

KABK710028822021



O.S./118/2021

**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 13th day of February – 2025

O.S. No.118/2021

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

..... Plaintiff.

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

Vs.

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

..... Defendants.

(By Shri.R.H.K., Advocate)

I. A. No.V

1. Shri.Madhukar S/o Bhimarao Joshi,

..... Applicant/Plaintiff.

Vs.

1. Shri.Arun S/o Dundappa Sonar,

2. Shri.Shekhar S/o Dundappa Sonar,

.....Opponents/Defendants.

* * *

Sl.No.	Details	Particulars
1	Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC R/w Section 151 of CPC
2	Relief sought for	Ad-interim Ex-parte Temporary Injunction
3	The date on which the application is filed	03-02-2025
4	Number of the applications	I.A.No.V
5	The date on which the objections are filed by the different opponent/s	---
6	The date on which the orders were passed on the said application/s.	13-02-2025

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

This application is filed by the plaintiff/applicant seeking a temporary injunction against defendants No.2

and 3, restraining them from constructing any wall or structure without adhering to the setback requirements as approved by the Town Planning Authority, Jamkhandi, until the disposal of the suit, for the reasons set forth in the accompanying affidavit.

2. On the contrary, defendants No.2 and 3 have filed objections and prayed for the rejection of the application.

3. Heard the arguments, perused the records placed before the court.

4. The points that arose for my consideration is as under:

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in their favour?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether plaintiff prove that irreparable loss will be caused to them if temporary injunction is not granted?
- 4) What Order?

5. My findings to the above points is 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 final order
for the following :

: R E A S O N S :

6. **POINT No.1 TO 3:-** For the sake of convenience and to avoid repetition of facts, the following points are being addressed collectively for a unified discussion.

7. It is the case of plaintiff that, he has a door on the first floor on the 'AB' wall and two windows on the 'BC' wall on the first and second floors to receive light and air, as observed by the Hon'ble Fast Track Court. Despite these facts, defendants No.2 and 3 have unlawfully attempted to damage the 'AB' and 'BC' walls. Additionally, the defendants are attempting to construct a wall abutting the 'AB' and 'BC' walls without leaving the setback approved by the Town Planning Authority, Jamkhandi. They have already dug columns and filled

them, and when the plaintiff requested them to cease their illegal actions, they responded with harsh words and threats. Particularly defendant No.2, who threatened the plaintiff with dire consequences. The plaintiff approached the police and municipal authorities, but no action was taken due to the pending case. Under these circumstances, the plaintiff seeks a temporary injunction restraining the defendants from constructing any wall abutting the 'AB' and 'BC' walls without adhering to the approved setback, until the disposal of the suit. The plaintiff further contended that there is a prima-facie case in their favour, and granting the injunction is necessary to prevent substantial loss and to avoid frustrating the purpose of the suit. The plaintiff further asserts that maintaining the status quo is essential to prevent further harm and avoid multiplicity of proceedings.

8. On the other hand defendants assert that the plaintiff has encroached upon their property, as

evidenced by photographs produced by the plaintiff before the Court. Since the 'AB' and 'BC' walls are common, each party is entitled to use 1½ feet (18 inches) of the wall exclusively for their construction. The plaintiff has put a door on the edge of the 'AB' wall, thus encroaching on the defendants rights. Therefore, the issue of leaving a setback does not arise for the defendants, as the plaintiff has already been restrained from entering the defendants premises. The defendants have taken steps to modify their own property without affecting the common walls. The defendants contended that the plaintiff's application is false, frivolous and misleading, as there is no prima-facie case in favour of the plaintiff. The defendants have not altered the 'AB' and 'BC' walls and no injury will result to the plaintiff if the injunction is not granted. On the other hand, granting the injunction would cause significant inconvenience to the defendants, which cannot be compensated by money. Prayed for rejection.

9. In this application, the plaintiff's primary concern is the construction of a wall abutting to the common wall. However, it is undisputed that the property on the other side of the common wall exclusively belongs to the defendants and as such, they have the legal right to utilize and modify their property as they deem fit, subject to applicable laws and regulations. The court, therefore, cannot restrain the defendants from making use of their own property in a lawful manner. The plaintiff's claim that the defendants have not adhered to the setback requirements and violated the norms set by the CMC, Jamkhandi falls within the purview of local municipal authorities, who have the jurisdiction and expertise to investigate and enforce such regulations. Matters relating to zoning, construction setbacks and compliance with building codes are within the domain of the CMC, Jamkhandi and it is for them to determine whether the defendants have breached any planning norms. It is not the role of this court to intervene in these

technical matters, especially when there is a specific statutory authority tasked with enforcing such regulations. The plaintiff should seek redress through the appropriate municipal channels, which have the power to investigate the properties and take corrective action if necessary. As such, the application filed by the plaintiff is not only outside the scope of this court's jurisdiction but also premature, as the proper authorities to address the issue at hand are the CMC, Jamkhandi.

10. Thus, in order to grant an order of temporary injunction, the applicants have failed to establish the three essential ingredients required by law: prima facie case, balance of convenience and the likelihood of irreparable loss and injury. The applicants have not demonstrated a sufficient prima-facie case that justifies the relief sought. Moreover, the balance of convenience clearly favors the defendants, as granting the injunction would cause them significant hardship, which cannot be adequately compensated by money. On the other hand,

no irreparable loss or injury would be caused to the plaintiff if the injunction is not granted, as the matter can be resolved on its merits. In fact, if the temporary injunction is granted, it would lead to greater harm to the defendants than any potential loss to the plaintiffs. Hence for these reasons, I answer Point No.1 to 3 in the '**Negative**'.

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

: O R D E R :

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

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 13th day of February - 2025)

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