

KASM310065592023



**IN THE COURT OF III ADDITIONAL CIVIL JUDGE AND JMFC,
BHADRAVATHI**

:Present:

**Smt. Nasira Banu, B.A., (Law), LLB.
III Addl. Civil Judge and J.M.F.C.,
Bhadravathi.**

ORIGINAL SUIT NO.575/2023

Dated on this the 17th day of September, 2024

PLAINTIFF:

Kempaiah S/o Late Nanjegowda,
Aged about 80 years,
R/o Lower Hutha,
Bhadravathi.

(By Sri.AMDK., Advocate)

- Vs -

DEFENDANT:

The City Municipal Council,
Bhadravathi represented by its
Commissioner.

(By Sri.TGS., Advocate)

PARTIES TO I.A.NO. I

**Applicant :
(Plaintiff)**

Kempaiah S/o Late Nanjegowda,

V/s.

**Opponent :
(Defendant)**

The City Municipal Council

PARTIES TO I.A.NO. III

Applicant : The City Municipal Council.
(Defendant)

V/s.

Opponent : Kempaiah S/o Late Nanjegowda
(Plaintiff)

1.	Provision of law	Order XXXIX Rule 1 and 2 R/w. Section 151 of CPC.	Order XXXIX Rule 4 R/w. Section 151 of CPC.
2.	Relief	Temporary Injunction.	Set aside temporary injunction.
3.	Date of filing of application	04.10.2023.	15.04.2024.
4.	No. Of application	IA No.I	IA No.III
5.	Date on which objection is filed	30.10.2023.	03.07.2024.
6.	Date of Order	17.09.2024	17.09.2024

COMMON ORDERS ON IA NO. I AND III

The counsel for plaintiff has filed IA.No.I Under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking for an order of temporary injunction against the defendant to restrain the defendant from demolishing the malige constructed in the suit schedule property or damaging it in any other manner without due process of law till the

disposal of this suit.

Counsel for defendant filed IA No.III under Order XXXIX Rule 4 R/w. Section 151 of CPC seeking to set-aside an exparte order of temporary injunction passed on 05.10.2023.

2. In support of IA No.I, the plaintiff has filed affidavit stating that the plaintiff is the owner of suit schedule property. He acquired same through a registered sale deed dated 15.09.1980. The plaintiff purchased three guntas of property vide sale deed dated 14.09.1981 from H.B.Chandrashekarappa. Based on above two sale deeds the revenue entries are mutated in the name of plaintiff. Thereafter the plaintiff constructed malige by leaving 20 feet space towards eastern portion and 192 feet towards northern side. Since the date of purchase the plaintiff is in possession and enjoyment of suit schedule property. One Athaulla Khan is residing towards eastern side of suit schedule property attempted to interfere with suit schedule property. Hence, the plaintiff filed suit for the relief of permanent injunction in OS.No.350/2021 on the file of the Hon'ble Prl. Civil Judge & JMFC Court, Bhadravathi. The said suit was

decreed in favour of plaintiff. In the month of February 2023 the PWD, Bhadravathi and CMC Officials came near suit schedule property and attempted to demolish malige constructed in the suit schedule property. The plaintiff lodged complaint through registered post. In the month of June 2023, PWD came near the Suit schedule property and attempted to demolish the part of malige constructed over suit schedule property. The plaintiff lodged protest to the said authority intimating the order of injunction. In response to that on 13.07.2023 AEE of PWD, Bhadravathi responded that they will not demolish the building and will not violate the order of injunction. Again on 19.09.2023 the AEE of CMC Bhadravathi and PWD came near suit schedule property and attempted to demolish the building without following due procedure and without issuing notice to the plaintiff. The plaintiff lodged protest on 19.09.2023. Again on 03.10.2023 the CMC and PWD Officials came near the suit schedule property with Police and attempted to demolish the malige constructed in the suit schedule property. The plaintiff resisted said acts of defendant. The plaintiff has not violated any law and CMC Authorities have taken

law into their hand and without any notice to the plaintiff attempted to demolish the malige. The act of defendant is not legal one and it is not in accordance with law. At any movement the defendant may illegally demolish the malige without any authority of law. In such an event the plaintiff will be put to untold hardship and irreparable injury will be caused to the plaintiff. On these grounds prayed to allow the application.

