

KADG030002512016



Presented on : 28-03-2016
Registered on : 28-03-2016
Decided on : 19-06-2026
Duration : 10 years, 2 months, 22 days

IN THE COURT OF
PRL CIVIL JUDGE AND JMFC DAVANGERE AT DAVANGERE,
Presided Over by GAYATHRI H D

O.S./174/2016

DATED THIS 19TH DAY OF JUNE 2026

Plaintiff:-

Sri Rachappa S.R.
S/o Rudrappa,
Aged about 54 years,
1327/2, 1st Main Road,
Saraswathi Nagar,
Davangere.
(By Sri U.G. Patil, Advocate)

V/s

Defendant:-

Smt. Gowramma
W/o Bheemappa A.D.,
Aged about 50 years,
1327/1, 1st Main Road,
Saraswathi Nagar,
Davangere.
(By Sri Ajay C., Advocate)

Nature of suit	Declaration, Mandatory Injunction and Permanent injunction.
Date of evidence recorded	22-03-2022.
Date of judgment pronounced	19-06-2026.

-: JUDGMENT :-

The plaintiff has filed the present suit against the defendant seeking the relief of declaration to declare that defendant has illegally constructed the lavatory and bathroom over B schedule property is highly illegal one and against the norms of the plaint and Municipal Corporation Act and by laws and to declare that defendant has put up lavatory towards south western portion measuring 4 X 10 feet without leaving set back and for demolishing structure by way of mandatory injunction and remove structure constructed on suit schedule 'B' property and also for permanent injunction to restrain the defendant, his henchmen, agents or anybody causing damages and disturbing peaceful possession and enjoyment of the plaintiff over the suit schedule 'A' property.

2. Description of the suit schedule properties:-

There are two suit properties which are stated thus:-

1) Suit schedule 'A' property:-

Site bearing No.2, D.No.1327/2 khata No.4265, formed in land bearing Re.Sy.No. 12/1B, measuring 46 + 49/2 X 25, situated at Nittuvalli village, Davangere and bounded by East : Site No.3, West : 40 feet road, North : Site No.1 and South : Sy.No.12/A property.

2) Suit schedule 'B' property:-

South western property bearing door No.1328/3, khata No.4265 formed in Re.Sy.No. 12, measuring 4 X 10 feet situated at Nittuvalli village, Davangere and bounded by East : Site No.4, West : Site No.1 and 2, North : 30 feet road and South : Sy.No.12/A property.

Hereinafter referred to as "suit schedule properties".

3. Gravamen of the plaintiff' case is as under:-

That the plaintiff had purchased the suit schedule "A" property from defendant on 01-01-2004. That the defendant is an adjacent eastern side property owner started troubling and disturbed the peaceful possession and enjoyment of the plaintiff over the south eastern property of the plaintiff and constructed the building without leaving set back towards south western side of plaintiff's property measuring 4 X 10 feet, the building constructed by defendant. That since from one year, the defendant started troubling the plaintiff and forcefully locked the lavatory, restricted to open eastern side door of suit schedule 'A' property. That the defendant has encroached the set back of south western and constructed the bathroom and in the suit schedule 'B' property. That the plaintiff has informed the defendant after dismissal of interim application filed by her to remove the encroachment structure of suit schedule 'B' property, but not ready to remove the same and arrogantly replied. Thus, in the light of the above background the captioned suit is filed.

