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O.S.No.248/2025

KABG510031332025



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,

AT :GOKAK

:: PRESENT ::

SMT. CHAITRA V. KULKARNI,

B.A.,LL.B., LL.M.

II ADDL. CIVIL JUDGE & J.M.F.C.,
Gokak.

Original Suit No.248/2025

Dated this the 2nd Day of July 2025

PLAINTIFF : Siddappa S/o Joteppa Subanji,
(By Shri. S.S.N., Advocate)

Vs.

DEFENDANTS : Narayan Parashuram Subanji and
Others,
(By Shri.V.V.K, Advocates)

PARTIES TO I.A.No.II

Applicant/
Plaintiff : Siddappa S/o Joteppa Subanji,

Vs.

Opponents/
Defendants : Narayan Parashuram Subanji and
Others,

ORDER ON APPLICATION NO.II UNDER ORDER XXXIX
RULE 1 AND 2 R/W Sec.151 OF CPC

The present application has filed by the plaintiff by seeking temporary injunction to restrain the defendants No.1 and 2 from constructing staircase towards the Western side of their property pending disposal of the suit.

2. In the accompanying affidavit to the application, the plaintiff has stated that, he has filed the suit by seeking the relief of mandatory injunction against the defendants. He is the owner of house property bearing CTS No.2017/A/1A part measuring 31 X 40feet situated at Maratha Galli, Gokak. Plaintiff's house property is facing towards the East direction to the property of defendants. The defendants No.1 and 2 are the owners of CTS No.2017A/1A/11A measuring 37.33 sqmtrs. The house of the defendants is facing towards the Northern side. In between the plaintiff's and defendants' house, there is a public road existing towards North-South direction. The defendants are constructing the house in their property, but they are illegally constructing staircase on the

public road situated towards the Western side of the house property of defendants No.1 and 2 and the Eastern side of plaintiff's house. The entire staircase is illegally constructed on the public road itself and the said staircase does not come within the area of property of the defendants No.1 and 2. The defendants also have not obtained construction permission from the CMC Gokak. Further, the construction of the said staircase reduced the width of public road and it causes hurdle to easy moving of vehicles of public. Hence he requested to the defendants not to construct the staircase in a public road, if defendants construct a staircase in a public road, the vehicles may dash to his property and it may cause the damage to his property, but the defendants did not heed his request and continued illegal construction of staircase in public road. Therefore, plaintiff filed an application before the City Municipal Council Gokak on 17.02.2025 requesting to stop the illegal construction of staircase. The authorities of the CMC visited the spot, and came to the conclusion that said staircase is constructing entirely on a public road and directed defendants to stop and remove the construction of staircase. After 2 to 4 days defendants again started the construction of staircase and ground floor staircase, construction was completed, further the defendants are trying to construct staircase to 1st floor, which is also on the public road, plaintiff

visited the City Municipal authority Gokak and requested to stop the construction of staircase which is existing on public road. If the staircase to first floor is constructed by the defendants on the public road, plaintiff will be deprived of his right to ingress and egress and make use of the road. Further plaintiff has made many representations by requesting to the CMC Gokak, but the Municipal Authorities have also not taken any action against defendants. Being aggrieved by the same the he has filed the present suit and also filed I.A. seeking the relief as prayed therein.

3.Per contra, The defendants No.1 and 2 have filed detailed written statement and filed memo by seeking to consider the contents of written statement as objection to IA.No.II, wherein they have contended that, the plaintiff has no locus standi to file the suit for mandatory injunction against the defendants to recover staircase place, when there are specific provision in the Karnataka Municipality Act 1964. Further, the defendants are owners of suit property measuring 26 X 15's in which old building was there and they demolished old building and constructed new double stored RCC building within that area by obtaining valid permission from CMC Gokak. The defendants have not encroached upon public road, it is far away from public road. The plaintiff is not the owner of suit property and he has no interest in the suit property

which belongs to defendant No.1 and 2, so the plaintiff cannot seek injunction against the defendants. The plaintiff has no prima facie case and balance of convenience is not in favour of plaintiff. Hence, on all these grounds sought to reject the application.

4. I have heard the counsel for plaintiff and defendants and perused the material available on record.

5. The following points arise for determination:-

- 1) Whether the plaintiff has made out prima-facie case for the purpose of application?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff would suffer irreparable loss or injury, if the application is not allowed?
- 4) What Order?

