

IN THE COURT OF II ADDL. CIVIL JUDGE AND JMFC,
ATHANI

Dated this the 1st day of August 2018

Present:

SRI P.S.SANTHOSH KUMAR, M.Com., LL.B.,

O.S.NO.460/2017

Plaintiff : Sri Mallappa Shivaling Nagathan
Age: 50 years, Occ: Agriculture,
R/o. Adahalli, Tq. Athani,
Dist: Belagavi.

[Represented by Sri T.L.P., Advocate]

V/s

Defendants: 1. Sri Somanna Mallappa Hugar
Age: 60 years, Occ: Agriculture,
R/o. Farm House, Adahalli,
Tq. Athani, Dist: Belagavi.

2. Sri Appasab Somanna Hugar
Age: 35 years, Occ: Agriculture,
R/o. Farm House, Adahalli,
Tq. Athani, Dist: Belagavi.

3. Smt. Sonawwa W/o. Hoovanna
Bijjaragi, Age: 62 years,
Occ: Household work,
R/o. Farm House, Adahalli,
Tq. Athani, Dist: Belagavi.

[Defendants by Sri K.H.A., Advocate]

ORDERS ON I.A. NO.I

The plaintiff has filed this I.A. U/o. XXXIX Rule 1 and 2 R/w section 151 of C.P.C, seeking for temporary injunction restraining the defendants from demolishing and damaging the remaining construction of 'ABCD' suit property bearing V.P.C.No.43 and from obstructing in the peaceful possession and enjoyment of the said property.

2. The plaintiff has sworn to an affidavit in support of the I.A. He has stated that he has filed this suit for declaration and consequential relief of injunction. The plaintiff and defendants are resident of Adahalli village. The plaintiff is the absolute owner in lawful possession of the suit 'ABCD' property bearing G.P.C.No.43. He has inherited the said property from one Sri Shivalinga. He has constructed a house in the 'ABCD' property by spending considerable amount about three years back and residing therein alongwith his family. Said ABCD property consists of two rooms shown as 'AEFG' and 'BHFG' each measuring E-W 8' and N-S 35' with two separate doors opening

towards north. Towards southern side of the said property, there is 'CDEH' kitchen room measuring N-S 13' and E-W 16' towards the western side of the said 'ABCD' property. Towards the northern side, there is a house of Sri Dundappa Malappa Hugar, who is the brother of the defendant No.1 and towards eastern side, there is a house of the defendant No.3 Smt. Sonawwa. The defendant No.1 is the father of the defendant No.2. The defendant No.1 held no any property or open space adjoining 'ABCD' property at any time. The defendants No.1 and 2 have been residing in the farmhouse of their land. The defendant No.3 also held the old house property towards eastern side of 'ABCD' property. There is a Beerappa Temple about 100' away from the suit property. The elderly persons belonging to the said Beerappa Temple asking the house owners adjoining the Beerappa Temple to give up their house properties or open spaces in favour of the Beerappa Temple, otherwise, they will be removed from the community. Under the circumstances, the Beerappa Temple had also asked the plaintiff to give up his suit

house property bearing G.P.C.No.43 in favour of the Beerappa Temple, for which the plaintiff flatly refused. When the above circumstances were prevailing, the elderly persons and henchmen of the said Beerappa Temple and the defendant Nof.3 colluding with each other demolished the house of defendant No.3 bearing G.P.C.No.44 and during that process, they destroyed the portion of the eastern wall of the plaintiff's 'ABCD' property, by which there is no protection to the said eastern wall of the plaintiff's house during the approaching rainy season. The defendant No.3 after demolition of her house has been now residing in her farm house. Under the circumstances, the plaintiff requested the defendant No.3 and the said Beerappa Temple elderly persons to reconstruct the damaged eastern wall of the plaintiff's 'ABCD' property for which, they turned their deaf ears. When the above circumstances were prevailing the plaintiff was out of station for few days and so also his wife had been for coolie work on 26.05.2017. The defendants taking undue advantage of absence of plaintiff and his family members in

the house, on 26.05.2017 at about 4:00 P.M., the defendants No.1 and 2 and the elderly persons of Beerappa Temple and their henchmen high handedly, illegally and forcibly trespassed on to the 'ABCD' suit property and removed the tin sheet roof of the 'AGFE' portion of the 'ABCD' suit property and also removed northern portion of the wall and the door and also caused damage to the outer portion of the suit 'ABCD' property and thereby the defendants No.1 and 2 and their henchmen caused damage and loss to the plaintiff's 'ABCD' suit property. When the wife of plaintiff after her return from the coolie work questioned the defendants No.1 and 2 and their henchmen about their high handed act of demolishing of 'AGFE' portion and causing damage to the remaining portion of the building for which the defendants No.1 and 2 and their henchmen picked up quarrel with the plaintiff's wife and threatened of dire consequences and also threatened to remove the plaintiff's family out of the community and threatened that they will also demolish the remaining 'CDEH' and 'BHFG' portion also and take the

entire 'ABCD' property to the Beerappa Temple. The defendants No.1 and 2 have no any kind of right, title or interest in the 'ABCD' suit property or any portion of it. The plaintiff's wife on the next day on 27.05.2017 approached the Aigali Police and has lodged the complaint against the defendants No.1 and 2 and their henchmen. The plaintiff after his return to the village approached the defendants and also the elderly persons of the Beerappa Temple and their henchmen and called on them to restore the roof of 'ABFE' portion and also reconstruct the northern wall and door and also reconstruct the damaged portion for which they flatly refused. The prime facie case and balance of convenience is in favour of the plaintiff and if temporary injunction is not granted, he will be put to heavy loss and injury, which cannot be compensated in any terms. Accordingly, prayed for allowing the I.A.No.I.