4. In pursuance of summons, the defendant has appeared through her counsel and filed her written statement.

5. Defence of defendant :-

In the written statement the defendant has denied the entire allegations in toto and stated that suit of the plaintiff is not maintainable without seeking the relief of declaration and is hit by doctrine of acquiescence, laches and also estoppels. That the present suit is only a counter blast to the suit filed by the defendant in OS No.546/2015 which is pending in this court and hence there is no truth in this case. That the plaintiff has not paid the proper court fee and this court has no jurisdiction to try this suit. That the plaintiff suppressed the material facts. That the defendant is the absolute owner in possession of the suit schedule property by virtue of registered sale deed dated 05.03.1997. That the defendant is paying tax in respect of written statement schedule property measuring 30 X 50 feet and khata of the property is standing in the name of defendant and the defendant constructed her building as per rules and regulations of City Corporation by leaving margin of passage, the property of the plaintiff situated on the western side of the defendant's property and the plaintiff encroached to an extent of 1 X 25 feet and constructed illegal toilet room in the passage left by the defendant. That the plaintiff constructed a sajja on the first floor which is affected the light and air. That in the month of September 2015 there is a compromise taken place between defendant and plaintiff and the plaintiff agreed to remove his illegal structure, but later did not do so, hence defendant constrained to file suit OS No.546/2015. That the plaintiff constructed his house in the property of the defendant without the plan, license and permission by the concerned authority and hence, it is necessary to remove illegal toiled room and sajja over the passage on the western side of the defendant's property. Thus, on the above grounds, defendant has prayed for dismissal of suit.

6. Based on the rival pleadings, my predecessor in office has framed the following issues on 19.05.2020:-

-: ISSUES :-

- 1) Whether the plaintiff proves that he is owner in possession of 'A' schedule property as described in plaint ?
- 2) Whether the plaintiff proves that defendant has put up construction in 'B' schedule property illegally ?
- 3) Whether the plaintiff proves that defendant interfered with his possession over schedule property ?
- 4) Whether the suit is maintainable without seeking declaration ?
- 5) Whether the suit is hit by doctrine of acquiescence, latches and estoppel ?
- 6) Whether plaintiff is entitled to reliefs sought ?
- 7) What order or decree ?

7. In order to prove his case, plaintiff is examined as PW-1 and got marked 16 documents at Ex.P.1 to P.16 and examined one witness by name Sri Kotresh D.M. as PW-2. Ex.D.1 is got marked during the course of cross examination of PW-1 on confrontation and thereby closed the side. On the other hand, defendant has not led any defence evidence.

8. Heard learned counsel for the plaintiff and defendant and examined the oral and documentary evidence available on record meticulously.

9. The counsel for defendant has relied upon the decisions of Hon'ble High Court of Karnataka in RFA No. 100256 of 2017 C/w RFA No. 100255 of 2017.

10. My findings to the above issues are as under:-

- ISSUE No.1 - In the Affirmative,
- ISSUE No.2 - In the Negative,
- ISSUE No.3 - In the Negative,
- ISSUE No.4 - In the Affirmative,
- ISSUE No.5 - In the Affirmative,
- ISSUE No.6 - In the Negative,
- ISSUE No.7 - As per final order for the following:-

-: REASONS :-

11. Issue No. 1 :- It is the case of the plaintiff that the plaintiff had purchased the suit schedule "A" property from defendant on 01-01-2004. That the defendant is an adjacent eastern side property owner started troubling and disturbed the peaceful possession and enjoyment of the plaintiff over the south eastern property of the plaintiff and constructed the building without leaving set back towards south western side of plaintiff's property measuring 4 X 10 feet, the building constructed by defendant. That since from one year, the defendant started troubling the plaintiff and forcefully locked the lavatory, restricted to open eastern side door of suit schedule 'A' property. That the defendant has encroached the set back of south western and constructed the bathroom and in the suit schedule 'B' property. That the plaintiff has informed the defendant after dismissal of interim application filed by her to remove the encroachment structure of suit schedule 'B' property, but not ready to remove the same and arrogantly replied.

12. The learned counsel for plaintiff has filed written arguments stating that defendant is the adjacent owner of eastern side of suit schedule property and the defendant was started troubling and disturbing peaceful possession and enjoyment of the plaintiff over the suit schedule property and filed suit in OS No. 546/2015. That the defendant has violated the norms and rules of Municipal Corporation Act and by laws without leaving set back towards south western side of plaintiff plaintiff measuring 4 X 10 feet. That the building constructed by defendant is obstructed the light and air to the plaintiff's property. That the plaintiff is the absolute owner in possession of the suit schedule 'A' property and constructed first floor in the said property. Since from one year the defendant started troubling the plaintiff from peaceful possession and enjoyment of the suit schedule 'A' property. That the plaintiff has constructed his building in the suit schedule 'A' property as per law and constructed lavatory in south eastern side of the suit schedule 'A' property, but the defendant with malafide intention started disturbing in peaceful possession and enjoyment of the plaintiff. Hence, prayed to decree the suit.

