

KABG040010462020



**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 13th day of October 2023.

ORIGINAL SUIT NO.522/2020

Plaintiffs:-

Mr. Rajendra S/o Bharamanna Narasagouda.

//VS//

Defendants:-

Mr. Devendra S/o. Neminath Narasagouda and another.

Parties to IA No.VII

Applicant :-

Mr. Rajendra S/o Bharamanna Narasagouda.

//VS//

Respondents:-

Mr. Devendra S/o. Neminath Narasagouda and another.

ORDER ON I.A.NO.VII

An instant application filed by Plaintiff U/s.151 of CPC seeking for police aid against the defendants to enforce the temporary injunction order passed by the Hon'ble Prl. Senior Civil Judge and CJM Belagavi in MA No.98/2023.

2. It is stated in the accompanying affidavit to the application that an application at IA.No.5 restraining the defendants from putting up any sort of construction before this Court. The Hon'ble Court was rejected an application by its order dated 25.07.2023, being aggrieved by the said order the plaintiff has preferred M.A.No.98/2023 before the Hon'ble Prl. Senior civil judge Belagavi, the Hon'ble Court was allow application by its order dated 15.09.2023. The defendants are not stop make any construction. Inspite of order passed by the Hon'ble Appellate Court restraining the defendants to not to make illegal construction over the property. But the defendants without obeying the order of the Hon'ble court was making illegal construction over the property.

3. The plaintiff has complained before the police but, the police have not taken any steps to stop the construction on the ground that no direction from the Court. Therefore, it is absolutely necessary to allow the application, if this application is allowed no hardship or loss will be caused to defendants. On all these grounds, prayed to allowing the application.

4. On the other hand, the counsel for the defendants filed objections by denying the allegations made in the affidavit as false. It is contended that, the Hon'ble Appellate Court in M.A.No.98/2023 observed that the T.I. order will not obstruct the construction undertaken by the defendants as per their sale deed dated 31.05.1958 and alleged encroachment has been decided after recording of evidence and by appointment of Court Commissioner. Unless proper steps of the plaintiff, the Court has no power to entertain the application, the plaintiff has unnecessarily troubling and harassing the defendants to stop the construction. The

alleged encroachment cannot be decided by the police authority. Hence prays to dismiss with cost.

5. Heard on learned counsel for the plaintiff and defendants and perused the materials placed on record.

6. The following points are arise for my consideration as under:-

1. Whether the Plaintiff has made out sufficient grounds for Police protection to enforce the temporary injunction order passed by the Hon'ble Prl. Senior Civil Judge and CJM Belagavi in MA No.98/2023?

2. What order?

7. My findings to the above points are as under:

Point No.1: Partly in the Affirmative,

Point No.2: As per final order for the

following:-

REASONS

8. POINT NO.1 : The present suit filed by the plaintiff against the defendants for the relief of permanent injunction and mandatory injunction over the suit property. After institution of the suit, the plaintiff has filed IA No.V Under Order 39 rule 1 and 2 for seeking temporary injunction against the defendants from encroaching further construction on the eastern and western side of the suit property at the back side till disposal of the suit and the same application heard on both sides, IA No.V was rejected by this Court on 25.07.2023. Thereafter, aggrieved of the order i.e., plaintiff has preferred MA No.98/2023 before Hon'ble Prl Civil judge Belagavi by challenging the order on IA No.V.

9. In support of plaintiff, the learned counsel for the plaintiff has argued that, even temporary injunction for not to make any construction in the suit property as per order in MA No.98/2023, the defendants without obeying the order of the Hon'ble Court they are making illegal construction over the suit property. The defendants are not ready to follow the

order of temporary injunction granted by the Hon'ble appellate Court. Further, it is argued that the Hon'ble appellate Court has clearly observed in 16th para of the order in MA No.98/2023 that encroachment is to be decided in taking evidence and by appointing a Court Commissioner. As per sale deed of the defendants, they have not constructed in their property, but the defendants have been constructing in the suit property also. Per contra, the learned counsel for the defendants has argued that, the alleged encroachment decided after recording of the evidence and by appointing the Court Commissioner, before full pledged trial it cannot be come to the conclusion as the defendants have encroached the suit property, it amounts to abuse of process of law. The plaintiff has intended to give unnecessarily trouble and harassing the defendants to stop the construction under taken as their area. After establishment of encroachment, the contention of the plaintiff would be accepted.

