

KABK710016682023



O.S./220/2023
{CASE_CAUSE_TITLE}

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI**

PRESENT :
SHRI ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 27th day of April - 2024

O.S. No.220/2023

1. Smt.Sharada W/o Suresh Biradar,
Age: 57 years, Occ: Housewife,
R/o Babaleshwar, Tq: Babaleshwar,
Dist: Vijayapur.

..... Plaintiff.

(By Shri.A.B.K., Advocate)

Vs.

1. The Deputy Commissioner,
Navanagar, Bagalkot,
Dist: Bagalkot.
2. The Secretary,
Town Development Board,
Jamkhandi, Dist: Bagalkot.

3. The Chief Officer,
The City Municipal Council,
Jamkhandi, Dist: Bagalkot.
4. The Assistant Commissioner,
A.C. Office, Jamkhandi,
Tq: Jamkhandi, Dist: Bagalkot.
5. The Tahsildar,
Jamkhandi, Dist: Bagalkot.
6. The Assistant Director of Land Records,
Jamkhandi, Dist: Bagalkot.
7. The Deputy Director of Land Records,
Bagalkot.
8. Shri.Bhimashi Biradar,
Age: 44 years, Occ: Contractor,
R/o Adarsh Nagar, Near Siddeshwar Asharam,
Vijayapur.

..... Defendants.

(D-1,4 to 7 - Exparte)

(D-2 - By Shri.D.D.J., Advocate)

(D-3 - By Shri.R.N.D., Advocate)

(D-8 - By Shri.U.S.S., Advocate)

I. A. No.I

1. Smt.Sharada W/o Suresh Biradar,

..... Applicant/Plaintiff.

Vs.

1. The Deputy Commissioner,
Navanagar, Bagalkot,
Dist: Bagalkot and Others.

.....Opponents/Defendants.

* * *

ORDERS ON I.A. No.I FILED BY
PLAINTIFFS/APPLICANTS UNDER ORDER 39
RULE 1 AND 2 R/w SECTION 151 OF C.P.C.

This application is filed by plaintiff/applicant seeking order of temporary injunction against the defendants from restraining them by making road and demolishing the suit property of plaintiff in any manner till disposal of the suit.

2. In support of application the plaintiff has sworn to an affidavit, wherein he stated that, he is the exclusive owner and in possession of the suit property since from the purchase of suit property. But the defendants have not issued notice to him regarding acquisition of his property. Now the defendants high handedly making road by demolishing his property, this illegal act of the defendants is beyond the law and facts. It is further submitted that plaintiff has purchased the suit property and he has constructed a house by investing 90 lakhs. If the defendants succeeds in their illegal acts he will be put to heavy loss which cannot be compensated in terms of money and amongst these grounds prayed to allow this

application.

3. On the contrary, defendant No.2 has contended that as per records available in the office, Jamkhandi Town Master Plan were approved by the Government in the year 1997 under vide order VNE No.334/TTP/97 dated 24-11-1997 and 2nd order in the year of 2000 under vide order No.NAE/130/TTP/2000 dated 27-07-2000. In both master plans 24 meters road was approved in the suit property bearing R.S.No.630. It is further submitted that the plaintiff's property bearing R.S.No.630/K is not approved by the defendant office. The KJP layout map regarding suit property was approved by ADLR without any reference.

4. On the other hand defendant No.3 has also contended that the land bearing R.S.No.630 of Jamkhandi taluka was earlier comes under Kumbarhalla gram panchayat and it was converted to non-agricultural land, there was no any KJP approval took from the concerned authority. The suit property is not approved from Town Planning Authority till today and there is a

circular passed by Government of Karnataka in the year of 2017 that without approval by Town Planning Authority the non-agricultural lands cannot be considered as legal one. The plaintiff has not obtained prior permission from CMC, Jamkhandi before construction of his house in the suit property. Therefore the defendant No.3 have right to demolish the plaintiff's illegal house as per Karnataka Municipalities Act. On these grounds prayed to reject the application and to dismiss the suit.

5. Heard the arguments of both the learned counsels. Also perused the records placed before this court.

6. The points that arose for my consideration are as under:

- 1) Whether the plaintiff has made out prima-facie case to grant the temporary injunction in his favour?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether plaintiff proves that

irreparable loss will be caused to him if temporary injunction is not granted?

4) What Order?