13. On the other hand, learned counsel for defendant argued that the plaintiff cannot rely upon the weakness of that the defendant has not adduced the evidence, but the plaintiff has to establish his case on his own with supportive oral and documentary evidence. It is further argued that the plaintiff has utterly failed to establish that there is any kind of encroachment as alleged in the plaint. Under such circumstances prayed to dismiss the suit.

14. In order to substantiate the claim of the plaintiff, the plaintiff entered into the witness box and examined as PW-1 and reiterated the plaint averments made in the plaint. During the cross examination, it is significant to note that PW-1 has admitted that the suit schedule 'A' property is purchased by the plaintiff from the defendant. He deposed that he constructed house in the year 2005-06. However, on confrontation of Ex.P.11 he deposed that he constructed the house in the suit schedule 'A' property after obtaining construction license on 02.02.2013. Further, on suggesting that after obtaining permission in 2013 the plaintiff constructed his house in the year 2014, wherein PW-1 denied the same and deposed that he started construction of the building in 2004 by obtaining construction permission. Further, he admitted that he obtained permission for construction on 02.02.2013. Further, on confrontation of Ex.P.10 i.e., sketch of the construction made by the plaintiff and suggestion made that in the passage on the eastern side it is not shown about the construction of a lavatory or sajja, the PW-1 admitted that there is no mention about the construction of lavatory or sajja, but the a window is shown.

15. Further, it is also admitted that he has not obtained any permission for construction of lavatory or sajja in the passage on the eastern side of the suit schedule 'A' property. Further, it is admitted by PW-1 that on the eastern side of wall of the property of the plaintiff there is no mention of installation of door in the approved plan, but the plaintiff has installed door on the eastern side of the wall of the property of the plaintiff. It is further admitted that the blue door in Ex.P.12 is the lavatory constructed by the PW-1. It is also admitted that the sajja of the plaintiff's house constructed in the

passage is constructed towards the outer side of the building, but deposed that the sajja is constructed in the passage. Further, on suggesting that the defendant has left passage is admitted by the PW-1 and he deposed that he also has left passage and the defendant has also left passage. Further, it is deposed by PW-1 that he has made construction in the passage only after construction made by the defendant. Further, it is admitted that the defendant constructed his house in his property prior to the purchase of the suit schedule 'A' property site by the plaintiff. Further, it is admitted that the construction of the defendant's house was made 4 years prior to the construction made by the plaintiff. Further, it is admitted that the defendant has filed OS No. 546/2015 against the plaintiff. Further, it is also admitted the defendant had filed OS No.546/2015 contending that the plaintiff had encroached 1 X 25 feet.

16. In support of his oral evidence, the plaintiff has produced and relied upon Ex.P.1 which is the registered sale deed dated 13.02.1997. The recital of said registered sale deed shows that the suit schedule 'A' property was purchased by defendant from her vendor B. Mangamma D/o Shivareddy. Ex.P.2 is the original registered sale deed that discloses the suit schedule 'A' property was purchased by the plaintiff from the defendant on 01.01.2004. It is not in dispute about the ownership of the plaintiff in respect of the suit schedule 'A' property. Further, Ex.P.3 is the khata extract showing that the suit schedule 'A' property was mutated in the name of plaintiff after the purchase under Ex.P.2. Ex.P.4 is the DMP register extract in the name of plaintiff. Ex.P.5 and P.6 are the SAS form and tax paid receipt in respect of suit schedule property in the name of plaintiff. Ex.P.7 is the encumbrance certificate in respect of suit schedule property from 01.04.1978 till

31.3.1991. Ex.P.8 is the encumbrance certificate that shows that the suit schedule 'A' property was first purchased by the vendor of the defendant and thereafter the suit schedule 'A' property was purchased by the defendant on 13.02.1997. Ex.P.9 is the original encumbrance certificate that shows the entry that the plaintiff has purchased the suit schedule 'A' property from the defendant. Ex.P.10 is the approved site plan of the suit schedule 'A' property of the construction to be undertaken by the PW-1. Ex.P.11 is the construction permission dated 02.02.2013 which indicates that the plaintiff has obtained construction permission in the suit schedule 'A' property. Ex.P.12 and P.13 are the photographs of the suit schedule 'A' and 'B' properties.

