

KAMS030078602023



**IN THE COURT OF THE XI ADDL.CIVIL JUDGE & JMFC, AT
MYSURU.**

:PRESENT:

Sri.Sanjay M Mallikarjunaiah,

B.E..L.L.B.,

XI Addl. Civil Judge & JMFC,
Mysuru.

DATED THIS THE 24th DAY OF MARCH, 2025

OS No.1536/2023

PLAINTIFF: Smt.Yashodha.M
W/o Mahadeva,
Aged about 31 years,
R/at No.202, Kanakagiri,
Sewage Farm Road,
Vidyaranyaapuram, Mysore.
(By Sri.S.K., Adv.,)

-V/s-

DEFENDANTS: 1. M.S.Kumar
S/o Late M.V.Subbarao,
Aged about 61 years,
R/at No.77, Srinivasa Krupa,
NGO Colony, Rajeev Nagar,
Mysore.
2. M.Manjunatha
S/o Late Mariswamy,

Aged about 45 years,
R/at No.149, Koppaluru
Teachers Layout, Mysore.

3. Smt.D.A.Kamala
W/o M.Manjunatha,
Aged about 40 years,
R/at No.149, Koppaluru
Teachers Layout, Mysore.
(By Sri.S.P.M., Adv)

IA NO.I/2023

Applicant/Plaintiff: Yashoda.M

-V/s-

Opponents/Defendants: Sri.M.S.Kumar & Others

ORDERS ON IA No.I

The plaintiff has filed this application, U/o 39 Rule 1 and 2 of CPC., prayed for Ad-interim temporary injunction against the defendant, restraining the defendant, his agents acting on his behalf from interfering with the lawful construction in the plaint/application schedule property, till disposal of the suit.

SCHEDULE

Residential property bearing Site No.123, measuring East-West 51 feet and North-South 37 feet, situated at layout formed as per approved MUDA layout plan by Mysore City Prouda Shala Shikshakara Gruhanirmana Sahakara Sanga Niyamita, Mysore over Sy.No.22/1, 26/2, 24/1 and 29/1 of Koppalur Village, Mysore Taluk, bounded on;

East by : Private Property,
West by : 9.00 meter Road,
North by : Property No.3018/c,
South by : Site No.122.

Having an area of site measuring 1887 Sq.feet.

2. The plaintiff is the absolute owner of the suit schedule property by virtue of registered Sale Deed Dt:22.06.2023. For the better utilization of the property, the plaintiff has obtained sanctioned Plan and License for construction of a residential house in the suit property and Dug a Borewell in the property and started excavation work. On 23.06.2023 the defendant came along with his followers, caused obstruction to the construction work of the plaintiff and lodged false complaint to the police against the plaintiff. The plaintiff has stored building materials like sand, cement bricks etc., she got a prima facie case and the balance of convenience tilt in her favour. Hence, prays to allow this application.

3. Upon service of summons, the defendants appeared before this court through their counsel and filed written statement and objection on IA No.1.

4. Defendants have filed the objection and stated that, the plaintiff has not approached to the Hon'ble Court with clean hands, the plaintiff is condemnable and the same alone dis entitles her from seeking equitable relief of injunction against

the defendants. The suit of the plaintiff itself is not maintainable in the legal parlance, the consideration of the interim application filed by the plaintiff does not arise and the same is out of place in ever since of its term. If the application is allowed it causes irreparable injury and hardship to defendants. The plaintiff is completely stranger to the defendant and to the incidents of the subject property. Hence, prays to dismiss the application.

5. Heard and perused the material on record.

6. The following points arise for consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether plaintiff will be put to irreparable loss and injury if the application is not allowed?

4. What Order?

7. The above points are answered as 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 the following;

REASONS

8. **Point No.1**: It is apt to note the following things Generally, before granting the injunction, the Court must be satisfied about the following aspects;

1. One who seeks equity must come with clean hands.
2. One who seeks equity must do equity.
3. Whenever there is a right there is a remedy.

The power to grant temporary injunction is at the discretion of the Court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to do.

9. It is settled law that, while granting temporary injunction the following tests has to be applied are;

1. Whether the plaintiff has a prima facie case?
2. Whether the balance of convenience is in favour of plaintiff?

3. Whether the plaintiff would suffer irreparable injury, if his prayer for temporary injunction is prayed for not allowed?

Temporary injunction is provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of plaintiff's rights. The main reason for use of temporary injunction is the need for immediate relief.