3. The defendant appeared through his counsel and filed written statement. The defendant by filing memo adopted written statement as objection to IA No.I.

4. **The objection of the defendant is as under:**

a. The defendant contended that plaintiff has not stated whether the suit property is revenue site or converted into commercial site. The plaintiff might have encroached site property which belong to PWD.

b. The PWD is competent authority to remove encroachment if any made by the plaintiff over the property of PWD. In fact the PWD will initiate legal proceedings against the plaintiff for recovery of

encroached portion if any over the property of PWD. The defendant authority has no vested interest over the property of plaintiff. At the same time the defendant is not a competent authority to take legal action against the plaintiff for encroachment of property of PWD. The plaintiff ought to have made PWD Officials as parties to the suit. Hence, the suit is not maintainable for non joinder of necessary party. Defendant authority will not take law into hands for renewal of encroachment if any made by the plaintiff. On these grounds prayed to dismiss the application with cost.

5. The counsel for defendant filed IA No.III Under Order XXXIX Rule 4 R/w. Section 151 of CPC to set-aside exparte order of temporary injunction. In the affidavit filed in support of IA No.III it is contended that the defendant authority never interfered with peaceful possession and enjoyment of suit schedule malige by the plaintiff. The suit schedule malige is situated in Ward No.3 within the limit of defendant authority. In front of malige there is drainage and BH Road. All these property belong to PWD. The defendant authority had no right

to remove any encroachment if any made by the plaintiff over the drainage or BH Road. It is only the PWD competent to take necessary action against the plaintiff. The defendant authority has been collecting property tax for the malige from the plaintiff. The plaintiff has not stated whether he has obtained permission with approved plan for construction of malige in the suit schedule property. The plaintiff not stated regarding trade license for doing business in the malige. The order of injunction obtained by the plaintiff against Athaulla Khan is judgment in Personam not judgment in rem. The said judgment is not binding on the defendant. The defendant authority has no personal interest over the property of private person including plaintiff. By virtue of exparte order of injunction the defendant authority has met with untold hardship and inconvenience. On these ground prayed to allow the IA No.III.

6. The counsel for plaintiff filed objection stating that the IA No.III is not maintainable and is liable to be dismissed. It is stated that, in the written statement the defendant contended that the defendant authority has not demolished the structure of plaintiff in the suit property and it is

the duty of PWD to maintain road and other things. If it is so what is the necessity of vacating or modifying the order of temporary injunction. There are no changing circumstances or reasons to vacate the order of temporary injunction. The plaintiff has already filed miscellaneous petition under Order XXXIX Rule 2A of CPC for taking suitable action for willful violation of order of temporary injunction. Hence, the present application is not maintainable. If the order of temporary is vacated the defendant will demolish the entire malige constructed in the suit property. In such an event the plaintiff will be put to untold hardship. On these grounds prayed to dismiss the application.

7. This Court heard arguments of counsel for plaintiff and defendant. Counsel for defendant filed notes of arguments on IA No.I.

8. Perused entire records, in the facts and circumstances of the case the following points arise for consideration:

POINTS

1. Whether the plaintiff has made out a prima-facie case in his favour to grant the interim order as prayed for in

IA No.I?

2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A.No.I is not allowed as prayed for?
 4. Whether the defendant has made out grounds to vacate the exparte order of temporary injunction?
 5. What order?
9. This court findings to the above points are as follows:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

Point No.4 : In the Negative.

Point No.5 : As per the order, for the following:

REASONS

10. **Point No.1**:-As could be seen from the contentions urged in I.A.No.I at this stage without going into merits of the case and holding mini trial this Court has to consider the aspects of prima-facie case. At

this stage this Court makes it clear that this Court is looking towards prima-facie case. It is well settled principle of law that, at the time of the disposing the temporary injunction application the Court cannot go into merits of the case and only to consider whether the plaintiff has made out prima-facie case for granting of Interim relief.

