

IN THE COURT OF THE PRL. CIVIL JUDGE
& JMFC, CHINTAMANI

Present:

Smt. Shrishylaja H.V, M.A., LL.M
Prl. Civil Judge & JMFC, Chintamani.

Dated this the 30th day of July 2022

O.S.NO.133/2021

Plaintiff/s :

Venkatashiva Reddy
S/o. Late Venkata Reddy,
Aged about 52 years,
R/at Nandanavana village,
Mittahalli Panchayathi,
Chilakalanerpu Hobli,
Chintamani Taluk,
Chikkaballapur District.

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

// Versus //

Defendant/s :

- 1.** Sri. Avalinti Peddanna
S/o. Late Bommanna,
Aged about 80 years,
- 2.** Sri. N.P.Manjunatha Reddy,
S/o. Avalinti Peddanna,
Aged about 48 years,

Both are residing at
Nandanavana village,
Mittahalli Panchayathi,

Chilakalanerpu Hobli,
Chintamani Taluk,
Chikkaballapur District.

(By Sri. T.N.S, Advocate)

PARTIES ON I.A.NO.I

Applicant : Sri. Venkatashiva Reddy
... Plaintiff

Vs.,

Opponents : Sri. Avalinti Peddanna and another
...Defendants

ORDERS ON I.A.No.I

The applicant/plaintiff has filed I.A.No.I under Order XXXIX Rules 1 & 2 of C.P.C., and praying this Court to pass an order of injunction against the defendants, their agents, servants or anybody through them are restrained from putting up stair case in the plaint 'B' schedule property in any manner till disposal of the suit in the interest of justice and equity.

2. It is the case of the plaintiff that, the suit schedule property is an ancestral property of plaintiff's family and they are in possession of suit property from immemorial time. The present

panchayath katha is standing in the name of plaintiff's father by name Late Venkata Reddy @ Dassi Reddygari Venkata Reddy. The suit 'A' property is a vacant site measuring East to West 49 feet and North to South 44 feet and towards west there is 6 feet Sandudari and this is a disputed property which is described as suit 'B' schedule property. The defendants are no way concern to the Sandudari or passage of 6 feet which is situated between the plaintiff's and defendant's property. It is meant for usage of both plaintiff and defendants. It is left for ventilation and for other usages.

3. It is further stated that, the defendants made preparations to put up a stair case for their house in the 6 feet passage which is between the properties of plaintiff and defendants. The plaintiff questioned the same, but they gave evasive answers and stopped the construction. The defendants again made preparation to build the stair case in hurried manner during general holidays in order to avoid the plaintiff to go for litigation. The defendants does not have any exclusive right over this 6 feet passage, but they are trying to encroach the same. That the

plaintiff is unable to resist the acts of the defendants without the aid of this Court. Hence, the plaintiff prays to grant of an ad interim exparte injunction against the defendants for praying not to put up stair case in the plaint 'B' schedule property in any manner till disposal of suit in the interest of justice and equity.

4. The defendants appeared through their counsel and filed objections contending that, the application is not maintainable either in law or on facts. There is no plaint 'B' schedule property in between property of plaintiff and defendants. The alleged 6 feet place is the exclusive property of defendants in which there was jopadi constructed by the ancestors of the defendants from the time immemorial in which the defendants used to store hay stock. The defendants constructed the house in the remaining vacant place in katha No.14 which measures 32 x 32 feet and the same is about to be completed and the defendants removed their hay stock and jopadi, put up the stair case to his newly built house. At that stage the plaintiff became jealous of defendants managed to tamper the panchayath records in

