

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

PRESENT:

SRI. SHIVAKUMARA G.J, B.A.L.L.B.
Addl. Civil Judge & J.M.F.C.,
Chinthamani.

O.S. No.172/2018

Dated on this the 05th day of October 2020

PLAINTIFF:-

Sri. Venkatarayappa,
S/o Munivenkatappa,
Aged about 65 years,
R/at A. Guttahalli Village,
Ambajidurga Hobli,
Hirekattigenahalli Post,
Chintamani Taluk,
Chikkaballapur District.

(By Sri.N.V.R. Advocate)

V/s

DEFENDANT:-

Sri. Hanumanthappa,
S/o Late Venkataravanappa,
Aged about 60 years,
R/at A. Guttahalli Village,
Ambajidurga Hobli,
Hirekattigenahalli Post,
Chintamani Taluk,
Chikkaballapur District.

(By Sri.B.R.S. Advocate)

ORDERS ON IA.NO.I

The plaintiff filed IA Under Order XXXIX Rule 1 and 2 of
CPC to restrain the defendant, their family members, agents,

servants, contractors or anybody on their behalf from obstructing and not erected stones labs in the suit schedule property till disposal of suit.

2. Brief case of the plaintiff is as under :

The plaintiff filed the suit against the defendants for the relief of permanent injunction. The plaintiff is the owner and possession in the suit schedule property. The plaintiff is the absolute owner and in peaceful possession and enjoyment of the house list no. 18, measuring East to West 42 feet, North to South 23 feet situated at A Guttahalli Village, Chintamani Taluk. The plaintiff further pleaded that he constructed the residential house measuring north to south 38 feet East to west 18 feet and having vacant space towards Northern side measuring 5 feet and Eastern side having vacant space measuring 4 feet for the purpose ingress and agrees for his family daily usage. The plaintiff further pleaded that the defendant has no manner title, right, interest and possession of the suit schedule property, the defendant is interfering and obstructing the peaceful possession and enjoyment of suit schedule property towards southern side of the suit schedule property. The act of the defendant is illegal against law, the plaintiff cannot resist the illegal acts of the

defendant, and defendant is illegally interfering and obstructing the peaceful possession and enjoyment of the plaintiff suit schedule property. Hence he is filed the suit against the defendant for seeking temporary injunction. He also stated that, he has made out prima facie case and balance of convenience lies in his favour and if Temporary Injunction order is not granted, he will be put to irreparable loss. Therefore, the plaintiff claiming to restrain the defendant from interfering the possession of the plaintiff over the suit schedule property during the pendency of the suit.

3. The defendant has appeared through his counsel and filed their respective written statement and memo for adopting the written statement as a objection to the IA. No.I. In the written statement the defendant has denied the title and possession of the plaintiff over suit schedule property. It is stated that plaintiff has furnished fabricated and created documents by suppressing real facts. The defendant further contended that, there is no vacant space towards eastern side of the suit property belongs to the plaintiff and further submitted that the defendant is in peaceful possession and enjoyment of the property measuring 4 feet

eastern side of the plaintiff property and the plaintiff deliberately has given wrong boundaries to the plaintiff schedule property towards Eastern side as road by includes/claiming the property of the defendant. The plaintiff is not the absolute owner and possession within the boundaries as shown in the plaint. Hence, the defendant submitted that the plaintiff has not made out the grounds to allow the IA No.I. Hence, defendant is seeking for dismissal of the I.A.I.

4. Heard arguments. Perused the records.

5. **The following points arise for the consideration of this court:-**

P O I N T S

1. Whether the plaintiff has made out a prima-facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. whether the plaintiff will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiff is entitled for the relief of Injunction as prayed for?

5. What order?

6. **My answer to the above points is as under:**

Points No.1 to 4 - **Affirmative**

Point No.5 - As per final order

for the following:-

REASONS

7. **Points No.1 to 4 :-** These points are interconnected to each other, hence to avoid repetition of facts these points are taken up for discussion together.