3. On the other hand, the defendants have filed an memo adopting the written statement as objections to I.A.No.I, wherein, they have contended that the plaintiff

has not produced any document showing his ownership and to what extent, he is in possession of the suit schedule property. He has also contended that merely based on revenue documents, it cannot be said that the plaintiff is the owner of the suit schedule property. The plaintiff has not stated as to how he came in possession and enjoyment of the suit schedule property. The wife and children of said Sri Shivalinga also were having right in the suit schedule property, but they have not been arrayed as parties to this suit and as such, the I.A.No.I is not maintainable. Accordingly, prayed for dismissal of the I.A.No.I.

4. Heard both the sides.

5. The following points would arise for my consideration:-

- 1] Whether the plaintiff has made out a prima facie case in his favour?
- 2] Whether the balance of convenience lies in his favour?
- 3] Whether the plaintiff will be put to irreparable loss and injury, if the temporary injunction is not granted?

4] What order?

6. My findings on the above points are as follows:-

- 1] In the affirmative,
- 2] In the affirmative,
- 3] In the affirmative,
- 4] As per final order,

for the following,

REASONS

7. **POINT NO.1:-** It is the case of the plaintiff that he is the lawful owner and possession of the suit 'ABCD' property bearing G.P.C.No.43. The elderly people of Beerappa Temple which is about 100' away from the suit property alongwith the defendant No.3 in order to extend the area of the temple, have illegally trespassed on to the 'ABCD' property and removed the tin sheet roof of the AGFE portion of the 'ABCD' property and also removed the northern portion wall and door by taking advantage of the absence of the plaintiff and his wife from the house and thereby caused loss and damage to the plaintiff. On the other hand, it is the contention of the defendants that the plaintiff is not the owner in possession and enjoyment of the suit 'ABCD' property and his wife and children are also

having right over the same. The plaintiff has not produced any document showing his ownership and merely on the basis of revenue documents, the plaintiff cannot be said to be owner of the same. As such, the plaintiff is not entitled for any relief as sought for in the I.A.

8. The plaintiff has also produced some documents in relation to the suit 'ABCD' property. The assessment register extract goes to show that the said property is standing in the name of plaintiff for the year 2007-08. The information furnished by the Adahalli Gram Panchayat in response to the requisition of the wife of the plaintiff discloses that the said property is standing in the name of the plaintiff as per the property register maintained by them. The property register is also produced and the said copy of the register supports the fact stated in the information furnished by the Adahalli Gram Panchayat on 15.11.2016. Further the photographs produced by the plaintiff shows the alleged illegal demolition of a portion of the suit 'ABCD' property. On the other hand, the defendants have not produced any documentary evidence

to show that the plaintiff is not the owner of the suit ABCD property. However, the contentions taken by the defendants in the written statement cannot be decided at this stage and the same requires full-fledged trial. The plaintiff has also produced the copy of F.I.R., which is said to have been filed by the wife of the plaintiff against the accused mentioned therein, which also goes to show that the defendants alongwith others have caused interference with the plaintiff's possession over the suit 'ABCD' property and as such, the said complaint came to be filed by the wife of the plaintiff. On going through the above documents and other materials available on record, it goes to show that prima facie case and balance of convenience lies in favour of the plaintiff and if the defendants were not restrained from causing any sort of obstruction as prayed for in I.A.No.I, certainly, the plaintiff would be put to heavy loss and injury. Accordingly, my findings on points No.1 to 3 are in the affirmative.

9. **POINT NO.4:** In view of my findings on point No.1 to 3, I proceed to pass the following,

ORDER

I.A.No.I filed by the plaintiff U/o. XXXIX Rule 1 and 2 R/w section 151 of C.P.C., is hereby allowed with costs.

The defendants are hereby restrained from demolishing and damaging the remaining constructed portion of ABCD suit property bearing G.P.C.No.43 and also obstructing in the peaceful possession and enjoyment of the suit house property bearing G.P.C.No.43 of Adhalli village, which is shown as ABCD in annexed handsketch till disposal of this suit.

[Typed to my dictation by the stenographer directly over computer, corrected, signed and then pronounced by me in the open Court on this the 1st day of August 2018]

(P.S. SANTHOSH KUMAR)
II Addl. Civil Judge & JMFC, Athani.