connivance of panchayath authorities and changed the measurements of katha No.15 as 49 feet x 44 feet in panchayath records in a different ink and also inserted boundaries for the first time. The actual measurement of katha No.14 is 32 x 32 feet, but in the panchayath records east-west measurement is altered as east-west 22 feet, north-south 32 feet by over writing the actual measurement and filed this false and frivolous suit. The defendants gave an application to Mittahalli Grama Panchayath to give the exact measurement of katha No.14 and an endorsement for having altered the east-west measurement from 32 feet into 22 feet in the panchayath records in tampering the original records. The panchayath document of defendants clearly indicates that the actual measurement of katha No.14 and 15, but subsequently the said measurement have been tampered in the panchayath records in connivance of some panchayath officials without any proper documents and without any proper resolution by the panchayath authorities. That the defendants are having prima-facie case in hand and the balance of convenience lies in their favour. If an order of injunction is granted in favour of the plaintiff, these defendants

will be put to irreparable loss and injury, no prejudice would be caused to the plaintiff. Hence, the application of the plaintiff may kindly be dismissed.

5. Heard both sides and perused the materials on record.

6. The points for consideration on I.A.I is as follows:

1. Whether the applicant/plaintiff has made out prima-facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the irreparable loss and injury would cause to the plaintiff if the application is not allowed?
4. What Order?

7. My answer on the above points are:-

Point No.1:- In the Affirmative,

Point No.2:- In the Affirmative,

Point No.3:- In the Affirmative,

Point No.4:- As per the final order below
for the following;

REASONS

8. Point No.1 to 3:- These points are interconnected with each other to avoid the repetition I have taken up these points together for consideration.

9. It is the contention of the plaintiff that the suit schedule property is an ancestral property of plaintiff's family and they are in possession from immemorial time. The present panchayath katha is standing in the name of plaintiff's father by name Late Venkata Reddy @ Dassi Reddygari Venkata Reddy. The suit 'A' property is a vacant site measuring East to West 49 feet and North to South 44 feet and towards west there is 6 feet Sandudari. The said Sandudari is a disputed property which is described as suit 'B' schedule property. The defendants are no way concern to the Sandudari or passage of 6 feet which is situated between the plaintiff's property. It is further stated that the defendants made preparations to put up a stair case for their house in this 6 feet Sandudari/passage which is between the properties of plaintiff and

defendants. Hence, the plaintiff prays to grant of an ad-interim Temporary Injunction against the defendants.

10. The defendants appeared through his counsel and filed objections contending that, the application is not maintainable either in law or on facts. There is no any plaint 'B' schedule property in between property of plaintiff and defendants. The alleged 6 feet place is the exclusive property of defendants in which there was jopadi constructed by the ancestors of the defendants from the time immemorial in which the defendants used to store hay stock. The defendants constructed the house in the remaining vacant place in katha No.14 which measures 32 x 32 feet and the same is about to be completed and the defendants removed they hay stock and jopadi, put up the stair case to his newly built house. At that stage the plaintiff became jealous of defendants managed to tamper the panchayath records in connivance of panchayath authorities and changed the measurements of katha No.15 as 49 feet x 44 feet in panchayath records in a different ink and also inserted boundaries for the first time. The actual measurement of katha No.14 is 32 x 32 feet, but

in the panchayath records east-west measurement is altered as east-west 22 feet, north-south 32 feet by over writing the actual measurement and filed this false and frivolous suit. Therefore, the plaintiff is not entitle any relief against suit 'B' property. That there is no prima-facie case or balance of convenience in favour of plaintiff or applicant.

11. The plaintiff has stated that the suit schedule property is the ancestral property and he and his family members are in peaceful possession and enjoyment of the suit schedule property to an extent of 49 x 44 feet towards west 6 feet sandudari. In order to prove his contention, he has produced two khatha register extract, building licence, tax paid receipt and assessment register. As per the records, it discloses that, the plaintiff is in possession over the property khata No.15 measuring 49 x 44 feet and there is a 6 feet sandudari towards western side of suit schedule property.

