

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

PRESENT: SRI.MANJUNATHA.R. BAL.LLB.

CIVIL JUDGE AND J.M.F.C. SANDUR

DATED THIS 30TH DAY OF MAY 2019

ORIGINAL SUIT NO.54/2019

Smt.Maasti Narasamma

... Plaintiff.

Vs.

Smt.Kurubara Gangamma

... Defendant

I.A.NO.II

APPLICANT/PLAINTIFF:

Smt.Maasti Narasamma wife of Maasti Kumaraswamy, 53 years, housewife, door No.1100, Hosa Chapparadahalli, 17th ward, Sandur town.

(By Sri.G.Mallikarjuna, Advocate, Sandur)

Vs.

OPPONENT/DEFENDANT:

Smt.Kurubara Gangamma wife of late Shanmukhappa, 56 years, near Maremma temple, 2nd ward, Sandur town.

(By Sri.S.Ujjinappa, Advocate, Sandur)

ORDERS ON I.A.NO.II

01. The plaintiff has filed this application under Order 39 Rules 1 and 2 read with Section 151 of CPC, and prayed to grant ad interim temporary injunction against the defendant, restraining the defendant, her men, coolies, servant and other persons who are claiming through her, from interfering in the peaceful possession and enjoyment of the plaintiff over the suit schedule property and from constructing any structures within three feet or attaching towards western side wall of the house of plaintiff, till disposal of the suit.
02. In the accompanying affidavit, the plaintiff has contended that, she is the absolute owner of the suit property having right, title and possession and enjoyment over the same. She has recently constructed a house under Dr.B.R.Ambedkar Housing Scheme with the aid of Government of Karnataka and she has constructed the house as per the provisions of the Karnataka Municipalities Act, leaving space in all four directions as provided under the law. She has further contended that,

towards western side wall of her house, she has put up two windows and ventilators, through which she is enjoying free air and light since the date of construction without anybody obstruction. She has further contended that, the defendant claiming to be the owner of vacant plot towards western side of the suit property, unnecessarily trying to interfere in to her peaceful possession and enjoyment over the suit schedule property by trying to lay foundation illegally within three feet or attaching towards western side wall of her house without following the provisions as provided under the Karnataka Municipalities Act, 1964.

It is further contention of the plaintiff that, on 06.01.2019 when she is working in the suit property, the defendant came to the vacant plot along with her son and other relatives and tried to dig the foundation within three feet or attaching to the western side wall of her house and tried to interfere in her peaceful possession and enjoyment over the suit property. She made a complaint to the Sandur police station to take necessary action

against the defendant and the police called the defendant and instructed not to pick up any quarrel with her and given an endorsement to her on 19.01.2019 to approach the jurisdictional court as the matter is civil in nature, and the defendant kept silent for few months, but again on 10.04.2019 and 14.04.2019 the defendant with her son and relatives tried to interfere in to her peaceful possession over the suit property and tried to lay foundation attaching to the western side wall of her house without following the provisions of the Karnataka Municipalities Act and with great difficulty, she has resisted the highhanded act of the defendant and expelled the defendant from the suit property. It is her apprehension that the defendant, at any time, may lay the foundation and dispossess her from the suit property and deprive her rights of free air and light towards western side of the suit property. The defendant is highly influential person having adamant and gusty nature and she can not spot the highhandedness of the defendant without the orders of the court. She has got a prima facie

case and balance of convenience is in favour of the plaintiff and there is imminent danger to the suit property. Hence, on these among other grounds, the plaintiff prays to allow the application.

03. The defendant put her appearance before the court through her learned counsel. But the defendant has not filed any objections to I.A.No.II.

04. Heard the learned counsel for the plaintiff and perused the material available on record.

05. The points that arise for my consideration and determination are as under:

1. Whether the plaintiff proves that he has got a prima facie case in his favour?
2. In whose favour the balance of convenience is lying?
3. Who would be put to irreparable loss, if temporary injunction is granted or refused?
4. What order?

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

Point No.1 ... In the affirmative

Point No.2 ... In favour of plaintiff

Point No.3 ... The plaintiff

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

REASONS

07. **POINT NO.1 AND 2:** The plaintiff has filed the present suit for the relief of permanent injunction against the defendant, restraining her from interfering with the peaceful possession and enjoyment of the suit schedule property. It is the case of the plaintiff that, previously the suit schedule property is a government land and she is in occupation of the suit land since more than 30 years and as such, upon the application made by the plaintiff, the TMC, Sandur has given door number to the said property as 1100 and her name has been entered in the concerned revenue records and during the year 2016-17 the plaintiff has constructed a house under the Dr.B.R,Ambedkar Housing Scheme as per the provisions of Karnataka Municipalities Act, but the defendant claiming to be the owner of the vacant plot towards western side of the suit property tried to interfere with the possession of the

plaintiff over the suit property to dig foundation within three feet or attaching to the western wall of the plaintiff's house.

- 08.** The plaintiff, at this stage, has produced the DCB Register extract of the suit schedule property for the year 2015-16 and also for the year 2019-20, which is standing in the name of the plaintiff. She has also produced the copy of mortgage deed executed by the plaintiff for having availed the full financial aid from the government under the Dr.B.R.Ambedkar Housing Scheme. The plaintiff has produced the self assessment for house tax and also produced number of photographs to show that she is in possession and enjoyment of the suit property and to show that the defendant had started constructed within the three feet left by the plaintiff as per the building license under the Karnataka Municipalities Act. The plaintiff has produced another photo which depicts that the defendant has put the mark for foundation attaching to the wall of the house of plaintiff. The photographs produced by the plaintiff clearly indicates at this stage

that the defendant has made attempt to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Hence, looking to the documents and the photographs produced by the plaintiff, at this stage, I found a prima facie case in favour of the plaintiff and the balance of convenience is also tilting in favour of the plaintiff. Though the defendant appeared before the court through his learned counsel, but he has not filed either the written statement or counter to I.A.No.II. Hence, I answer point No.1 in the affirmative and point No.2 accordingly.

09. POINT NO.3: When the plaintiff has successfully proved that she has got prima facie case at this stage and also the balance of convenience lies in her favour and in the absence of counter or written statement to I.A.No.II by the defendant, I am of the opinion that, if the application is not allowed, the plaintiff would be put to irreparable loss and hardship. Hence, I answer point No.3 accordingly.

10. POINT NO.4: For the aforesaid reasons, I proceed to pass the following

ORDER

The application filed by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 of CPC is hereby allowed.

The defendant, her men etc who are claiming through her are hereby restrained from interfering with the possession and enjoyment of the plaintiff over the suit schedule property and also from constructing any structure within three feet or attaching towards western side wall of the plaintiff's house, until further orders.

No order as to costs.

(Dictated to the stenographer, typed by him directly on the computer, corrected by me and then pronounced in the open court on this 30th day of May, 2019)

(MANJUNATHA.R.)

Civil Judge & JMFC. Sandur