17. It is significant to note that the sale deeds on record at Ex.P.1 and P.2 and the khata extract and the encumbrance certificates and tax paid receipts and building construction permission all the documents clearly establish the ownership of the plaintiff in the suit schedule 'A' property. Further, it is also not in dispute that the plaintiff is in possession of the suit schedule 'A' property. Hence, for the aforesaid discussion, I inclined to answer Issue No.1 in the Affirmative.

18. Issue No.2 and 3 :- As both these issues are inter-related to each other, they are taken up together for discussion to avoid repetition of facts and appreciation of evidence.

19. It is the specific contention of the plaintiff that the defendant has put up construction in the suit schedule 'B' property illegally and thereby interfered with his possession over the suit schedule property. In order to

substantiate the said claim the plaintiff has relied upon the oral evidence of plaintiff wherein PW-1 in his examination-in-chief deposed that the defendant has constructed 4 X 10 feet without leaving set back on the south western end in the suit schedule 'B' property.

20. Firstly, it is pertinent to note that it is not disputed by the plaintiff that the defendant is the adjacent owner of the suit schedule 'A' property on the eastern side of the said property and that the plaintiff purchased the suit schedule 'A' property from the defendants. It is contended that the defendant has constructed a lavatory on the western side of their property without leaving set back and encroached the set back let by the plaintiff. On the other hand, it is the contention of the defendant that the defendant has not made any encroachment and they have constructed the house in suit schedule property belonging to them and they have not made any encroachment in the suit schedule 'B' property as alleged by the plaintiff.

21. In order to substantiate their case the defendant has neither entered into the witness box nor examined herself. Further, defendant has not produced any documents on her behalf. During the cross examination of PW-1 the certified copy of the examination-in-chief of the plaintiff who was the defendant in OS No.546/2015 was confronted which is admitted by PW-1 and the said document is marked on behalf of the defendant.

22. However, it is well settled law that the plaintiff has to prove his own case by adducing cogent oral and supportive documentary evidence and the plaintiff cannot rely upon the weakness of the defendant that the defendant

has not filed written statement or the plaintiff cannot take the advantage of non appearance of the defendant. At this juncture, I would like to cite and rely upon the decision of the Hon'ble Apex Court, reported in 2007 (3) CTC 691 (M. Durai Vs. Madhu and others and 2011 (12) SCC 220 (Rangammal Vs. Kuppuswamy and another) wherein the Hon'ble Apex Court has held that:-

"The plaintiff has to first of all discharge the burden of proof so as to succeed in his case and then only the burden could be shifted from plaintiff to disprove the case of the plaintiff."

23. In another decision reported in 2006 (4) CTC 524 (Anil Rishi Vs. Guru Baksh Singh) it has been categorically laid down by the Hon'ble Apex Court as follows:-

"18. In terms of Sec.102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitled him to a relief, the onus shifts to the defendant to prove those circumstances, if any which would disentitle the plaintiff to the same."

24. The learned counsel for defendant has relied upon the decisions of Hon'ble High Court of Karnataka in Smt. Sunita Tapadia and another Vs. Smt. G.P. Lakshmi Narasamma and another RFA No. 100256 of 2017 C/w RFA No. 100255 of 2017, wherein it is held that :-

"Weakness of the defendant is not a trump card to the plaintiff, plaintiff must prove his case."

25. Thus, in the instant case, considering that the defendant has not adduced evidence on his behalf, but it is the duty of the plaintiff to establish his case and cannot rely on the weakness of the defendant. Thus, the

principal of law held in the decision relied upon by the defendant is applicable to the case on hand.

26. Looking at the entire evidence on record, the PW-1 himself has admitted during his cross examination that the defendants had constructed their house prior to the purchase of the site by the plaintiff from the defendant. It is also admitted that the house of the defendant was constructed 4 years prior to the construction of the house of the plaintiff.

