

KABG040056792023



IN THE COURT OF THE I ADDL. CIVIL JUDGE
& JMFC, AT: BELAGAVI

Present: Sri. Nagaraj Barki. B.A., LL.B.,
I Addl. Civil Judge & JMFC.,
Belagavi.

Dated: This, the 7th Day of March 2024
ORIGINAL SUIT NO.1644/2023

Shri. Vamanrao Hanmantrao Jadhav
Age: 75 Years, Occ: Ex-Servicemen,
R/o. Plot No.50, Sy.No.663/1
Kalmeshwar Housing society, Angol
Belagavi-590 006. Tal and Dist: Belagavi.

(Plff. By Smt. H.M.Shahapurkar, Adv.)
.... Plaintiff

Vs.

Shri. Sanjeev Lakappa Pujari
Age: 50 years, Occ: Business
R/o. Near Kurade Complex,
Opposite Maruti Temple, Khanapur road
Hanumanwadi, Brahma Nagar, Udyambag,
Belagavi-590 008, Tal and Dist: Belagavi.

(Deft. By Shri. S.I.Ganamukhi, Adv)
.... Defendant

Parties to I.A.No.I

Applicant/ Plaintiff :

Shri. Vamanrao Hanmantrao Jadhav
Age: 75 Years, Occ: Ex-Servicemen,
R/o. Plot No.50, Sy.No.663/1
Kalmeshwar Housing society, Angol

Belagavi-590 006. Tal and Dist: Belagavi.

V/s.

Opponents/ Defendants:

Shri. Sanjeev Lakappa Pujari
Age: 50 years, Occ: Business
R/o. Near Kurade Complex,
Opposite Maruti Temple, Khanapur road,
Hanumanwadi, Brahma Nagar, Udyambag,
Belagavi-590 008, Tal and Dist: Belagavi.

ORDERS ON I.A.NO.I FILED BY THE PLAINTIFF U/O
XXXIX RULE 1 & 2 OF C.P.C

An instant application filed by the plaintiff with a prayer to order of ad-interim injunction to restrain the defendant, their agents, servants or anybody acting on his behalf from obstruct the plaintiff from doing construction over the suit property.

2. In support of the affidavit to the application wherein the plaintiff has stated that he has purchased the property from its earlier owner Anant Changappa Lad of Macche Belagavi, vide sale deed dated 07.11.1997. The property bearing Gram Panchayat Peernwadi No.2272, 2272/A, 2272/B measuring East-West towards southern

side 51ft, towards north side 63 ft in length and south-north 35ft in width which consists R.C.C. three shops measuring 1)10ft x 14ft, 2)15ft x 11ft and 3) 17ft x 12 ft and remaining open space surrounding to the shops, with two separate electric meters bearing No.HMD MP-4 III phase 15 HP and MVR MP-9000 III phase 5 HP etc., situated at Brahma Nagar, opposite Maruti Mandir, Khanapur Road, Udyambag,

3. After purchase of the said property, then his name got mutated in the property records as absolute owner till today. The plaintiff has absolute owner and is in peaceful possession and enjoyment of the above said property. As per the sale deed, he had total width of the property measuring 35ft south-north and out of it he left the 5ft passage towards south side of his property and the original owner has also left 5 feet from his remaining property altogether the 10ft passage was left towards, the south side of his property for common use and Wahiwat. After leaving 5 ft passage, the total width of the property remains with plaintiff is 30ft towards south north. He was

paying the taxes to the concern authorities since beginning till today. Few years back, the Government took plan of the road widening work of main Khanapur road high way and in the said widening of Khanapur main road his front side property measuring towards north 35ft and towards south 32ft was acquired by the Government for road widening.

4. After acquisition of front portion of the property by the Government was constructed by foot path and the height of the road was enhanced, because of which the three shops 2/3rd portion went down of the road and were in dilapidated condition and endangering to the life of the human. The plaintiff demolished the all three old shops to construct new house for residence purpose in the suit property, but two years back the defendant got constructed his compound wall in his premises touching to the polls laid down by plaintiff boundary. On the said compound wall the defendant at night suddenly fixed the door with frame and window towards his western north side without living any setback/space so also fixed the

patra/steel sheet as roof and front portion of the roof steel sheet coming in plaintiff suit property. On next day plaintiff requested the defendant to remove the door frame and window but, the defendant was not in mood to heed his request. The plaintiff was alone taking undue advantage of his old age the defendant accompanied with the gunda people forcibly stopped the work of digging. Then, plaintiff has approached to the concern police station and lodged complaint, the police came on the spot and saw the suit property and had talk with the defendant in his house and while returning advised to stop the work otherwise they will file case against you. The defendant is high handed and influenced person and always accompanying with the local political leaders that why he is threatening and obstructing for construction work in the suit property even though he is not having any kind of right, title over the suit property. Hence, this application.

5. On the other hand, the defendant has filed objection to I.A.No.I and he has denied the averments of supporting affidavit and it is specifically contended by the

defendant that the plaintiff is constructing in the suit property which is adjacent (i.e., by touching the defendants property) to the defendant house property for which plaintiff has dug more than five feet in depth. It is endanger to the life and his family members, which is illegal and unlawful. The plaintiff has not taken permission to construct in the suit property by the proper authority. The plaintiff is constructing over the suit property without taking any care of rules made by the Government i.e. local authority. Hence, it is illegal. The plaintiff has not come with clean hands as there is no legal permission as well as map of the suit property. Hence, prayed to dismiss the present application.

