No.1 to 3 this court proceed to pass

the following.

ORDER

The application filed by the plaintiff
U/o XXXIX Rule 1 & 2 R/w section 151
of CPC is hereby allowed.

The defendant No.1 or his agents,
workmen or any one who claims rights
through or under him are hereby
temporarily restrained from altering the
nature of the suit schedule property till
disposal of suit.

(Directly dictated to the Stenographer on computer, typed by him, corrected
by me and then pronounced in the open Court on this 15th day of January
2025)

**III Addl. Civil Judge & JMFC,
Anekal.**