11. The primary purpose of granting the interim relief is preservation of the things in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated.

12. This Court in order to consider the prima-facie case has clearly perused the plaint averments, affidavit filed in support of application and documents.

13. On perusal of the materials on record, it shows that the plaintiff has filed present suit for the relief of permanent injunction to restrain the defendant from demolishing the malige situated in suit schedule property. In support of case of plaintiff the plaintiff has produced documents viz., Sale deed dated 15.09.1980 which shows that plaintiff purchased 03 guntas of property from H B Navalappa. Plaintiff

has also produced sale deed dated 16.09.1981 which shows that the plaintiff purchased 03 guntas of property from H P Chandrashekarappa. The assessment register of the year 2015–16 shows the name of plaintiff in respect of property bearing No.195-208/221. The extent of property is mentioned as 40X192 feet. The extent of building is mentioned as 33X20 feet. The plaintiff also produced tax paid receipt and judgment passed in OS.No.350/2021. The plaintiff produced application submitted by him before the AEE, PWD stating about demolishing the building. The plaintiff has produced photographs which shows that some portion of building is already demolished. The said photos are produced on 13.10.2023 and ex parte order of temporary injunction is granted on 05.10.2023. The defendant contended that, the defendant authority has no right to demolish the building of the plaintiff situated in suit schedule property. The defendant also contended that, it is the PWD Department who has right to demolish encroachment if any made by the plaintiff over the property of PWD. But, in the written statement the defendant has not stated that the plaintiff encroached property of PWD. The defendant also

contended that the plaintiff should have made PWD as party to the above suit. Even the plaintiff pleaded that PWD and CMC Officials attempted to demolish the building of the plaintiff but not made PWD as party to the above suit. However, as could be seen from photographs which are produced after institution of suit prima-facie shows that some portion of building is demolished. The defendant contended that, only the PWD has right to demolish the building. Hence, if an order of injunction is granted restraining the defendant from further demolishing the building no hardship would be caused to the defendant. The plaintiff has produced prima-facie materials to show that the building is demolished in part. On the other hand, the defendant has not produced any document in support of his defense. Therefore, Point No.1 is answered in the ***Affirmative***.

14. **Point No.2 and 3:** Both points are inter-related; hence these points are discussed together for the sake of brevity and to avoid the repetition of facts. The suit of the plaintiff is for the relief of permanent injunction. The plaintiff proved prima-facie case for grant of temporary injunction. The photographs shows that some portion of building is

already demolished and if entire building is demolished during the pendency of suit the purpose of suit will be defeated. Hence, in order to preserve the suit property if an order of temporary injunction is granted against the defendant no hardship would be caused to the defendant. Hence, if an order of temporary injunction is granted, the plaintiff will be put to irreparable loss and hardship. Therefore, this court is of the opinion that balance of convenience also lie in favour of plaintiff. Accordingly, points No.2 and 3 are answered in the ***Affirmative***.

15. **Point No.4:** The defendant filed application as per IA No.III to vacate the order of temporary injunction by contending that the defendant is put to irreparable loss and hardship due to an order of ex parte temporary injunction. However, defendant in IA No.III admitted that the plaintiff is in possession and enjoyment of suit schedule malige. The defendant further contended that, the defendant authority has no personal interest over the property of plaintiff and it is the PWD who has to remove encroachment if any and not the defendant. Hence, if order of temporary injunction passed by this court is not vacated no hardship will

be caused to the defendant. Accordingly, Point 4 is answered in the ***Negative.***

16. **Point No.5:** In view of the foregoing observations and discussions, this court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiff Under Order XXXIX Rule 1 and 2 read with Section 151 of CPC is hereby allowed. The defendant is restrained by an order of temporary injunction from further demolishing malige situated in suit schedule property without due process of law.

I.A.No.III filed by the defendant Under Order XXXIX Rule 4 read with Section 151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, taken print put, corrected and then pronounced by me in the Open Court on this 17th day of September, 2024)

(Nasira Banu)

III Addl. Civil Judge and JMFC,
Bhadravathi.