The relevant portion of admission is extracted hereunder:-

"ಪ್ರತಿವಾದಿಯವರು ತಮ್ಮ ಮನೆಯನ್ನು ನಾವೂ ಸೈಟ್ ಅನ್ನು ಖರೀದಿ ಮಾಡುವ ಪೂರ್ವದಲ್ಲಿಯೇ ಕಟ್ಟಿದ್ದರು. ಪ್ರತಿವಾದಿಯವರು ಮನೆಯನ್ನು ಕಟ್ಟಿಕೊಂಡು ಅವರೇ ಮಾಲೀಕರು ಹಾಗೂ ಅವರೇ ಸ್ವಾಧೀನದಾರರು ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಾನು ನಮ್ಮ ಮನೆಯ ಕಟ್ಟಡವನ್ನು 2004 ರಲ್ಲಿ ಮಾಡಿರುತ್ತೇನೆ. ಪ್ರತಿವಾದಿಯವರು ಯಾವ ವರ್ಷದಲ್ಲಿ ಮನೆ ಕಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಪ್ರತಿವಾದಿಯವರು ನಾನು ಮನೆಯನ್ನು ಕಟ್ಟುವ ನಾಲ್ಕು ವರ್ಷ ಪೂರ್ವದಲ್ಲಿಯೇ ಮನೆಯನ್ನು ಕಟ್ಟಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ."

27. Further, it is admitted by PW-1 that the defendants have not encroached any of the property belonging to the plaintiff. The relevant portion of the admission of PW-1 is reproduced hereunder:-

"ನಾನು ನನ್ನ ವಾದ ಪತ್ರದಲ್ಲಿ ಪ್ರತಿವಾದಿಯವರು ಪಶ್ಚಿಮ ಭಾಗದಲ್ಲಿ 4 * 10 ಅಡಿಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ ಕಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಪ್ರತಿವಾದಿಯೂ ಒತ್ತುವರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿದ್ದು ಅದರಲ್ಲಿ ನಮ್ಮ ಜಾಗೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿರುವುದಿಲ್ಲ. ಯಾರ ಜಾಗೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಬರೆಸಿರುತ್ತೀರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯೂ ಅವರು ಗಾಳಿ ಹಾಗೂ ಬೆಳಕಿಗೆ ಎಂದು ಬಿಟ್ಟುಕೊಂಡಿರುವ ಅವರ ಜಾಗೆಯನ್ನೇ ಅವರು ಒತ್ತುವರಿ ಮಾಡಿ ಕಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಪ್ರತಿವಾದಿಯೂ 4 * 10 ಅಡಿ ಒತ್ತುವರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿದ್ದು ಮಹಾನಗರ ಪಾಲಿಕೆ ಇವರಿಂದ ಅಳತೆಯನ್ನು ಮಾಡಿಸಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯೂ ನಮ್ಮ ಜಾಗೆಯನ್ನು ನಾನು ಅಳತೆ ಮಾಡಿಸಿರುತ್ತೇನೆ. 4 * 10 ಅಡಿ ಜಾಗೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ನಾನು ಅಂದಾಜಿನ ಮೇಲೆ ಬರೆಸಿರುತ್ತೇನೆ."

28. Further, it is pertinent to note that the plaintiff has not produced any document to show that there is any kind of encroachment in his property as alleged by him. It is necessary to consider that PW-1 has admitted that the defendant has filed a suit OS No.546/2015 against him for the relief of declaration and mandatory injunction contending that the plaintiff who is the defendant in OS No. 546/2015 has encroached 1 X 25 feet in the property of the defendants. Further, it is admitted by PW-1 in para 5 of the written statement that the defendants have constructed lavatory and bathroom in the suit schedule 'B' property which is attached to the wall of the plaint schedule 'A' property and till 2015 there is no dispute between the plaintiff and defendant which clearly shows that the lavatory and bathroom is constructed by the defendant much earlier to 2015 and the plaintiff did not object the same.

