

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

28th day of February 2024

**PRESENT: Kavya B.H.,, L.L.M.,
Prl. Civil Judge and JMFC,
Anekal.**

OS.No. 506/2023

Plaintiff : Sri. N Gnanendra Reddy

V/s.

Defendants : Sri. Shivakumar Reddy

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ORDERS ON IA No.1

The plaintiff has filed IA No.1 under Order-39 Rules-1 and 2 read with sec.151 of the Civil Procedure Code, seeking for grant of an ad-interim order of Temporary injunction, restraining the defendant, his agents or any other person acting on his behalf from interfering or from dispossessing the the plaintiff from the suit schedule property, pending disposal of the suit.

2. In the supporting affidavit to I.A.No.1 plaintiff has stated that he is the owner of the suit schedule property having purchased under a Regd. Sale Deed dtd. 25.01.2019. But, defendant having no manner of right, title interest or even possession over suit schedule property on 14.8.2023 made an attempt to trespass over it with an instruction to dispossess him. Hence, prayed for allowing application.

3. In response to the summons, the defendant has appeared before the Court and filed his written statement and memo adopting the same as objections to the application contended that suit is not maintainable. He denied plaintiff averments and plaintiff be put to strict proof of same. Further stated that he approached the plaintiff and requested him not to put up construction in the adjoining property of his father which has been declared under a decree dtd. 16.03.2021 passed in OS No.4528/1990 by CCH No.16 in favour of his father Y.Nagaraj, as such there was encroachment over his property by the plaintiff. When he did not heed to the request of the defendant, the defendant approach PDO, Dommasandra Grama Panchayath and lodged a complaint on 6.3.2023 seeking to removal of encroachment in Sy.No.205 and for cancellation of building plan of the plaintiff and PDO issued notice to the plaintiff to stop the construction work. Defendant also addressed a letter to the Executive Officer, Anekal Taluk Panchayath on 21.3.2023 and other complaints for survey and the PDO wrote a letter to the Tahsildar on 1.8.2023 for conducting survey and fix the haddubasth of Sy.NO.205 and 212. Due to the collusion by the PDO with the plaintiff, based on the complaint by the defendant to the executive officer, The Executive officer of Anekal Taluk Panchayath passed an order on 2.8.2023 and thereby withheld the building licence of the plaintiff and ordered not to put up further construction. Even after the said order the plaintiff continued his illegal act, which made to file a complaint in Crime No.280/2023. By suppressing these facts, the plaintiff has filed the present suit with a sole intention to deprive

the defendant. Hence, suit is not maintainable and prayed for dismissal of the suit along with application.

4. Heard and perused the materials on record.
5. The following points arise for my consideration:-
 - 1) Whether plaintiff has made out a prima-facie case in his favour?
 - 2) Whether the balance of convenience is in favour of the plaintiff?
 - 3) Whether the plaintiff would suffer irreparable injury, if the temporary injunction is not granted?
 - 4) What order?
6. My findings on the above points are 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

REASONS

7. **Point Nos.1 to 3:-** The plaintiff has filed this suit for the relief of permanent injunction in respect of site bearing No. 212/26P, Sl.No.1391 formed in Converted Sy.No.212 measuring EW-45 feet and NS 60 feet having been purchased by him from V.V.Ramamurthy and others under a regd. Sale Deed dtd.25.1.2019, based on it katha has been entered in his name. But

during fourth week of July 2023 the defendant started interfering with his construction work. Hence, present suit is filed.

8. Along with the plaint, plaintiff has produced the documents like certified copy of the sale deed dtd. 14.8.1991, 23.10.2013, 15.5.2015 and 25.1.2019, so also copy of E-katha, Tax paid receipts, construction licence and police acknowledgment.

9. On the other hand, it is the defence of defendant that his father Y.Nagaraj got the adjoining property of the plaintiff's property under a decree dtd. 16.3.2021 in OS NO.4528/1990 and there was an encroachment of the property of defendant by the plaintiff, which was complained by the defendant to the PDO and there exist an order against the plaintiff herein not to construct further by withholding his building licence granted by the local authority as per Order dtd. 2.8.2023. Even then the plaintiff continued his case, which made the authorities to file a criminal case against the plaintiff for the offence punishable u/s.188 of IPC in Crime No.280/2023 of Anekal Police Station. By suppressing the said facts plaintiff has approached this court and he is not entitled for the reliefs, prayed for dismissal of the suit including IA for grant of Temporary injunction.

10. In support of defendant's case, he has produced the documents like certified copy of the judgment and decree in OS No.4528/1980 c/w. 2062/1981, letter given by the defendant to PDO dtd. 6.3.2023 Notice issued by the PDO to the plaintiff herein, so also the letters written by defendant to the said Panchayath authorities, letter dtd. 1.8.2023 issued by PDO to Tahsildar

regarding identification of the converted, so also Order dtd. 2.8.2023 staying the further construction of the plaintiff herein, copy of FIR in Crime No.2809/2023 based on the complaint of PDO against the plaintiff herein, photographs, CD sketch.

11. On perusal of entire materials it is clear that the plaintiff alleged to have started his construction work in a portion of the property belonged to the defendant, wherein on the complaint of the defendant the Panchayath authorities have passed stay order directing the plaintiff herein to stay the further construction work. The said order has not been stayed by the appellate authority and still in force. These facts have not been pleaded by the plaintiff in his pleadings and suppressed before this court. On perusal of the entire materials it is clear that there is decree in favour of the father of the plaintiff, so also the documents goes to show the right of the defendant over the property. When that is so , the plaintiff has not approached this court with clean hands and suppressed the true material facts. In view of the same, that the plaintiff has failed to prove prima facie case with cogent and convincing materials and hence the plaintiff is not entitled for temporary injunction at this stage.

12. On considering the above, I am of the opinion that the plaintiff has not made out prima facie case for granting an order of temporary injunction as sought for. So, the balance of convenience and irreparable loss and injury is also not lies in favour of the plaintiffs by sufficient and substantial material placed before the Court. If the order of injunction as sought for is granted in favour of

the plaintiffs, the defendants would put to irreparable loss and hardship. On the other hand, no much hardship would be caused to the plaintiffs in any manner. Consequently, **point Nos.1 to 3** are answered in the **negative**.

13. Point No.4:- In view of the reasons given above, I proceed to pass the following:-

O R D E R

I.A.No.1 filed by the plaintiff under Order-XXXIX Rules-1 & 2 read with sec. 151 of the CPC., are **hereby dismissed**.

No order as to costs.

(Dictated to stenographer directly on computer, computerized printout taken by her, and then corrected and pronounced by me in open court on this 28th day of February 2024).

(Smt.Kavya B.H)
Prl. Civil Judge and JMFC.,
Anekal