6. On perusal of the respective pleadings, documents, and applications, the points that arise for my consideration are as follows;

POINTS

i) Whether the plaintiff has made out prima-facie case?

ii)Whether the balance of convenience lies in favour of the plaintiff?

iii) Whether irreparable loss and hardship would be caused to the plaintiff if a temporary injunction is not granted?

iv) What order?

7. Heard the argument on behalf of the plaintiff and the defendant. Perused materials and documents submitted by both parties were placed on record carefully.

8. To the above points have been answered 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

9. POINTS NO.1 TO 3:- These points are taken up together for discussion to avoid repetition as they require the same set of pleadings and documents.

An instant suit filed by the plaintiff against the defendant for the relief of permanent injunction to restrain the defendant from obstructing construction work done by the plaintiff and the relief of mandatory injunction to direct the defendants for remove the newly fixed door with frame, window and front portion of the steel sheet roof on the compound wall towards the eastern northern corner side of the suit property.

10. It is the case of plaintiff that after purchase of the suit property, his name mutated in property records as absolute owner. As per the sale deed, the original owner and the plaintiff left 10 feet passage towards the southern side of the suit property for common use and wahiwat. The highway authority made acquisition in part of the suit property for road widening, therefore the plaintiff demolished all three old shops in the suit property for new construction. However, the defendant has illegally fixed the door with frame window and steel sheet on his compound wall without leaving any setback. Further the defendant is trying to threatening the plaintiff and obstruction in the construction of the plaintiff. On the other

hand the defendant has denied the allegations of the plaintiff and it is specifically contended by the defendant that the plaintiff is constructing in the suit property which is adjacent to the defendants house property with endanger to the life and property of the defendant, the plaintiff has not taken permission to construct in the suit property. It is specifically denied by the defendant the proper description of suit property.

11. In order to show prima-facie, the plaintiff has produced unregistered notary copy of sale deed dated 07-11-1997 in respect of property panchayat No.2272, 2272/A and 2272/B which was executed by Anant Lad in favour Vamanrao Jadhav. Further, the plaintiff has produced old panchayat assessment list pertaining to the suit property which are in the year 1997, the same were standing in the name of plaintiff. Since the said above documents are in Marathi language, the plaintiff has produced transaction copy of those documents. Further the plaintiff has produced tax assessment list and acknowledgment of Udyambag police station along with complaint and photos. Per contra the defendant has

produced unregistered sale deed dated 25-02-2020 which was executed by Ramchandra Jadhav in favour of Sanjeev Pujari and Venkatesh Pujari in respect of house property bearing RSN0.350 its corporation property No.761. Further defendant has produced the photos along with Form No.1 in respect of his property.

12. On careful perusal of the records it apparent that admittedly the title deeds of the plaintiff and defendant are unregistered documents. No doubt, the name of plaintiff recorded in old assessment extract of panchayat in the suit property. It is specifically contended by the plaintiff that highway authority made acquisition in the suit property. At this juncture, the plaintiff did not produce the documents which are relating to acquisition of highway authority before the court. It is material to note that in absence of the said documents, it is difficulty to ascertain exact acquisition property of the plaintiff in the suit property. Apart from that, the plaintiff has been claiming the relief of permanent injunction based upon unregistered title deed.

13. The construction of the plaintiff in the suit property is concerned, the plaintiff did not produce map or construction permission from the competent authority. It is relevant to note that after demolition of old buildings, it is necessary to get permission for new construction building, the plaintiff has not placed the materials for construction permission from the competent authority. Apart from that in absence of approved map from the competent authority, how could be accept extent of construction in the property of plaintiff after following the rules and regulations issued by the competent authority.

However, it is to be noted that the plaintiff has not produced the document of building permission and approved map of the competent authority at this juncture. Further it is important to note that the plaintiff has alleged regarding fixed the door and sheets on the compound wall of defendant. In this context, it is to be noted that fixing of door and sheets are showing as newly, but the said compound wall is old wall which was existed in previous. It is pertinent to note that the plaintiff has not disputed existence of compound wall, but the plaintiff has alleged

about only fixing of door and sheets on the compound wall. Moreover, the sale deed of defendant is also unregistered document.

14. Apart from that only based upon photos it cannot be held that the plaintiff has obtained the necessary permission from the competent authority after demolition of old building and he will construct as per terms and conditions of the permission issued by the competent authority after leaving the set back area. Moreover, the defendant has contended that he is having only road to approach the main road from his property. In this concerned, it cannot be considered before full pledged trial. On considering all these aspects, it cannot be ascertain as construction of plaintiff in own area in absence of material document. In the light of above discussion, this court comes to the conclusion that the plaintiff has not establish prima-facie and balance of convenience lies in favour of the plaintiff. When the plaintiff has not shown prima-facie, irreparable loss of the plaintiff does not arise. Accordingly, this court answered **points No.1 to 3 in the Negative.**

15. POINT NO.4:- In the light of the above discussion and materials available on record, I proceed to pass the following;

ORDER

IA No.I filed by the plaintiff against the defendant under Order XXXIX Rule 1 and 2 of CPC is hereby dismissed with no costs.

On considering the nature of the suit and parties to the suit, no order as to costs.

(Directly dictated to the Stenographer on the computer, typed by her, corrected by me, and then pronounced in the open Court on this 7th day of March 2024)*

Sd/-

(Nagaraj Barki)

**I Addl. Civil Judge & JMFC,
Belagavi.**