The plaintiff stated that the plaintiff is in possession and enjoyment of the suit schedule property without any disturbance. As per the Khata produced by the plaintiff, the plaintiff is in peaceful possession and enjoyment over the suit property. In this suit it is the specific contention of the defendant that the plaintiff has shown wrong extant and there is no vacant space towards the Eastern side of the plaintiff property and denied the boundaries and wrong measurement to the suit schedule property. The plaintiff claims the suit property Khata No 18 through Grama panchayath documents. Both the plaintiff and defendant have produced the copies of the Grama Panchyath

documents to show the boundaries, measurements/extents of the suit property. The defendant has denied the suit property measurement towards North to south and further contended that the North – south 23 feet measurement is not entered in the panchayath records. Further submitted that the plaintiff has furnished fabricated and created documents. And claims the 4 feet vacant space towards Eastern Side. The plaintiff has produced the Khata extract issued by the Upparapete Gram panchayath records. On perusal of the Khatha extract the suit property Khatha No 18 **property No.21**, measuring 42 X 23 feet and further the plaintiff has produced the certified copies House list with relating to the 8 villages of Chintamani Taluk, as per this document the page No 65 to 68 is with respect to the A Guttahalli village, on perusal of the page No 66, the property No 21 is measuring 42 X 23 feet, boundaries of the property No 21 is as hereunder

“ಪೂರ್ವಕ್ಕೆ -ಹನುಮಂತಪ್ಪ, ಪಶ್ಚಿಮಕ್ಕೆ -ಗೋಪಾಲಪ್ಪ, ಉತ್ತರಕ್ಕೆ
ಹಿಡುವಳಿ, ದಕ್ಷಿಣಕ್ಕೆ - ಸ್ವಂತ ಖಾಲಿ ಜಾಗ ಮತ್ತು 42 X 4 ಮತ್ತು
ರಸ್ತೆ”.

8. As per certified copy of the house list boundaries, it is in the southern side of the suit property averred as follows: "ದಕ್ಷಿಣಕ್ಕೆ -

ಸ್ವಂತ ಖಾಲಿ ಜಾಗ ಮತ್ತು 42 X 4 ಮತ್ತು ರಸ್ತೆ " thus it appears there is an existence of the plaintiff's Vacant space 42 X 4 feet and thereafter road. The defendant has denied the same but the defendant has not produced any documents to show that House list and Khatha extract produced by the plaintiff is not correct. As per the Khata extract and House list produced by the plaintiff, defendant is owner of the suit property towards Eastern side. Even of perusal of the House list extract and Demand Registered extract it reveals that the existence of vacant space towards southern side of the suit property not in the Eastern side or Northern side of the suit property. But this itself is not a reason to hold that the plaintiff is not in possession of the property. As per the House list documents and Demand Registered documents in prima facie the plaintiff is in possession over the suit property total measuring 42 X 23 feet and within the boundaries as per the plaint schedule. Therefore at this prima-facie stage the plaintiff has made out the prima-facie case for grant of temporary injunction.

9. The plaintiff has contended that defendant is interfering in his possession over the suit schedule property and attempting to erect the stone slabs in the suit schedule property, as per the point no. 1 the plaintiff made out prima facie case. Therefore the

plaintiff is entitled to protect his possession. If the defendant trespass and by erect the stones slab in the suit schedule property it will lead to multiplicity of proceedings and the plaintiff will suffer irreparable loss and hardship. On the other hand if injunction is granted, the defendant will not suffer any loss as his property is entirely different than the suit schedule property. Under these circumstances this court holds that plaintiff has also made out the balance of convenience in his favour. Therefore the plaintiff is entitle for relief claimed in the application. Hence I answered the points No.1 to 4 in the **Affirmative**.

10. Point No.5:- In view of the answers to point No.1 to 4, I will proceed to pass the following:-

ORDER

The application filed by the plaintiff under order 39 rule 1 and 2 of CPC as hereby allowed.

The defendant his men, agents, persons claiming under the defendant are hereby restrained from erecting the stones slab or interfering in the possession of the plaintiff over the suit property till disposal of the suit.

Parties to bear their own cost.

(Typed by Stenographer in computer and corrected and initialed by me and then, pronounced in the open court on this 05th day of October 2020)

(SHIVAKUMARA.G.J)

**Addl. Civil Judge & JMFC.,
Chinthamani.**

**Orders pronounced in the open court
(Vide separate Order)**

ORDER

The application filed by the plaintiff under order 39 rule 1 and 2 of CPC as hereby allowed.

The defendant his men, agents, persons claiming under the defendant are hereby restrained from erecting the stones slab or interfering in the possession of the plaintiff over the suit property till disposal of the suit.

Parties to bear their own cost.

(SHIVAKUMARA.G.J)

Addl. Civil Judge &

Chinthamani.

JMFC.,