6. My answer to the above points are as under:

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

7. Point No.1:- The present suit has filed for the relief of mandatory injunction and the present application has filed to restrain the defendant No.1 and 2 from constructing the staircase towards the Western side of their property. During the course of argument the counsel for plaintiff argued that plaintiff's property comes opposite to the property of defendants and in between their property, there is public road, on which the defendant No.1 and 2 are constructing the staircase, which obstruct the plaintiff as well as public to use the said road. Per contra, the counsel for defendants argued that, the defendants have constructed the staircase in their property and they have not encroached the public road, therefore, question of encroachment does not arise and the defendants are in need of staircase for reaching the upstairs.

8. On perusal of pleading of both parties, it prima facie appears that there is no dispute in respect of ownership of their respective properties, the crux of the matter is only that, the defendants are encroaching upon the public road and even there is no dispute in respect of existence of public road. Upon

perusal of documents produced by the plaintiffs, it prima facie appears that before filing the present suit, the plaintiff had approached the defendant No.3 against the act of defendant No.1 and 2, in his pleadings in the plaint, he has averred that, the defendant No.3 has visited the spot and inspected the same and came to conclusion that, there is encroachment by the defendant No.1 and 2 and also directed them to stop the construction, but he has not produced any such documents with respect to conducting the inspection by the defendant No.3, if at all the defendant No.3 has already concluded that the public road has been encroached, the authority could have taken the action against the defendants, but no such documents are forthcoming to show that the authority has taken action against the defendant No.1 and 2 as averred by the plaintiff.

9. Further, both the parties have produced the photographs but at this stage it cannot be decided as to encroachment merely by perusing the photographs and they cannot be considered at this stage. Further, the counsel for plaintiff argued that, the permitted area of construction is lesser than the area constructed by the defendants and the staircase has covered portion of public road, which is causing obstruction to the vehicles and it also causes hurdle to the plaintiff. It is to be noted that, there is no single piece of paper

to show that the defendants have encroached upon the public road and even there is no document to show the measurement of the road. Further, plaintiff could have produced the document in support of his pleading that the defendant No.3 has found that the defendant No.1 and 2 have encroached the public road, but no such documents are placed on record, and plaintiff has not placed any document to show that he has right over the alleged public road and same is only road for him and he has no alternative road than the alleged road. Therefore in the absence of such documents at this stage, the plaintiff has not proved the prima facie case.

10. Further, whether the defendant No.1 and 2 have made an encroachment over the public road as shown in the hand sketch annexed to the plaint will be determined during the trial. The plaintiff has not made out prima-facie case for the purpose of this application. **Hence, I answer point No.1 in the Negative.**

11. Point No.2 and 3:- The plaintiff has also not produced any document to show the measurement of the road and also to show the alleged encroachment of the public road. As discussed earlier, there is no clarity with respect to the encroachment of the public road on account of absence of prima facie documents in support of the said contention.

Further, it appears that the staircase has constructed at the ground level and if the defendants are not permitted to continue with the construction of staircase, it causes hardship to them to go with the construction of next floors as per the permission obtained by them, if at all the application is not allowed, no hardship will cause to anyone as there is road which appears to be existing to use for the public.

12. If after the trial, the court comes to the conclusion that there has been encroachment of the public road by the defendants, the plaintiff has certainly got remedy to demolish the staircase. On the other hand, if the court comes to the conclusion that there is no encroachment as alleged by the plaintiff then, the defendants will be at loss, as their construction work will be stopped and as they have raised the loan, it causes more hardship to the defendants rather to the plaintiff. Therefore, I am of the opinion that more inconvenience will be caused to the defendants if the application is allowed, than to the plaintiff if the application is dismissed. Therefore balance of convenience does not lean in favour of the plaintiff. The plaintiff would not suffer any loss or injury if the application is dismissed. **Hence, I answer point No.2 and 3 in the Negative.**

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13. Point No.4:- In the light of the discussion made above, I proceed to pass the following order:

ORDER

IA.II U/o.XXXIX Rule 1 & 2 of CPC
filed by the plaintiff is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, typed by his on computer and corrected by me, then pronounced in the open Court on this day 02nd July, 2025.)

(Smt. Chaitra V Kulkarni)
Prl.Civil Judge & JMFC,
Gokak.