

Present: Miss. M.S. SHASHIKALA,
B.A.L.L.L.B.,
III Addl. Civil Judge & JMFC., Belgaum.

O.S. No.135/2014

1. Miss. Kamala D/o. Malakappa Patil,
Age: 57 years, Occ: Household work,
R/o: 1307, Gyani Colony, Station Road, Bijapur,
Represented through her
Irrevocable General Power of Attorney Holder
Shri. Muzaffar Musharif S/o. Mehamood Bagewadi,
Age: 47 years, Occ: Business,
R/o: H.No.1033/3, Kalaigar Galli, Fort Road, Belgaum.

... Plaintiff

(Plaintiff by Shri. A.A. Sunalkar., Adv., Belgaum)

1. Shri. Muzammil S/o. Mohammedali Alwakdar,
Age: 32 years, Occ: Business,
R/o: H.No.4073, Kakativess Galli, Belgaum.
2. Shri. Mohammedumar S/o. Mohammedusman Shaikh,
Age: 27 years, Occ: Business,
R/o: Mannurkar Galli, Belgaum.

... Defendants

(Defendants by Shri. MMC., Adv., Belgaum)

Parties in I.A. No.II**BETWEEN:**

1. Smt. Kamala Malakappa Patil,

... Applicants/ plaintiff

AND:

1. Shri. M.M. Alwadkar and another.

... opponents/defendants

ORDER ON I.A.No.II

I.A. No.II filed by the plaintiff under Order 39 Rule 1 and 2 R/w. Sec.151 of CPC seeking prayer to restrain the defendants or their henchmens, agents, servants and anybody acting on their behalf for not to put up further construction/stop construction upon the suit property till the disposal of the suit by way of Temporary Mandatory Injunction. The application is supported by an affidavit sworn by the plaintiff.

2) It is submitted by the plaintiff that she has purchase the suit property through registered sale deed dated 18.4.1990 from Asadkhan Co-Op. Housing Society Ltd., Belgaum and accordingly her name is also mutated in M.E. No.7215 dated 26.6.1994 with respect to the suit property

and she was in possession and enjoyment of the suit property from the date of her purchase. The defendants without having any right, title, interest in or over the suit property taking advantage with the plaintiff residing in Bijapur and started construction in suit property. When plaintiff enquired the defendant, the defendant shown their sale deed which pertains to totally different property i.e. Plot No.40/1 out of R.S.No.54/2 and further enquired that whether they have got measurements and fixation of boundaries got done by them but they told that they will construct over the suit property. Hence they lodged complaint before APMC Police on 6.1.2014. But the same is vent in vain. Further it is submitted that the defendant without obtaining building permission illegally construct in suit property. If defendants are not restrains from putting up further construction, the plaintiff will be put into hardship and hence prays to allow the I.A.

3) On the other hand the defendants filed written statement and treat the written statement as objection to I.A.

4) The defendant has specifically denied the case of the plaintiff. It is the specific defendant of the defendant is that after purchasing plot No.40/1 measuring 55' x 45' = 2475 Sq.fts comprised in R.S. No.54/2A of (Azam Nagar) Kangrali BK, Belgaum is originally held by the Aszdkhan Co-operative Housing Society Limited, Belgaum and the said society has allotted the said plot to its member Shri. Sameer Mohammadsab Mulla and executed a registered sale deed dated 14.2.2008 and put him in possession of suit property. Further it is submitted by the defendant that they have paid tax to the suit property and they are in possession of the property purchased by them. Further it is submitted by the defendants that they have already completed construction in the property purchased by them and only plastering work is remained. At this stage if further construction is stopped the defendant will be put into great hardship and irreparable loss. At this stage the plaintiff has not made out prima facie case. Hence prays to reject the I.A. No.II.

5) Heard argument by Shri. A.A.S., Adv., for plaintiff and Shri., for defendants.

6) Based on the above said pleadings, the following points are arised for my consideration;

:POINTS:

1. Whether the plaintiff has made out prima facie case in respect of the relief claimed in I.A.No.II?
2. Whether the balance of convenience lies in favour of the plaintiff in respect of the I.A.No.II?
3. Whether, if Temporary injunction as prayed for I.A.No.II is not granted the plaintiffs will suffer irreparable injuries?
4. What order?

7) My answers to the above said Points are 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:

8) **POINTS No.1 to 3:-** As these points are interlinked with each other, therefore these points are taken together for common discussion in order to avoid repetition.

