

KABC010287682024



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.

DATED: THIS THE 17th DAY OF JUNE, 2025.

PRESENT : Smt. NISHARANI A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru.

O.S.No.7932/2024

PLAINTIFFS: Smt.G.Leelavathi
W/o Sri.G.Madan Mohan,
Aged about 59 years,
R/at No.1695, 4th Cross,
2nd Main, Kamakshamma Layout,
Yelahanka, Bengaluru – 560 064.

(By Sri.Viswanatha N.S., Advocate)

V/s

DEFENDANTS: 1. The Commissioner
Bruhat Bengaluru Mahanagara Palike,
Bengaluru, N.R. Circle,
Bengaluru – 560 002.

2. The Zonal Commissioner
Bruhat Bengaluru Mahanagara Palike,
Yalahanka Sub Division,
Yelahanka Old Town,
CMC Road, Bengaluru - 560 064.

3. **The Assistant Executive Engineer**
Bruhat Bengaluru Mahanagara Palike
Yalahanka Sub Division,
Yelahanka Old Town,
CMC Road, Bengaluru - 560 064.

4. **Sri.B.Venkataramana**
S/o Late B.Nagulaiah,
Aged about 44 years,

5. **Smt.B.Venkatasubamma**
W/o Sri.B.Venkataramana
Aged about 37 years,

Both are R/at. No.3/62,
1st Main, 2nd Cross, Near Bharath
High School, Kamakshamma
Layout, Yelahanka,
Bengaluru – 560 064.

(D.1 to 3 by Sri.J.N.M., advocate
D.4, 5 by Sri.G.N.R., advocate)

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Provision under which the application is filed	I.A. filed under Order VII Rule 11(d) & (e) r/w/ section 151 of CPC
Relief sought for	To reject the plaint
The date on which the objection filed by opponent	14-03-2025
The date on which the order passed on the said application.	17-06-2025

**ORDER ON I.A.No.4 UNDER ORDER 7 RULE 11 (d) & (e)
R/W/S.151 of C.P.C. FILED BY THE DEFENDANT No.4 & 5:**

This application is filed by the defendant No.4 and 5 under Order 7 Rule 11(d) and (e) r/w Sec.151 of CPC, praying to reject the plaint in the interest of justice.

2. In support of the I.A. the defendant No.4 has sworn to an accompanying affidavit stating that, the suit is filed by the plaintiff against the defendants No.4 and 5 for the relief of mandatory injunction and prohibitory injunction and other consequential reliefs. The defendants have purchased the schedule 'B' property by two different Sale Deeds from Sri.Mohammed Wajeed @ Mohammed Wajib rush by Sale Deed dated 06.04.2023 and another Sale Deed from Sri.Munawar Pasha and his wife Smt.Parvin Taj by way of Sale Deed dated 03.04.2023. Subsequently, the defendants No.4 and 5 amalgamated the above said both the sites by way of amalgamation deed dated 17.04.2023. From the date of purchase the defendants No.4 and 55 are in peaceful

possession and enjoyment of the same and Khatha changed in their names as per the certificates dated 09.06.2023 issued by the BBMP. The defendant No.4 paid up to date tax to schedule 'B' property and he obtained the building license and sanction plan from the competent authority of BBMP. The defendants have started their construction as per sanction plan in the 'B' schedule property. The plaintiff suit is not maintainable as there is no cause of action for the suit. The plaintiff has filed the frivolous suit without informing these defendants. Further the present suit barred by limitation under Article 59 of the Limitation Act 1963 as the plaintiff filed the present suit after lapse of two years from the date of started the construction. Moreover the plaintiff herself encroached the 4 inches of the defendants property and constructed her residential building without leaving any setbacks as per the rules and the plaintiff has not obtained any sanctioned plan from the competent authority. The cause of action shown in the plaint is created for the purpose of this case. Admittedly, the defendants started the construction in the two

years back, the plaintiff knows everything about the constructions as she is the neighbor of the defendants. Intentionally, she kept quiet for two years and filed this frivolous suit at the far end of constructions by creating false cause of action in the plaint. Therefore, the plaintiff has no locus standi to file a case against her neighbor owners. Hence, prayed to dismiss the suit.