10. On careful perusal of the records, it appears that the plaintiff has produced online judgment copy in MA No.98/2023 to show order of temporary injunction granted by the Hon'ble appellate Court. On perusal of the order, the Hon'ble appellate Court has ordered as follows,

" Miscellaneous Appeal filed under order XLIII Rule 1(r) R/w. Section 151 of C.P.C., is hereby allowed.

The order passed by the learned I Addl. Civil Judge & J.M.F.C., Belagavi, on I.A. No.V in O.S.No.522 of 2020 dated: 25.07.2023 is hereby set aside.

As a result, I.A. No.V filed by the plaintiff is allowed.

The defendants are hereby restrained by way of temporary injunction from encroaching upon the suit property or carry out further construction in the eastern and western side of suit property at the backside of suit property till disposal of the suit.

It is made it clear that injunction order will not be an obstacle for the defendants to construct a structure in their property purchased as per sale deed dated 31.05.1958."

11. As per order of the Hon'ble Appellant Court, the temporary injunction granted in favour of the plaintiff from encroaching upon the suit property or carryout further construction in the eastern and western side of the suit property at the back side of the suit property till disposal of the suit. No doubt, alleging encroachment will decide after full pledged trial and by appointing the Court Commissioner. It is relevant to note that, as per order in MA No.98/2023 the plaintiff must obey order of the appellate Court till disposal of the suit. Apart from, the Hon'ble Appellate Court has observed in 16th para that width in the front side of the property sold i.e., 17.1 inches includes the common wall. The Common wall agreement clearly establishes that common is measuring 1ft.6 inches in width. So the claim of the defendants that they are having 17.1 inches in width cannot

be accepted if common wall agreement dated 07.03.1974 and sale deed dated 31.05.1958 are considered together. On considering the same before full pledged trial, it cannot be considered construction of the defendants in their property only. Therefore, if the defendants are continued the construction work in the suit property, the plaintiffs will be sufferer from the order of the Hon'ble Appellant Court in MA No.98/2023.

12. Admittedly, the said application was allowed by the Hon'ble Appellate court after considering the objection filed by the Defendants. Admittedly the Defendants were temporarily restrained from encroaching upon the suit property or further construction. At this juncture, there is no material to show challenging the order in MA No.98/2023.

13. Now, the question before the Court is that whether police protection can be given to enforce the temporary injunction order passed by the Hon'ble Court. In this context, I relied upon the ruling of Hon'ble High Court of Karnataka, reported in ***ILR 2010 Karnataka 1197 between Smt.***

Karisiddamma and others V/s. Smt. Sanna

Kenchamma. The Hon'ble High Court of Karnataka has observed at para No.11 of the judgment that,

“In the light of granting the temporary injunction order after hearing both the sides, if party in whose favour temporary injunction order is made complains to the Court that the other side is obstructing her use of the road and that the police are not coming for her rescue, the Trial Court is well within its limits to pass an order directing the police to give the necessary aid in the enforcement of the temporary injunction order. The Court can grant police aid exercising its inherent powers. Otherwise the interests of the litigants cannot be protected against a party, who violates the temporary injunction order.

14. It is alleged by way of sworn affidavit that Defendants are making illegal construction in the suit

property. When such being the case, the temporary injunction granted by the Hon'ble Appellate court has to be implemented and right of parties has to be protected. Therefore, in the facts and circumstances of the case and relying on the ruling cited above, I am of the opinion that in order to enforce the temporary injunction order, the police aid appears to be necessary. Therefore, I proceed to answer Point No.1 partly in the **Affirmative.**

15. Point No.2: For the reasons assigned in Point No.1, I proceed to pass the following:

ORDER

IA No. VII filed by the plaintiff U/s 151 CPC is allowed partly.

The Jurisdictional SHO is directed to provide police aid in implementing the temporary injunction order passed by the Hon'ble Appellate Court in MA NO.98/2023 on 15.09.2023 only in the suit property and it is not provided police aid to construct a structure in

defendants property purchased as per sale deed
dated 31.05.1958.

*(Dictated to the stenographer, Transcribed and typed by her,
corrected by me and then Order pronounced in the Open Court on this
the 13th day of October, 2023.*)*

Nagaraj Barki
I Addl. Civil Judge and JMFC,
Belagavi.