9) It is the contention of the plaintiff that, she has purchase the suit property through registered sale deed dated 18.4.1990 from Asadkhan Co-Op. Housing Society Ltd., Belgaum and accordingly her name is also mutated in M.E. No.7215 dated 26.6.1994 with respect to the suit property and she was in possession and enjoyment of the suit property from the date of her purchase. The defendants without having any right, title, interest in or over the suit property taking advantage with the plaintiff residing in Bijapur and started construction in suit property. When plaintiff enquired the defendant, the defendant shown their sale deed which pertains to totally different property i.e. Plot No.40/1 out of R.S.No.54/2 and further enquired that whether they have got measurements and fixation of boundaries got done by them but they told that they will construct over the suit property. Hence they lodged complaint before APMC Police on 6.1.2014. But the same is vent in vain. Further it is submitted that the defendant

without obtaining building permission illegally construct in suit property. If defendants are not restrains from putting up further construction, the plaintiff will be put into hardship and hence prays to allow the I.A.

10) The plaintiff to prove that she is in possession of the suit property has produced RTC with respect to Sy.No.54/2A. The plaintiff has produced sale deed to prove that she has purchase the suit property on 18.4.1990. Further the plaintiff has also produced sale deed to show that her name is mutated with respect of the suit property. The plaintiff has also produced application intimating to the Commissioner, City Corporation, Belgaum about illegal construction made by the defendant.

11) It is the specific defendant of the defendant is that after purchasing plot No.40/1 measuring 55' x 45' = 2475 Sq.fts comprised in R.S. No.54/2A of (Azam Nagar) Kangrali BK, Belgaum is originally held by the Aszdkhan Co-operative Housing Society Limited, Belgaum and the said society has allotted the said plot to its member Shri. Sameer Mohammadsab Mulla and executed a registered sale deed

dated 14.2.2008 and put him in possession of suit property. Further it is submitted by the defendant that they have paid tax to the suit property and they are in possession of the property purchased by them. Further it is submitted by the defendants that they have already completed construction in the property purchased by them and only plastering work is remained. At this stage if further construction is stopped the defendant will be put into great hardship and irreparable loss. At this stage the plaintiff has not made out prima facie case. Hence prays to reject the I.A. No.II. The defendant to substantiate her case has relied upon following citation;

AIR 2008 SUPREME COURT 2291

Mandali Ranganna & Ors. Etc Vs. T Ramachandra & Ors.

**(A) Civil P.C. (5 of 1908) O. 39 Rr.1, 2-
Injunction-Grant of –Besides consideration of
basic elements. Court must consider conduct
of parties.**

12) On the other hand the defendant has also produced sale deed dated 19.11.2013 to show that he has purchase the plot No.40/1 measuring 55' x 45' Sq.ft out of

R.S.No.54/2A Kangrali BK, Belgaum. The defendant has also produced the tax receipt, assessment Extract. Further the defendant has also produced his Vendor sale deed dated 14.12.2013.

13) The plaintiff has filed this suit for Permanent and Mandatory Injunction to restrain the defendant from putting up of further construction. It is to be noted that the plaintiff contention is that in her suit property the defendant has constructing. On the other hand the defendant is denied the same. It is the contention of the defendant is that he has constructing his house in the property purchased by him.

14) On perusal of the available materials on record it is pertinent to note that the plaintiff has also produced document to show that he has purchase the suit property. On the other hand the defendant has also produced document to show that he has also purchased the property from the Asad Co-op Housing Society. Further it is pertinent to note that the defendant has also produced photographs of the construction of house made by them. On perusal of the said photographs almost all construction has taken place

except plastering the house. At this stage it is very difficult for the court to come to the conclusion whether the defendant has constructing in the suit property of the plaintiff or not. Hence I am of the opinion that it requires trial. Since the defendant has already almost completed his construction. At this stage it is just and not proper to restrain him from constructing. If defendant is restrained he will be put into great hardship and inconvenience. Hence I am of the opinion that at this stage the plaintiff has not made out a cause. **Hence I answer Points No.1 to 3 are in Negative.**

15) **POINT No.4:-** Since Points No.1 to 3 are answered as Negative, I proceed to pass the following;

: O R D E R :

I.A. No.II filed by the plaintiffs
under Order 39 Rule 1 and 2 R/w.
Section 151 of CPC is hereby
dismissed.

(Dictated to the Stenographer, transcript corrected by me and then pronounced in the open Court on this the 12th day of February, 2014).

Sd/-

(Miss. M.S. SHASHIKALA),
III Addl.Civil Judge & JMFC, Belgaum.