3. The plaintiff filed objections and submitted that, application filed by the defendants No.4 and 5 seeking rejection of plaint in the above suit is not maintainable. The defendants No.4 and 5 have blocked the free air and light to the schedule 'A' property by constructing illegal construction and which leads the plaintiff to file the present and that is the cause of action to file this present suit. The date of alleged sanction plan was on 06.10.2023 and alleged construction commenced after the alleged sanction plan. The suit is well within the law of limitation in so far as cause of action concerned and not beyond two

years as contended by the defendants No.4 and 5 in the application. The plaintiff has not sought any relief against the defendants No.1 to 3 in the present suit and it is not the case of the plaintiff that she has undertaken the construction, the defendants No.1 to 3 have interfered with the construction. On the other hand, it is the case of infringement of easementary right of the plaintiff due to illegal construction of the defendants No.4 and 5. Thereby, mere taking of actions under the BBMP act by the defendants No.1 to 3 against the defendants No.4 and 5 does not prohibit the plaintiff from seeking protection of her easementary rights against the defendants No.4 and 5 and the Judgment in W.P.No.9934/2023 is not applicable to the fact of this case as facts and circumstances of the facts of both cases are different and further the direction given are not applicable to the facts of this case. Hence, prayed to reject the application.

4. With this rival contention of plaintiff and defendant No.1 the following points arise for my consideration:

POINTS

1. Whether the application filed by the defendant No.4 and 5 is deserves to be allowed?
2. What order ?

5. Heard arguments both the sides. Perused the material available on record.

6. My findings for the above points for consideration:-

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| POINT NO.1 | : In the Negative, |
| POINT NO.2 | : As per final order for the following ; |

REASONS

7. **POINT NO.1:** The plaintiff filed this suit for the relief of mandatory injunction restraining the defendants from putting up further illegal constructions and to restrain them from interfering

with the peaceful possession and enjoyment of the suit schedule property.

8. This application under Order 7 Rule 11 (d) & (e) filed by the defendants No.4 and 5 for rejection of plaint.

9. The learned counsel for the defendants relied the following citation:-

1. The Judgment passed by the Hon'ble Supreme Court of India, in the case of (India Evangelical Lutheran Church Trust Association V/s. Sri.Bala & Co.) in **Civil Appeal No.1525/2023** dated 08.01.20255.

2. The Judgment passed by the Hon'ble High Court of Judicature at Madras, in the case of (C.E. Sathyanarayana Reddi V/s. C.E.Sulochana) in **O.S.A.No.355/2008** dated 19.08.2009.

3. The Judgment passed by the Hon'ble Delhi High Court, in the case of (Manju Anand and another V/s. Geeta Chopra and others) in **CS(OC) No.3315/2015 and I.A.No.23296 to 97/20155** dated 04.11.2015.

4. The order passed by the Hon'ble High Court of Karnataka in **Writ Petition No.9934/2023** (LB-BMP), in the case of (Smt.Kavitha Jain and others. Etc. V/s. The Commissioner BBMP and others) dated 17.08.2023.

Perused the citations relied by the counsel for the defendants No.4 and 5. The above citations are not applicable to the case on hand.

10. The plaintiff made the neighbors and BBMP as the defendants to the present suit. The defendants No.1 to 3 are the BBMP authorities and the defendants No.4 and 5 are the neighbors who are building alleged illegal construction. However, the defendants No.1 to 3 authority have filed their written statement stating that on the basis of the complaint lodged by the plaintiff against the defendants No.4 and 5 with respect to putting up illegal construction, the legal action is taken by the authorities. However, the plaintiff stated that the illegal construction is objecting easementary right of light and air to the plaintiff's property. Therefore, at this stage the Court

cannot come to the conclusion and reject the plaint in the threshold. Therefore, a complete full-pledged trial is requires to decide that the construction put up by the defendants No.4 and 5 is illegal or not and whether this illegal construction effecting light and air i.e. easementary right of the plaintiff. The defence of reject the plaint cannot be take at this stage. Therefore, with this observation, I answer Point No.1 in the **Negative**.

11. **POINT NO.2** :For the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No.4 filed by the defendants No.4
and 5 under Order 7 Rule 11 (d) and (e) r/w
Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer, translate and typed by her, corrected and pronounced by me in open Court on this 17th day of June, 2025).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**