7. My findings to the above points is 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 :

: R E A S O N S :

8. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

9. It is the case of the plaintiff that, he is the exclusive owner and in possession over the suit property since from the purchase of the suit property. But the defendants without any prior notice regarding the aquisition of the property high handedly making the road by demolishing his property. It is further submitted that he has purchased the suit property for Rs.90,00,000/- and if the defendants have succeeded in thier illegal acts

he will be put to heavy loss and which cannot be compensated in terms of money. Sought for protection by this court by granting temporary injunction.

10. On the other hand it is the contentions of the defendant No.2 is that, as per the records available in their office Jamkhandi Town Plan was approved by Govt. In the year of 1997 under vide No. VNE No. 334/TTP/97 dated 24-11-2000 under vide order No. NAE/130/TTP/2000 dated 27-07-2000. In these both master plans the 24 meters road was approved in the suit property bearing R.S.No.630. They also submitted that the plaintiff layout plan is not approved but the KJP layout map in suit property is approved by ADLR department without any refrence hence they are not entitled for any relief and suit is also liable to be dismissed.

11. The defendant No.3 contended that, the land bearing R.S No.630 earlier comes under Kumbarhalla Gram Panchayat and the original owner of the said land has coverted in N.A land and there is no KJP approval

took from the concerned authority. The plaintiff has not obtained approval from Town Planning Authority nor from CMC Jamkhandi. Hence defendant No.3 i.e., CMC, Jamkhandi have a right to demolish the plaintiff's illegal house as per Karnataka Municipalities Act.

12. Keeping in mind the contentions, material placed and the arguments conveyed on the points that to be considered and the claim of plaintiff that he has purchased the suit property and constructed the house. The defendants are trying to form new road by demolishing valuable property. The defendants contending that they are forming existing road under master plan and not forming new road. The plaintiff has constructed property illegally etc.

13. The plaintiff has produced some documents in his support, now without full fledged trial all the points raised at this stage cannot be considered. Whether KJP is granted or not, whether road was in existence and plaintiff constructed house illegally or not, whether house constructed without any permission etc. To consider all

this aspects it requires full fledged trial.

14. It is also not clear that whether plaintiff's property purchased by him is legal or not and constructed house elsewhere are to be looked into. Now it shows that plaintiff property is in existence and is about to be demolished.

15. It is fairly well settled that court granting injunction must satisfy three basic principles 1) prima-facie case, 2) balance of convenience and inconvenience and 3) irreparable loss and injury. It is specifically contended by the plaintiff that he has constructed his house in suit property and he has spent Rs.90 lakhs and if the injunction is not granted the defendants colluding with each other and high handedly demolish the suit property. If they succeeds in doing so plaintiff will face irreparable loss which cannot be compensated in terms of money. This leads to multiplicity of proceedings. Now to consider all these aspects mini trial cannot be held at this stage. Thus it is clear that plaintiff got prima-facie case.

16. Considering this aspects it is clear that plaintiff will be put to face more inconvenience rather than defendants. When it comes to deciding the aspect regarding who will be put to irreparable loss or injury, the court must rely only on pleadings of parties and on careful perusal of pleadings and relying upon decision reported in **(2008) 11 SCC 1** The Hon'ble Apex Court judgment in **Mandali Ranganna & Ors. Vs. T. Ramachandra & Ors.**, Held, "While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima-facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties."

17. It is also material to refer to **Dalpat Kumar Vs. Prahlad Singh (1992) 1 SCC 719** wherein it is held that, "It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed

question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendants; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it". In the light of ratio laid down in above decisions and the discussion made supra it is clear that, if the defendants demolishes the suit schedule property, it would lead to multiplicity of proceedings.

18. Considering the above discussed facts and circumstances plaintiff has made out prima-facie case, balance of convenience also lies in his favour. If temporary injunction as prayed by plaintiff is not granted, it would cause irreparable loss and injury to plaintiff, rather than defendants. Hence for the above

said reasons, I answer Point No.1 and 2 in the '**Affirmative**'.

19. **Point No.3:-** As discussed in point No.1 and 2 irreparable loss and injury would be caused to the plaintiff in case of refusing of grant of temporary injunction. Thus I answer Point No.3 in the '**Affirmative**'.

20. **Point No.4:-** For the reasons and findings given to point No.1 to 3, I proceed to pass the following :

: ORDER :

I. A. No.I filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Defendants or anybody in their favour are hereby restrained from effecting any sort of work on the suit property till further orders.

No order as to costs.

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

Sd/-
(Arashad Ansari),
Addl. Civil Judge & JMFC,
Jamkhandi.