29. At this stage, it is purposeful to quote and rely on the decision of Hon'ble Supreme Court of India in the case of [Narayan Bhagwant Rao Bosabhi Balajiwale Vs. Gopal Binayak Gosai](#), reported in AIR 1960 SC100 held that:-

"An admission is the best evidence that an opposing party can rely on and though not conclusive is decisive of the matter, unless successfully withdrawn or proved erroneous."

30. At this stage I would also place my reliance on the decision of Hon'ble Supreme Court of India in Nagindas Ramdas Vs. Dalpatram Ichharam @ Brijram and others, reported in (1974) 1 SCC 242, wherein the three judge bench of the Hon'ble Apex Court has held thus:-

"Admissions if true and clear, or by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof".

31. Further, it is significant to note that though plaintiff contended that defendant has encroached 4 X 10 feet in the set back, but during cross examination, he admitted that he has shown that defendant has encroached 4 X 10 feet on assumption and did not get the property measured so as to know the exact measurement of the alleged encroachment. It is also necessary to consider that the plaintiff has not taken any steps to get the property measured so as to assess the encroachment if any by the defendant.

32. The plaintiff has not produced an iota of documentary evidence to show the factum of alleged encroachment. Further, the photographs produced by plaintiff do not disclose anything about the alleged encroachment by the plaintiff. It is also necessary to consider that the plaintiff has not taken any legal recourse against the defendant if at all there was any encroachment made by the defendant. In the cross examination of PW-1, the PW-1 admitted that the defendant had already constructed the building when he purchased the property in the year 2004 and that the building of the plaintiff was constructed 4 years prior to the purchase of the suit schedule 'A' property by the plaintiff. Under such circumstances, it seems that if at all there was any encroachment made by the defendant, the

same should have come to the notice of the plaintiff after the purchase of the suit schedule 'A' property from the defendants. However, as per the admission of PW-1 himself the defendant had already made construction which clearly goes to say that the plaintiff had stayed quite for all the years from 2004 till 2015 and as admitted by the plaintiff himself in paragraph No.4 and 5 of the plaint there was no dispute between the plaintiff and defendant from the day of construction of lavatory either by the defendant or by the plaintiff himself in their respective properties. If at all the defendant had made any construction at a later stage as alleged by the plaintiff, the plaintiff ought to have lodged a complaint against the defendant, but the failure on part of the plaintiff not to take any necessary action against the defendant from 2004 till 2015 does not inspire this court to believe the alleged encroachment by the defendant.

33. Thus considering the material evidences on record, I am of the opinion that the plaintiff has failed to establish that the defendant has put up lavatory towards south western portion measuring 4 X 10 feet without leaving set back on the south western end by encroaching 4 X 10 feet in the suit schedule 'B' property. Further, even considering the material evidence produced by the plaintiff there is no scrap of documentary evidence to show that the defendant has encroached the property of plaintiff and thus caused interference in the property of plaintiff. Thus, when the alleged encroachment is not established by the plaintiff, then the question of interference with the possession of plaintiff over the suit schedule property does not arise. Thus the plaintiff has failed to establish that the defendant

has caused any sort of interference in the suit schedule property of the plaintiff. Thus considering the evidence on record and material available there is nothing to show that the defendant has made the alleged encroachment or interference in the suit schedule 'B' property. Hence, I inclined to answer Issue No. 2 and 3 in the Negative.

34. Issue No.4:- The plaintiff in the present suit has specifically contended that the defendant being the adjacent land owner, on the south western side of his property and has encroached the suit schedule 'B' property which is the set back left by the parties to the extent of 4 X 10 feet. The plaintiff has sought for the relief of permanent injunction and mandatory injunction against the defendant restraining her from interfering in suit schedule property and to demolish the illegal construction made by the defendant in the suit schedule 'B' property.

