



IN THE COURT OF ADDL THE CIVIL JUDGE & JMFC.,

SAKALESH PURA

:-PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,

Addl. Civil Judge & JMFC., Sakaleshpura.

Dated this the 9th day of December, 2024

O.S. NO. 128/2024

PLAINTIFFS : **Sri. B.D. Nagaraj and
others**

V/s.

DEFENDANT : **Sri. B.T. Ramesh**

I.A. No.II

Plaintiffs/Applicants : **Sri. B.D. Nagaraj and
others**

V/s.

Defendant/Opponent : **Sri. B.T. Ramesh**



ORDERS ON APPLICATION FILED BY THE PLAINTIFFS
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C.

The plaintiffs have filed this application under order XXXIX Rule 1 and 2 of CPC praying this court to pass an order of an ad-interim temporary injunction restraining the defendant, his agents, men or anybody claiming through him from putting up any construction over suit schedule “B” property till the disposal of the suit.

2. In the affidavit annexed along with the application, plaintiff No.1 has averred that, they have filed the present suit for the relief of declaration and possession in respect of suit schedule “B” property. The suit schedule property is the ancestral property of the plaintiffs, has fallen to the share of their father by name Dharmegowda. After his demise the revenue records got mutated in the name of their mother by name Hoovamma. After her demise, got mutated in the name of plaintiff No.1 and 2. Thus, they



became absolute owners in possession of the suit schedule property. That on 12.01.2023, the defendant tried to encroach suit schedule property and tried to construct the house. The plaintiffs have restrained the act of the defendant, whereas the defendant threatened that he would again encroach the suit schedule property. As such, the plaintiffs have filed requisition before Taluka Surveyor for measurement of the suit schedule property. That on 29.03.2023 they filed report stating that the defendant has encroached the property extent of 12 guntas. That on 22.03.2024, the defendant tried to lay down the foundation in suit schedule "B" property. In spite of request and demand, went in vain. The plaintiffs have got prima-facie case and balance of convenience in their favour. If the application is not allowed, they will be put to irreparable loss and injury. Hence prayed to allow the application.



3. Upon the service on summons, the defendant has appeared before the court through his counsel and filed objections to the application. It is his contention that the land bearing Sy No. 31/1, measuring 36 guntas of Yadavanahalli village, Hetturu Hobli, Sakaleshpura Taluk was originally belonging to the father of defendant by name Thimmegowda, after his demise, the revenue records of the said land got mutated the name of defendant. Thus, the defendant became the absolute owner in possession of the said property by growing the crops and valuable trees and also constructed the shops. He is in possession of the said property by fencing around since 80 years from the period of his father. The plaintiff has not impleaded other adjacent owners.

4. He has further contended that the defendant and his two brothers have partitioned Sy No. 31/1 measuring 36 guntas. The land to extent of 12 guntas each has fallen to



the share of defendant and his two brothers. The plaintiffs have produced the copy of survey report, whereas he has not impleaded the other parties who have alleged to have been encroached the property bearing Sy no. 31/5. The plaintiffs have given wrong boundaries and filed present suit. The plaintiffs have not pleaded anything as to towards which side the defendant has encroached the suit schedule property. The defendant has preferred an appeal before DDLR vide appeal No. 149/2024 challenging the survey report of ADLR. The plaintiffs have filed this suit only with intention to harass the defendant. Accordingly, prayed to dismiss the application.

5. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiffs have made out prima-facie case in their favour?



2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?

4. What order?

6. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

7. My finding on 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 the final order for the following

::REASONS::

8. **Point No.1 to 3:** Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.



9. The plaintiffs have filed the present suit for the relief of declaration and possession in respect of suit schedule property. The plaintiffs have mainly relied upon the copy of survey report. On perusal of the same, it appears on prima facie that the land bearing extent of 12 guntas in Sy No. 31/5 has been encroached by the adjacent owners. The land to an extent of 5 guntas in Sy No. 31/2 has been encroached by adjacent owner. Whereas, at this stage it appears that the said survey report does not disclose as to towards which side, the land has been encroached. Further, the plaintiff has also not pleaded as to on what basis the defendant has encroached the suit schedule "B" property. Hence, the same is required to be adjudicated after full fledged trial.

10. Further, it appears on prima facie that the alleged survey report is dated 23.03.2023. The plaintiffs have contended that the defendant tried to lay



down the foundation for construction of the house on 22.03.2024. But, the photographs produced by the plaintiffs themselves, it discloses that already the foundation work has been completed as on 22.03.2024. Interestingly, at the time of arguments, the learned counsel for the defendant has produced photograph of conducting Pooja for laying down the foundation work, wherein the plaintiffs have also participated in the said Pooja work and offered the pooja. The plaintiffs have not denied the said fact during the arguments. When, they have received the report of alleged encroachment on 23.03.2023 and when the defendant proceeded to construct the house on 22.03.2024, what impediment has caused the plaintiffs to prevent the same, whereas instead of the same, they have also participated in Pooja work for foundation work. Hence, at this stage, by looking into the above facts and circumstances, the plaintiffs have failed to make out



prima facie case and balance of convenience in their favour.

11. Further, at the time of arguments, the learned counsel for defendant has produced the copy of grant made by the government for having granted financial aid to construct the house. Hence, at this stage, if the application is allowed, it is the defendant who would put to irreparable loss and injury than in comparison with the plaintiffs. However, if the plaintiffs succeed in the suit, the defendant shall hand over the vacate possession of suit schedule property at his own cost. Accordingly Point No.1 to 3 are answered in the ***Negative***.

12. **Point No.4::** For the above discussed reasons, this court proceeds to pass the following:



::ORDER::

Application filed by the plaintiffs under order
XXXIX Rule 1 and 2 of C.P.C. is hereby dismissed.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in
the open court on this the 12th day of November, 2024]

[Lakshmi Narasimha R.V.,]
Addl. Civil Judge and JMFC,
Sakaleshpura.