12. The defendants contended that there is no any plaint 'B' schedule property in between property of plaintiff and

defendants. The alleged 6 feet place is the exclusive property of defendants in which there was jopadi constructed by the ancestors of the defendants from the time immemorial in which the defendants used to store hay stock. The defendants has constructed a house and the remaining vacant place in katha No.14 which measures 32 x 32 feet and the defendants removed they hay stock and jopadi, put up the stair case to his newly built house. At that stage the plaintiff became jealous of defendants managed to tamper the panchayath records in connivance of panchayath authorities and changed the measurements of katha No.15 as 49 feet x 44 feet in panchayath records in a different ink and also inserted boundaries for the first time. The actual measurement of katha No.14 is 32 x 32 feet, but in the panchayath records east-west measurement is altered as east-west 22 feet, north-south 32 feet by over writing the actual measurement and filed this false and frivolous suit. To prove the same produced documents tax assessment, endorsement issued by the PDO, copy of khata extract, assessment extract, tax paid receipts, 4 photos, pen-drive and photo bill. The said documents are not disclose that

the said 6 feet sandudari is exclusively property of the defendants and there was jopadi constructed by the ancestors. The document produced by the defendants i.e. endorsement issued by the PDO Mittahalli Grama Panchayath, the document shows that the measurement has been changed. In that regard there is no explanation was forthcoming in the revenue records on what basis the measurement has been changed in the plaintiff document. The said aspect needs to be proved in the course of trial and defendants have taken specific contention that the 6 feet space is exclusive property of their ancestors and there is no B schedule property. So if at all defendants are having right over the 6 feet sandudari why he kept in mum when endorsement issued by the PDO. Further, admittedly the defendants have been constructing the building, but they have not produced any building construction permission from the concerned authority, it shows that without permission from the authority the defendants constructing the building, under this circumstance the construction is to be restrained. Therefore, at this stage on perusal of documents produced by the plaintiff with the plaint it

appears prima-facie that the documents pertaining to the suit schedule property standing in the name of the plaintiff and towards west there is a 6 feet sandudari (passage) and it appears from the pleadings that the defendants have seriously disputed the passage of 6 feet and possession of the plaintiff. If an order of temporary injunction is granted by restraining and interference the defendants, they will not be put to any inconvenience as he is at liberty to rebut the contentions of the plaintiff during the trial, but if injunction is refused, there are chances that the defendants constructed stair case in the disputed area. In this sense, I hold that the balance of convenience lies in favor of the plaintiff and not in favor of the defendants. Needless to say that the plaintiff is not absolved from his liability to make any loss or damage which may be caused to the defendants, if the plaintiff fails to prove his possession over the suit schedule property after trial. Now with regard to the question of hardship, if the temporary injunction is not granted, the possibility of constructing the building by encroaching 6 feet sandudari i.e. suit 'B' schedule

property by the defendants cannot be overlooked as it may also invariably lead to multiplicity of proceedings and the plaintiff may be put to hardship. On the other hand, if temporary injunction is granted, no hardship will be caused to the defendants. Moreover, the grant of temporary injunction at this stage does not have a bearing on the main suit as the plaintiff must prove his possession and interference from the defendants over the suit 'B' schedule property and the defendants are at liberty to disprove the claim of the plaintiff and prove their own possession over the suit 'B' schedule property. Therefore, I am of the view that if I.A.No.1 is not allowed, the plaintiff would be put to irreparable loss or damage whereas the defendants will not be put to any hardship. **Hence, I answered Point No.1 to 3 in the Affirmative.**

13. Point No.4:- In view of my finding given on above facts and circumstances of the case, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rules 1 and 2 of C.P.C., is hereby allowed.

The defendants, their agents, servants or anybody through them are hereby restrained by way of an order of temporary injunction from putting up stair case in the plaint 'B' schedule property in any manner, till disposal of the suit.

Cost of this application will follow the result of this case.

(Dictated to the Stenographer directly on to the computer, computerized by her, corrected, signed and then pronounced by me in the open Court on this the 30th day of July 2022)

Sd/-

(Shrishylaja H.V)

Prl. Civil Judge & JMFC,
Chintamani.