10. It is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. The exercise of the discretion should be in judicial manner, depending upon the circumstance of each case. No hard and first rule can be laid down for the guidance of the court to that affect. It is well settled that while granting injunction plaintiff must show existence of prima facie case i.e., the first rule. The first rule is that applicant make out a prima facie case in support of the right claim by her. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and decision on merits on the facts before the court there is a probability of the applicant being entitled to the relief claimed by her. The existence of a prima faice right and infraction of such right is a condition precedent for grant of temporary injunction.

The burden is on the plaintiff to satisfy the court by leading evidence otherwise that she has prima facie case in her favour.

11. Prima facie case, however should not be confused with a case proved to the hilt. It is no part of the court's function at that stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and matured consideration. These are matters to be dealt with at that trial. In other words, the court should not examine the merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the court is to be guided by the plaintiff case as revealed in the plaint, affidavits or other materials produced by her.

12. The plaintiff has filed this suit for relief of permanent injunction against defendant and also filed this interim application U/o 39 Rule 1 and 2 of CPC., seeking for the temporary injunction against the defendant, restraining the defendant, his agents acting on his behalf from interfering with the lawful construction in the plaint/application schedule property, till disposal of the suit.

13. The defendants have appeared and filed the written statement and objection.

14. The plaintiff has produced documents i.e., true copy of Two Sale Deeds, RTC, MR No.2/99-2000 and MR No.5/99-

2000, Government Proceedings Dt:24.07.1990, Endorsement issued by MUDA Dt:11.09.1998, Alienation Order Dt:20.12.1990, Sites Release order issued by the MUDA, Encumbrance Certificates, Sale Deed Dt:22.03.2003, Encumbrance Certificate, Site Khatha and Kandaya Patra Dt:23.09.2003, Sale Deed in favour of plaintiff, Acknowledgment, Photographs, UPOR and Endorsement.

15. The defendants have produced documents i.e., xerox copy of Registered GPA Dt:18.04.1994, xerox copy of registered Sale Deed Dt:28.04.1994, xerox copy of Judgment and Decree in OS No.214/2003, copy of Order passed in RA 536/2018 by AC Court, copy of Petition to Police Dt:24.06.2023, acknowledgment, Statement before Police Dt:20.07.2023, Letter to Police by Tahasildar, Form No.10 with Survey Sketch, Registered Agreement of Sale Deed Dt:19.07.2023, Registered Sale Deed Dt:31.01.2024, RTC, Letter from DC to AC and Tahasildar Dt:29.05.2024, Encumbrance Certificate, Surveyor Note, Order passed by the Court of Assistant Commissioner and Plaintiff in OS No.670/2020.

16. After meticulous examination of entire material on record, at this juncture, it appears that, the matter requires full-fledged trial for complete adjudication of matter in dispute and also at this juncture Court cannot venture into the merits of the case and after analyzing the materials on record, to

adjudicate the rights of the party, it needs full-fledged trial and hence, based on the material on record and by considering the materials placed by the either of the party's, it seems that plaintiff is not having prima facie case or in other words plaintiff is not having arguable case and hence, I answer this point in the **Negative**.

17. **Point No.2 and 3:** When there is no material to show that plaintiff has a prima facie case or arguable case to entertain the application (U/o 39 R 1 and 2) then, next point for consideration i.e., balance of convenience, irreparable loss or injury does not survives for consideration and hence it cannot be considered.

18. It is pertinent to note that Our Hon'ble Karnataka High Court Judgment in **Sri Gowrishankara Swamigalu Vs Sri Siddaganga Mutt** reported in **ILR-1989-Kar-1701**. In this judgment Hon'ble High Court has laid down the ratio that, "*when prima facie case does not exist i.e., if no prima facie case, then balance of convenience, irreparable loss etc., has no consideration. That is existence of prima facie case is harbinger to investigate other aspects*". Hence, the plaintiff has not made out any grounds to allow this application and Accordingly, Points No.2 and 3 are answered in the **Negative**.

19. **Point No.4:** Since the reasons assigned above and discussion made supra and hence, I proceed to pass the following;

ORDER

*The IA No.I filed by the plaintiff
under Order XXXIX Rule 1 and 2 of
C.P.C., is hereby rejected.*

(Dictated to the Stenographer, transcribed by her and after corrections, signed and pronounced by me in open Court on this **24th day of March, 2025**)

(Sanjay.M.Mallikarjunaiah)

XI Addl.Civil Judge & JMFC.,
Mysuru.

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