

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

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, L.L.B. (Hons.)

**Prl. Civil Judge & JMFC,
Jamkhandi.**

**C/c Addl. Civil Judge & JMFC,
Jamkhandi.**

Dated this the 07th day of September 2021

O.S. No.118/2021

Plaintiff : 1. Shri.Madhukar S/o Bhimarao Joshi,
Age: 60 years, Occ: Retired Service,
R/o Jagad Yallamma Temple,
Jamkhandi.

(By Sri.D.M.J., Advocate)

Vs/-

Defendants:1. Shri.Mohan S/o Ramachandra Manur,
Age: 63 years, Occ: Retired Service,
R/o Hulyalkar Galli,
Jamkhandi,

2. Shri.Arun S/o Dundappa Sonar,
Age: 59 years, Occ: Business,
R/o Opposite Boxe,
Mudhol Road,
Jamkhandi,

3. Shri.Shekar S/o Dundappa Sonar,
Age: 55 years, Occ: Business,
R/o Opposite Boxe,
Mudhol Road,
Jamkhandi,

(D-1 – Steps not taken)

(D-2 & 3 - By Sri.R.H.K., Advocate)

I.A. No.I

APPLICANT/ : Shri.Madhukar S/o Bhimarao Joshi,
PLAINTIFF

Vs/-

OPPONENTS/ : Shri.Mohan S/o Ramachandra Manur
DEFENDANTS & Others

**ORDERS ON I.A. No.I FILED BY PLAINTIFF UNDER
ORDER XLI RULE 1 R/W SECTION 151 OF C.P.C.**

This application is filed by plaintiff seeking to issue direction to defendant No.2 and 3 to make the cement plastering to the southern side of AB wall, eastern side DC wall of CTS No.3377/1 of Jamkhandi at the half cost of plaintiff.

2. In the affidavit annexed to the application, plaintiff averred that Hon'ble Fast Track Court, Jamkhandi was pleased to order that he has got equal right of use and enjoyment of suit property i.e., present suit southern wall and eastern wall i.e., AB and DC wall and due to heavy rain, the southern side of AB wall and eastern side of DC wall are under dilapidated condition and due to heavy rains, further loss is caused to the common wall as well as the inner portion of the other part of the house. Under such circumstances, immediate action is

necessary to make repairs and cement plastering on the southern side and eastern side of the suit wall. But defendants are not ready to make the repairs, in spite of sincere attempts made. Defendants are not permitting plaintiff to enter their house for making the necessary repairs and amongst these grounds, prayed to allow the application.

3. After issuance of suit summons to defendants, defendant No.2 & 3 appeared through their counsel and filed their written statement and memo adopting the written statement as objections to I.A.No.1. Plaintiff has not taken any steps against defendant No.1 and present application is filed only against defendant No.2 and 3.

4. Defendant No.3 filed his written statement, which was adopted by defendant No.2 and denied the entire averments of the plaint and admitted that CTS No.3377/2A originally belong to Smt.Janakibai W/o Ramachandra Mannur and defendant No.1 has sold the same in favour of defendant No.2 and further defendant No.2 has gifted the said property to defendant No.3. Plaintiff is the owner of property bearing CTS No.3377/1, which lies towards the northern and western side of property bearing No.3377/2A.

5. It is further contended that O.S.No.9/2003 was filed by the erstwhile owner of CTS No.3377/2A against plaintiff for the relief of declaration and injunction, which was decreed on 31-10-2006, wherein it is was declared that suit walls AB and DC are common walls to the parties and defendant, who is plaintiff in this case, was asked to remove the newly made constructions to his property bearing CTS No.3377/1. Against which plaintiff preferred appeal in R.A.No.1/2007, which was partly allowed and appellate court held that suit walls AB and DC are common walls and restrained the plaintiff from making any use of staircase, which was abutting to AB wall.

6. It is further contended that rights and liabilities on the parties have already been decided and no rights are conferred on defendant to undertake repairs works of the walls to enjoy his property by entering into the premises of plaintiff. The suit filed by the plaintiff is hit by principles of res-judicata and amongst these grounds, prayed to dismiss the application.

7. Heard, perused the records placed before the court.

8. The points that arise for my consideration is as under :

- 1) Whether plaintiff has made out sufficient grounds to allow the application?
- 2) What order ?

9. My findings to the above points is as under :

Point No.1 In the Negative,

Point No.2.... As per final order
for the following :

REASONS

10. **POINT No.1**: It is the specific case of plaintiff that as per the orders passed by Hon'ble Appellate Court in R.A.No.1/2007, he has got equal right of use and enjoyment of suit walls AB and DC and now due to heavy rains, the southern side of AB wall and eastern side of DC wall are in dilapidated condition and it has caused loss to the common wall as well as to the inner portion of other part of the suit house. On requesting defendants, they are not ready to make any repairs.

11. In support of his contention, plaintiff filed in all 9 documents i.e., photocopy of judgment passed in R.A.No.1/2007, photocopy of registered

sale deed dated 05-07-2019, photocopy of property card of CTS No.3377/2A, photocopy of hand sketch map of CTS No.3377/1 and CTS No.3377/2A, office copy of notice dated 19-07-2021, reply notice dated 26-07-2021, three postal receipts, two acknowledgements and nine photographs.

12. On the contrary, defendant No.3 contended that rights and liabilities of the parties are already decided by decree of this court, hence the present suit is not maintainable. No rights are conferred upon defendants to take the repair works of the walls to enjoy the property. In support of his contention, defendant No.3 produced certified copy of judgment and decree passed in O.S.No.9/2003.

13. On perusal of pleadings and documents produced by both the parties, prima facie it reveals that O.S.No.9/2003 was filed by Janakibai Mannur against the present plaintiff of this case, which was decreed by this court and against which, plaintiff had preferred appeal in R.A.No.1/2007, wherein Hon'ble Appellate Court had ordered that the present plaintiff has got equal right of use and enjoyment of suit walls. This aspect is not disputed by defendant No.2 and 3 of this case.

14. The present application is filed under Order XLI Rule 1 R/w 151 of CPC, which deals with 'Form of appeal, what to accompany memorandum'. Such being the provision of law, there is no explanation forthcoming from the side of plaintiff as to how said provision of law is applicable to the present application. Furthermore, it is pertinent to note that the relief claimed in the plaint and the relief in the interim application is one and the same.

15. It is well settled principle of law that final relief cannot be granted at an interlocutory stage. On perusal of records, it appears that the relief claimed in the plaint as well as in the interim application is one and the same. If an order of direction is passed against defendant No.2 and 3 to plaster the southern side of AB wall and DC wall of CTS No.3377/1, it would be as granting of final relief. No sufficient grounds have been made out by plaintiff to allow the application at this stage of the case. Hence for the above said reasons, I answer point No.1 in the 'Negative'

16. **POINT No.2:** For the reasonings and findings given to point No.1, I proceed to pass the following :

ORDER

I. A. No.I filed by plaintiff under Order XLI Rule 1 R/w Section 151 of C.P.C is hereby rejected.

Parties to bear their own costs.

(Typed to my dictation by the Stenographer directly on Computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **07th day of September 2021**)

Sd/-

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Jamkhandi.

C/c Addl. Civil Judge & JMFC,
Jamkhandi.