35. On the other hand, the defendant has contended that the measurement of his property is 30 X 50 feet and he has constructed the building in his property and that the present suit is only a counter blast to the OS No. 546/2015 filed by the defendant against the plaintiff for the encroachment of 1 X 25 feet in the set back area of the defendant. It is further contended that the construction was made prior to the purchase of the suit schedule 'A' property by the plaintiff from the defendant. It is significant to note that on perusal of the entire pleadings, it is not in dispute that the plaintiff is the owner in possession of the suit schedule 'A' property and that the defendant is the adjacent land owner and it is also not in dispute that the plaintiff purchased the suit schedule 'A' property from the

defendant. It is also admitted by plaintiff that the defendant already constructed the house prior to 4 years from the date of purchase of the suit schedule 'A' property. Thus, there is no indication of denial of the title of the plaintiff in the suit schedule 'A' property or there is no denial that the set back was left by the parties at the time of construction of their respective houses. It is only the case of the plaintiff that the defendant has constructed the lavatory in the set back that was left by the parties for proper light and air.

36. At this juncture, I find it fruitful to quote and place my reliance on the decision of the Hon'ble Supreme Court of India in Anathula Sudhakar V/s. P. Buchi Reddy (dead) by LR's and others, reported in (2008) 4 SCC 594 wherein the Hon'ble court comprehensively discussed as to the general principles as to the scope of a suit of prohibitory injunction relating to immovable property wherein the Hon'ble Apex Court has observed that:-

“11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an

injunction. A person out of possession cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction”.

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action of declaration is the remedy to remove the cloud on the title of the property.Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, file a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raised a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the Court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiffs' title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

37. In the present case on hand, it is evident on record that the plaintiff is the owner in possession of the suit schedule 'A' property and the defendant is the adjacent owner. It is not the case of the defendant that the plaintiff is not the owner of the suit schedule 'A' property or that the defendant is the owner of the set back left by the parties in between their properties. Under such circumstances, the plaintiff who is the owner in possession of the suit schedule 'A' property has every right to file a suit for the relief of mandatory injunction if any encroachment is made by the defendant in the set back area that is meant for the enjoyment of the easement right of light and air to both the parties and there is no need to seek the relief of declaration of title when the title of the plaintiff is not at all in dispute and when there is no cloud cast upon the title of the plaintiff. Thus, applying the settled law underlying in the aforesaid dicta in the said decision, the present suit for the permanent injunction and mandatory injunction is maintainable. Hence, I inclined to answer Issue No.4 in the Affirmative.

38. Issue No. 5:- It is the contention of the defendant that suit of the plaintiff is hit by doctrine of acquiescence, latches and estoppel. The substantiate question of law which has been framed is in respect of acquiescence, namely, whether the plaintiff has acquiescence his right and

has not approached the court for a considerable period of time. Apparently, it is to be noticed that as per the contention of the plaintiff the defendant constructed lavatory in the suit schedule 'B' property by attaching the wall of the lavatory to the wall of the plaint schedule 'A' property. It is further contended that till the end of September 2015 there is no dispute between the plaintiff and the defendant and that since the day of the construction the plaintiff was using and enjoying the lavatory and also the eastern side passage on the suit schedule 'A' property and that the dispute arose when the defendant filed a false suit against the plaintiff contending that the plaintiff has encroached the property of the defendant to the extent of 1 X 25 feet by constructing the lavatory and sajja.

39. It is no doubt that as per the say of the plaintiff himself the construction of the defendant was prior to 4 years of the purchase of the suit schedule 'A' property by the plaintiff, but it is significant to consider that the plaintiff has neither raised objection at the time of alleged encroached construction if any by the defendant. Further, the plaintiff has not even knocked the doors of the appropriate authority for not obtaining license from the concerned authority. The construction if at all made by the defendant by encroaching the property should have prompted the plaintiff to approach the appropriate forum for violating the municipal laws at the earliest point of time. That has not been done. It is to be noticed that the plaintiff has allowed the gross to grow under his feet over a period of time and has filed the present suit in the year 2016 for the relief of mandatory injunction and permanent injunction that too after the institution of a suit for mandatory injunction by the defendant under OS No. 546/2015.

