

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

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

31st day of January 2023

OS.No. 635/2022

Plaintiff : Shanthamma & Another

V/s.

Defendants : Sridhar & Another

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:: ORDERS ON IA.NO.I U/O.39 RULE 1 AND 2 OF CPC ::

IA.No.1 is filed under Order 39 Rule 1 & 2 R/w Sec.151 CPC, praying to restrain the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit.

2. In the affidavit sworn, the plaintiff no.1 has stated that, they are the absolute owners of the suit schedule property having inherited soon after the death of her husband and since then they are in possession and enjoyment of the suit schedule property by paying revenue tax to the authorities concerned. Further, she has also, intended to put a dwelling house over the suit schedule property by obtaining construction license and thereafter started constructing in it. When things stood thus the defendants without any right have proclaimed that, the plaintiffs have encroached their property and have obtained interim orders of ex-parte injunction in OS.No.541/2022 the property bearing Sy.no.124 by

obtaining interim orders the defendants have obstructed the construction work. Hence, they had been to jurisdiction police where they have refused to entertain stating that the matter is civil in nature. Hence, the plaintiffs were constrained to file the suit and thereby maintained the present application.

3. Per contra, the defendants adopting their written statement as objections to the said application have contended that, they are the absolute owners of the property bearing Sy No.124 and they are the adjacent owners of the suit schedule property. The plaintiffs are not building the house in accordance with the license issued by the authorities concerned. Hence, they have filed OS.No.541/2022 and obtained interim orders. However, the plaintiffs are constructing house by encroaching 1 ½ feet belonging to the defendants. Hence prayed to dismiss the application.

4. Heard arguments.

5. The points that would arise for my consideration are:-

1. Whether plaintiffs have made out a prima facie case in their favour?

2. Whether balance of convenience lies in favour of the plaintiffs?

3. Whether plaintiffs prove that if exparte Temporary Injunction order granted by this court is vacated, they will be put to great hardship?

4. What order?

6. My findings on the above points are as follows:

Point No.1 to 3 : In the Affirmative

Point No.4 : As per final orders

for the following:-

REASONS

7. Points No.1 to 3 : Since these points involve common discussion, to avoid repetition of facts, they are taken together for consideration.

8. The plaintiffs in order to substantiate the case have produced documents on their behalf. While considering an application under Order 39 Rule 1 and 2 r/w 151 of CPC, the court needs to look into prima-facie, balance of convenience and irreparable loss as stated above. The plaintiffs have mainly relied upon the Form No.9 and 11 issued by the village panchayath and Encumbrance certificates.

9. It is the case of the plaintiffs that, they are the absolute owners of suit schedule property and they have obtained necessary license from the panchayath to construct residential building over the suit schedule property. The defendants are trying to interfere with the possession of the suit schedule property. On the other hand, the defendants contended that, the plaintiffs are not constructing residential building in accordance with license issued by the panchayath. It is also contended that, defendants are the owners of the property bearing Sy.no.124 which is adjacent to the suit schedule property and the plaintiffs have constructed residential building by encroaching 1 ½ feet and also in utter violation of building bye laws. To prove these

aspects, the defendants have produced the certified copies of orders passed in O.S.No.541/2022, NCR, Complaint and Photographs etc.

10. It is not in dispute that, defendants are the owners of the property bearing Sy.no.124 of Karakalaghatta village and the plaintiffs are the owners of property bearing Junjar no.6 measuring 60x 40 feet situated at Karakalghatta village. Further, it is also not in dispute that, the plaintiffs have undertaken a construction in their property. It is the specific allegation of the defendants that, the construction so put up by the plaintiffs is in violation of the license and building bye-laws. It is further alleged, that plaintiffs have not left required setback. Therefore, this has caused nuisance to the defendants.

11. The simple fact before the court is regarding the encroachment of the defendant's property or not. To decide on which property the construction is going on, it needs a full fledged trial. However, the court, while considering the application U/o.39 rule 1 and 2 of CPC, need to look into the prima-facie case. It doesn't mean, the court should look in to prima facie title. To look into prima facie case, it is sufficient for the court to consider the pleadings and the documents produced.

12. The title of the parties i.e., to the property bearing junjar no.6 of Karakalaghatta village, the plaintiffs are the owners and the same is not disputed. Similarly, the defendants are the owners of property bearing Sy.No.124, which is also not in dispute.

13. As per the plaintiffs, they are constructing in the suit schedule property. It is their contention that, the property bearing Sy.No.124 belonging to the defendants has not been encroached even as per the mahazar drawn by the P.D.O of Indlavadi village Panchayath in the presence of witnesses on 17/10/2022. The relevant portion is read as under:

"ಆನೇಕಲ್ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಇಂಡ್ಲವಾಡಿ ಗ್ರಾಮ ಪಂಚಾಯತಿ ವ್ಯಾಪ್ತಿಯ ಕರಕಲಘಟ್ಟ ಜನತಾ ಕಾಲೋನಿ ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ 6ರಲ್ಲಿ ಖಾತೆ ದಾಖಲಾಗಿರುತ್ತದೆ. ಅದರಂತೆ ಸ್ಥಳ ಪರಿಶೀಲಿಸಲಾಗಿ ಅವರ ಸ್ವಾಧೀನದಲ್ಲಿರುವಂತೆ ಕಟ್ಟಡ ಕಟ್ಟುತ್ತಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಯಾವುದೇ ತಂತಿ ಇರುವುದಿಲ್ಲ ಕಟ್ಟಡ ನಿರ್ಮಿಸುತ್ತಿರುವ ಸ್ಥಳದಿಂದ 1 ½ ಅಡಿ ಜಾಗವು ಸಹ ಇರುತ್ತದೆ ಎಂದು ಸ್ಥಳ ಪರಿಶೀಲನೆ ಸಮಯದಲ್ಲಿ ಹಾಜರಿದ್ದ ಗ್ರಾಮಸ್ಥರುಗಳು ಹೇಳಿ ಬರೆಯಿಸಿದ ಮಹಜರು ಕ್ರಮ".

14. The plaintiff in order to prove that they are constructing junjar no.6 has produced encumbrance certificate, building license, tax paid receipts, photographs etc., which are not disputed but the same cannot be considered to identify on which property they are constructing. The other documents regarding obtaining of license to construct and materials purchased for construction is not at all in dispute.

15. It is the vehement contention of the plaintiffs counsel that, the property which is under construction by plaintiffs is junjar no.6, which can be perused in the building license. Further, the plaintiffs have also produced house construction license, tax paid receipts. The plaintiffs are building the house over the suit schedule property. It is pertinent to note that, if at

all, there is any deviation, authority concerned to take appropriate action in accordance with law but not the defendants.

16. The plaintiff has made out a prima-facie case and the balance of convenience lies in favour of the plaintiffs. If an order of injunction is not granted certainly the defendants holding an interim order in hand on sy.no124 may interfere and cause irreparable loss to the plaintiffs. The plaintiffs seems to have stored construction materials and any interference by defendants will certainly hamper and cause loss to the plaintiffs. The defendants have not made out any grounds to vary or set aside the order of exparte temporary injunction which was granted earlier. Hence with these observations, **I answer Point No.1 to 3 in the affirmative .**

17. Point No.4: In view of my findings on points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 r/w Sec.151 of CPC is allowed.

The defendants are hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit.

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