

KABG710017162022



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

PRESENT: SHRI. VEERESH HIREMATH

B.A.,L.L.B.

ADDL. CIVIL JUDGE & JMFC., KHANAPUR

ORIGINAL SUIT No.196/2022

DATED THIS THE 27th DAY OF APRIL, 2024

BETWEEN :

1. Shri. Azharoddin S/o. Abidali Bedrekar

Age: 39 years, Occ: Medical Practitioner,
R/o. New Naik Galli,
Tal: Khanapur, Dist: Belagavi.

2. Shri. Juned S/o. Abidali Bedrekar

Age: 35 years, Occ: Private Service,
R/o. New Naik Galli,
Tal: Khanapur, Dist: Belagavi.

.....Plaintiffs

(By Shri. S.K.Nandgadi, Advocate)

AND :

1. Shri. Yallappa Balappa Naik @ Biddarbhavi

Age: 62 years, Occ: Business,
R/o. New Naik Galli,
Tal: Khanapur, Dist: Belagavi.

...Defendants

(By Shri. V.N.Patil Advocate)

Parties to the I.A.No.I

Between	Rank in I.A	Rank in suit
---------	-------------	--------------

Shri. Azharoddin S/o. Abidali Bedrekar	Applicant	Plaintiff
--	-----------	-----------

V/s

Shri. Yallappa Balappa Naik @ Biddarbhavi	Opponents	Defendant
---	-----------	-----------

Parties to the I.A.No. III

Between	Rank in I.A	Rank in suit
---------	-------------	--------------

Shri. Yallappa Balappa Naik @ Biddarbhavi	Applicant	Plaintiff
---	-----------	-----------

V/s

Shri. Azharoddin S/o. Abidali Bedrekar	Opponents	Defendant
--	-----------	-----------

ORDERS ON I.A.NO.I & III FILED UNDER ORDER 39
RULE 1 AND 2 R/W SEC.151 OF C.P.C BY THE
PLAINTIFF/APPLICANT.

The plaintiff filed I.A-I under Order XXXIX Rule 1 and 2 R/w sec.151 of C.P.C the ex-parte ad-interim injunction against the defendant, his agents and representatives by

restraining them from causing interference/disturbances in house and back yard bearing TPC No.1583/1 measuring East-West 50' feet and North-South 32' feet totally measuring 1600 square feet in which a house measures 1045.60 square feet and backyard measures 5' feet X 32' feet situated at New Naik Galli Khanapur.

3. The plaintiffs filed I.A-III under XXXIX Rule 1 and 2 R/w Section 151 of C.P.C., the ex-parte temporary injunction against the defendant his agents and representatives from construction in the area of the plaintiff i.e., house and back bearing TPC No.1583/1 measuring East-West 50' feet and North-South 32' feet totally measuring 1600 square feet in which a house measures 1045.60 square feet and backyard measures 5' feet X 32' feet situated at New Naik Galli Khanapur.

4. It is stated in the supporting affidavit that, plaintiffs are brothers, plaintiff No.1 and his father have purchased suit property from its previous owner under registered sale deed. Subsequently, plaintiff's father gifted his share to plaintiff No.2. Backyard is situated towards the western side of house as such one door is affixed for access to backyard, windows are fixed in order to enjoy fresh air and light.

5. Defendant is not concerned with suit property though he is trying to disturb the possession of plaintiff over suit property. Further, now defendant to construct the premises with the aid of State Government under Karnataka Slum Board scheme. Beneficiaries under said scheme need not obtain the permission of local authority as such defendant is trying to take the benefit of said scheme and trying to encroach the suit property. Hence, prays to allow application.

6. The defendant filed written statement and filed memo to adopt the same as objections to applications. Defendant filed written statement by denying the plaintiff's averments in toto. Further, it is pleaded that, suit is not maintainable without prayer of declaration since title of plaintiff over suit property is denied. Further, it is stated that defendant and his brothers are joint owners of property comprising house and open space situated towards western side of alleged suit property. Name of his father was appearing from more than 60-70 years, there was a tiled house in a portion of open space concerned municipality has assigned the TPC No.799, totally measuring 9205 square feet. Three sons of his father inherited that property after death of their father. Name of defendant and his brothers entered the Panchayat records. Further it is stated that plaintiff have created certain document in order to grab

the open space of defendants. There is no inch of open space remained with plaintiff. Further, submitted that, plaintiffs illegally fixed door towards western side of the alleged suit property only with an intention to make unlawful gain. It is the version of the defendants that, plaintiffs are not in possession and owners of suit property. Hence, prays to reject the application.

7. Heard both side.

8. upon hearing arguments and on perusal of material placed on record the following points arises for consideration.

POINTS

- 1. Whether the plaintiff proves that they have got prima facie case?***
- 2. Whether plaintiff proves that they have got balance of convenience in their favour?***
- 3. Whether the plaintiff proves that they will be put to irreparable loss or injury if T.I is not granted in their favour?***
- 4. What order?***

9. My answer to the above points as under:

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

Point No.4 : As per final order, for the following:

REASONS

10. Points No.1 to 3 :- Since these points are interlinked with each other, to avoid the repetition of the facts and circumstances they have taken together for discussion.

11. Plaintiff in support of his case produced the property extract of TPC No.1583/1 of Khanapur, two xerox copy of the sale deeds, xerox copy of the tax paid receipts, photographs of the suit property.

12. Here plaintiffs claimed their title and possession over suit property whereas defendant denied the entire claim of plaintiff. Here, documents are playing significant role. Plaintiffs produced the Panchayat record of suit property wherein name of plaintiffs are incorporated in records. Further, plaintiffs produced sale deed to support their version. Further, as per record of suit property, totally suit property is measuring 148.6448 square meter out of which plinth area is 97.1300865 square meter, so the area remaining is open space. Hence at this stage documents are pointing towards the title and possession of plaintiffs over suit property. Defendant is not furnished any document to

rebut the credibility of documents produced by plaintiffs. Hence, at this juncture it appears that, plaintiff is the owner of suit property and some property is left as open space on suit property even after construction of house. Now defendants are claiming no open space is left on suit property as such there are possibility of construction by defendants as if no open pace is left on suit property. Defendants are claiming that, the wall of house of plaintiff is the dead end of the suit property but at this juncture it appears that some open space is left by plaintiff even after of construction of house.

13. If defendant constructs house on open space left by plaintiff it will amounts to great loss to plaintiff and also plaintiff will have to workout to remove said construction as such it will cause grate inconvenience to plaintiff. From above all discussion I inclined to answer point no. 1 to 3 are in affirmative.

14. Point No.4:- For the above discussed reasons, I proceed to pass the following

ORDER

**The IA-I & III filed by plaintiff U/o
39 rule 1 and 2 R/w section 151 of
CPC are hereby allowed.**

The defendant his hereby restrained from causing interference/ disturbances the plaintiff possession of plaintiffs over suit property as well as from constructing the building on suit property till the disposal of the suit.

Under the facts and circumstances of the case. No order as to cost.

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then pronounced in the open court on this 27th day of April, 2024)

(Veeresh Hiremath.)
Addl. Civil Judge & JMFC.,
Khanapur.