

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC, ANEKAL.**

**20<sup>th</sup> day of December 2024**

**PRESENT:** Sri. Shankarareddy.D.V., L.L.B., PGD in IR & PM.,  
Prl. Civil Judge and JMFC, Anekal.

**OS.No. 777/2024**

**Plaintiff** : Smt. Gowramma,

**V/s.**

**Defendant** : Sri. Srinivas & another

**IA No.II**

**Plaintiff/ Applicant** : Smt. Gowramma,

**V/s.**

**Defendant/Opponent** : Sri. Srinivas & another

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**ORDERS ON IA No.II**

The plaintiff has filed the present application U/o.XXXIX Rule 1 & 2 R/w Sec.151 of CPC seeking an interim order of temporary injunction, restraining the defendant No.1 and his men from putting up further construction in “B” & “C” schedule properties pending disposal of the suit.

**2.** In the affidavit annexed to the present application, plaintiff stated that she is the owner in possession of suit “A” schedule property. Towards western side of “A” schedule property defendant No.1 property is in existence ie., “B” schedule property.

The defendant encroached the 3 feet of plaintiff "A" schedule property belongs to plaintiff towards western side and constructed building thereon and the defendant No.1 is not ready to demolish the building in the encroached portion and the defendant No.1 also not left the set back. Therefore, the plaintiff constrained to file the present suit for mandatory injunction and permanent injunction along with present application for the aforesaid relief.

**3.** The defendant No.1 opposed the present suit by filing written statement along with memo, praying to treat the written statement as objection to IA No.II. Considering the averments of memo, written statement treated as objection to IA No.II. In the written statement defendant No.1 admitted that he is the owner of suit "B" schedule property and he also admitted that the suit "A" schedule property belongs to plaintiff and remaining averments of plaint are denied and contended that he has not encroached any portion of plaintiff's "A" schedule property much less "C" schedule property and constructed building thereon and he further contended that he put up construction in "B" schedule property by leaving set back as per the norms of concerned

authority and he further contends that he has invested huge amount for construction of building in “B” schedule property and already three storied building constructed in the “B” schedule property and only plastering to the walls and fixation of doors are pending. In the circumstance, if this court by allowing the present application, defendant No.1 is restrained from plastering of walls and fixation of wooden doors to his building constructed in the “B” schedule property, same cause huge monetary loss to him and same cannot be compensated in any manner. Accordingly, among these and other grounds defendant No.1 prayed to dismiss the present application.

**4.** Having heard on IA No.II both side and on perusal of material available on record, the following points arise for consideration;

1. Whether the plaintiff has made out prima-facie case in her favour?
2. Whether the balance of convenience lies in-favour of plaintiff?
3. Whether the irreparable injury would be caused to the plaintiff, if present application is disallowed?
4. What order?

5. On appreciation of material available on record, the above points are answered as under;

<b>POINT No.1</b>	:- In the Affirmative,
<b>POINT No.2</b>	:- In the Negative
<b>POINT No.3</b>	:- In the Negative
<b>POINT No.4</b>	:- As per final order, for the following ;

**REASONS**

6. **Point No.1:-** Admitted facts are that plaint "A" schedule property belongs to plaintiff and plaint "B" schedule property belongs to defendant No.1. The allegation of the plaintiff is that defendant No.1 encroached 3 feet towards western side of "A" schedule property ie., described as "C" schedule property in the plaint and constructed building thereon. Therefore, the plaintiff constrained to file the present suit for mandatory injunction praying to direct the defendant No.1 to demolish the building in encroached portion and handed over the same to the plaintiff and also sought permanent injunction in respect of "A" schedule property.

On the other hand, the defendant No.1 denied the said allegation in toto.

During the course of argument, learned counsel for the defendant No.1 submitted that the plaintiff has not produced any

authorized survey sketch to come to the conclusion that the defendant No.1 encroached any portion of plaintiff "A" schedule property much less "C" schedule property. In the circumstance, it cannot be said that defendant No.1 encroached "C" schedule property as per the version of the plaintiff. Further, he argued that defendant No.1 already invested lakhs together and constructed 3 storied building in "B" schedule property. In the circumstance, if defendant No.1 restrained further construction, same cause huge monetary loss to the defendant No.1 and same cannot be compensated in any manner and he relied upon the three decisions in support of his arguments.

It was rightly argued by the learned defendant No.1 counsel, at this stage the plaintiff not produced any authorized survey sketch with regard to encroachment of plaintiff "A" schedule property much less "C" schedule property by the defendant No.1 and put up construction thereon. Therefore, the plaintiff needs to prove the alleged encroachment by the defendant No.1 during the course of trial. Thus, this court of the view that the plaintiff has made out prima-facie case for trial. In the result, point No.1 answered in the Affirmative.

**7. Point No.2 & 3:-** To avoid repetition of facts, these two points are taken up together for consideration;

As rightly argued by defendant No.1 counsel, at this stage plaintiff has not produced any prima-facie material with regard to encroachment of portion of "A" schedule property ie., "C" schedule property. In the circumstance, the defendant No.1 is restrained for completion of plastering works and fixation of doors in plaint "B" schedule property by allowing the present application, then huge monetary loss would be caused to the defendant No.1 and same cannot be compensated in any manner. On the other hand, if plaintiff succeeded in the suit and got decree in his favour as prayed for, then the defendant No.1 is bound to the said decree and he shall not seek any equitable relief thereafter. In the **Civil Revision Petition No.6284/2006 – Balkar Singh and others Vs Kehar Singh and others** – The Hon'ble Punjab and Haryana High court observed that "permanent injunction sought for restraining the further construction of building, already roof laid down and only plastering of walls and fixing of wooden doors left. In the circumstance, respondent cannot be restrained now from

completing the building as that will cause serious prejudice to the respondent". The said decision aptly applicable to the case on hand and supports the view of this court. With this discussion, this court of the view that the plaintiff failed to prove the case in her favour as irreparable injury would be caused to her, if present application is disallowed and further opines that balance of convenience also not lies infavour of plaintiff, rather same lies infavour of defendant No.1 for the aforesaid reasons. Accordingly, point No.2 & 3 are answered in the Negative.

**8. Point No.4:** For the reasons assigned in point No.2 and 3 the plaintiff is not entitled temporary injunction as sought for, though she has made out prima-facie case for trial. Accordingly, this court proceeds to pass the following:-

**ORDER**

IA No-II filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC are hereby dismissed.

*(Directly dictated to steno, corrected, signed and pronounced by me in Open Court on this the 20<sup>th</sup> day of December 2024.)*

**(Sri. Shankarareddy D.V)  
Prl. Civil Judge & JMFC., Anekal.**