40. Further, it is to be noted that in cases of mandatory injunction, promptness is essential if a mandatory injunction is desired remedy. When the plaintiff does not file a suit for mandatory injunction at the earliest opportunity but has waited till the building is completed and then ask the court to have it removed, the relief cannot be granted. If a person having a right to object has acquiesced in the construction of the structure that is encroached upon the plaintiff is not entitled to discretionary remedy of mandatory injunction. It is not in dispute that the plaintiff is an immediate neighbour of the defendant. It is not as if he has been staying away for length of time. If really he had cared to find out he would have certainly come to know about the defendant putting up construction and it is also surprising that the plaintiff is silent about if after the purchase of the suit property whether the plaintiff got the property measured and if he checked upon if the defendant had left set back as the defendant had already completed the construction. The suit having been filed in the year 2016 when it is admitted by the plaintiff himself that the construction was made by the defendant prior to 4 years of the purchase of the property by the plaintiff itself makes the plaintiff certainly guilty of acquiescence even though the construction of the lavatory attached to the wall of the plaintiff's property as alleged by the plaintiff had come to the notice of the plaintiff in 2015 seems unbelievable.

41. Further, it is necessary to consider that when it is admitted by the plaintiff himself that the construction was already made by the defendant when the plaintiff purchased the property how it could be possible that the defendant would construct a lavatory attached to the wall of the plaintiff. The plaintiff did not at the earliest point of time seek the removal of the

lavatory, but for the first time has approached the court and filed the present suit in the year 2016 as a counter blast to the suit instituted by the defendant in OS No.546/2015. Hence, I inclined to answer Issue No. 5 in the Affirmative.

42. Issue No.6 :- It is the specific case of the plaintiff that defendant has illegally constructed the lavatory and bathroom over B schedule property is highly illegal one and against the norms of the plaint and Municipal Corporation Act and by laws and to declare that defendant has put up lavatory towards south western portion measuring 4 X 10 feet without leaving set back and for demolishing structure by way of mandatory injunction and remove structure constructed on suit schedule 'B' property and also for permanent injunction to restrain the defendant, his henchmen, agents or anybody causing damages and disturbing peaceful possession and enjoyment of the plaintiff over the suit schedule 'A' property. Having considered the evidence on record, I am of the view that plaintiff has utterly failed to establish that plaintiff and defendant have left set back at the time of construction of their respective buildings and that the defendant has encroached 4 X 10 feet in the set back left by the plaintiff and the defendant and constructed the lavatory attached to the wall of the plaintiff. Further, the plaintiff has not taken any pain to get appointed a court commissioner to ascertain if there is any illegal construction or encroachment made by the defendant. Further, the plaintiff, in as much as he has acquiesced his right seek a decree for mandatory injunction within the period of limitation does not entitle him for extraordinary relief of mandatory injunction. Thus the plaintiff having failed to establish the alleged illegal construction of lavatory

by the defendant, the plaintiff is not entitled for relief of mandatory injunction and permanent as sought for. Further in view of the said judgment, any Interlocutory Applications pending stand disposed. Hence, I inclined to answer Issue No.6 in the Negative.

43. Issue No. 7:- In view of my discussion on issue No. 1 to 6, following order is passed:-

-: O R D E R :-

The suit of the plaintiff is hereby DISMISSED
WITH COST.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and initialled by me, and then pronounced in the open court on this the 19th day of June, 2026.)

(Smt. GAYATHRI H.D.)
Prl. Civil Judge and JMFC,
Davanagere.

:A N N E X U R E:

Witnesses examined for the plaintiff/s:-

PW-1 : Rachappa
PW-2 : Kotresh D.M.

Documents marked for the plaintiff/s:-

Ex.P.1	- Original registered sale deed Dt: 13.02.1997
Ex.P.2	- Original registered sale deed Dt: 01.01.2004
Ex.P.3	- Khata extract of property No.1327/2

Ex.P.4	- DMP extract of property No.1327/2
Ex.P.5	- Tax paid receipt
Ex.P.6	- Self declaration of property tax
Ex.P.7 to P.9	- Encumbrance certificate
Ex.P.10	- Proposed construction plan
Ex.P.11	- Building construction permission
Ex.P.12 and P.13	- Photographs
Ex.P.14 and P.15	- CD and receipts
Ex.P.16	- Certificate U/Sec.65(B)

Witnesses examined for the defendant/s:-

- Nil -

Documents marked for the defendant/s:-

Ex.D.1	- Chief examination in OS No.546/2015
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(Smt. GAYATHRI H.D.)
Prl. Civil Judge and JMFC,
Davanagere.