

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI.**

PRESENT

**Sri. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 03rd March, 2023.

M.A.No.20/2022

Sri. P. Venkatesh : S/o Late Papanna Aged about 51 years Residing at : Navarathna Agrahara Village, Jala Hobli, Yalahanka Taluk, Bengaluru District.	<u>Defendant / Appellant</u>
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(ApInt. - By Sri. M.N.,
Advocate)

- V/s. -

Sri. Suresh N. S/o Late Narayanappa Aged about 48 years	: <u>Plaintiff / Respondent</u>
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Residing at :
Navarathna Agrahara Village,
Jala Hobli,
Yalahanka Taluk,
Bengaluru District.

(Rspnt. – By Sri. A.K.R.,
Advocate)

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ORDER

This Miscellaneous Appeal is filed under order 43 Rule 1(r) of C.P.C. by the defendant in suit bearing O.S.No.348/2022 pending on the file of Additional Civil Judge & J.M.F.C, Devanahalli challenging the order dated 17-09-2022 passed on I.A. No.1 filed under order 39 Rule 1 & 2 of C.P.C. The Trial Court by the impugned order dated 17-09-2022 has allowed the application filed by respondent under order 39 Rule 1 & 2 of C.P.C. The defendant has challenged the said order on various grounds set out in the appeal memo.

2. **The facts of case are unfurled here under :**

The respondent herein has filed suit bearing O.S.No.348/2022 seeking for the relief of Permanent Injunction to restrain the defendant / appellant herein from interfering with his possession and enjoyment over

suit property bearing Kaneshumari No.15/2 measuring 26 X 25 feet situated at Navarathna Agrahara Village. It is contended by the respondent / plaintiff that the property bearing Kanesumari No.15/1 measuring 31.01 square meter and property bearing Kaneshumari No.15/2 measuring 22.4 square meter belongs to him. He has acquired the said property from his ancestors. The Panchayath records were standing in the name of his father. After the death of said father, he had applied for change of entries. The authorities have refused to mutate his name over said property. He has further contended that the house has been constructed in property bearing Kaneshumari No.15/1 to an extent of 26 X 25 feet. The Kaneshumari property bearing No.15/2 measuring 26 X 22 feet has been kept open. He is in use and enjoyment of said property. The defendant without having any right over said open space has laid his hand over said property with an intention to construct house. He tried to dig trenches in the said property to construct house. He has immediately rushed to the Police authorities seeking their intervention, who failed to take any action against him, thereby he was perforce to file the said suit. Hence he seeks to injunct the appellant / defendant from interfering with his possession over property bearing Kaneshumari No.15/2.

3. The defendant / appellant has appeared through his counsel and filed Written Statement by denying the claim of existence of property of plaintiff in the said open space. According to him, the property bearing Kaneshumari No.206/206 measuring East to West 32 + 28 feet and North to South 53 feet belongs to his ancestors and he got the said property under registered Release Deed dated 27-07-2017. He intended to erect car shed over the said property. The plaintiff has obstructed his use and enjoyment of said property without any right. Therefore he seeks to dismiss the suit.

4. As indicated above the respondent has filed I.A. No.1 under order 39 Rule 1 & 2 of C.P.C. before Trial Court seeking to injunct the appellant from obstructing his use and enjoyment of property bearing Kaneshumari No.15/2 measuring East to West 26 feet and North to South 25 feet. The Trial Court has initially directed the parties to maintain status-quo. The Trial Court by impugned order dated 17-09-2022 has allowed the said application on merits. **The defendant / appellant has challenged the said order on following :**

GROUND S :

1. The Trail Court did not properly consider the material on record. The Trail Court has wrongly recorded the finding on the Issue of possession of plaintiff over suit property which is not in existence.
2. The Trail Court has failed to consider the factum of existence of property of defendant with specific boundaries.
3. The Trail Court has failed to consider the fact that the plaintiff himself admitted the activity of erection of car shed by the appellant which would indicate his possession over the disputed property.
4. The Trail Court has failed to consider the disparity of measurement mentioned in the document and measurement mentioned in the plaint.

5. The plaintiff / respondent has filed statement of objections by reiterating the stand taken before Trail Court. He seeks to support the order passed by Trail Court. **Heard both the sides. Having heard the learned counsel for appellant and respondent and having perused the material on record, the following points would arise for my consideration :**

1. Whether the appellant made out that the order of Trail Court is perverse, capricious and against the settled cannons of law governing the field of grant or refusal of interim injunction and liable to be interfered with?
2. What order?

6. **Having heard the learned counsel on record and having perused the records placed by the parties which were relied upon before Trail Court, my findings to above points is as under :**

- Point No.1 : **In the Partly Affirmative,**
- Point No.2 : **As per final order for the following :**

REASONS

7. **Point No.1** : The Appellant is the Defendant before Trial Court. The respondent is the plaintiff before Trail Court. He has filed suit seeking to restrain the defendant / appellant from interfering with his possession and enjoyment of suit property bearing Kaneshumari No.15/2 measuring East to West 26 feet and North to South 22 feet. According to him, the defendant has created document in respect of said property when his wife was President of Panchayath by assigning number as Kaneshumari No.206. The Panchayath authorities have failed to mutate his name over property bearing Kaneshumari No.15/2. The defendant by taking undue advantage of said fact has tried to dig foundation over said property to construct house. He has opposed the activity of appellant over said property. He has failed to stop the said illegal activity which forced him to approach Police authorities who also failed to take action against him and which forced him to knock the doors of Civil Court. The appellant / defendant denied the factum of existence of any vacant land belongs to plaintiff. According to him, he is the owner and in possession of property bearing Kaneshumari No.206 measuring East to West 32 + 28 feet and North to South 53 feet. Therefore he claims to be in

possession of said property. He has further contended that he is intending to erect car shed over the said property. Therefore he seeks to dismiss the suit.

8. Based on rival contentions of parties, the following undisputed facts can be culled out here under :

1. It is not in dispute that the plaintiff has constructed house over property bearing Kaneshumari No.15/1.
2. It is also not in dispute that the plaintiff has applied for change of entry of name in respect of property bearing Kaneshumari No.15/2.
3. It is also not in dispute that the claim of appellant / defendant is in respect of property bearing Kaneshumari No.206 measuring East to West 32 + 28 feet and North to South 53 feet. He has shown the property of father of plaintiff towards Northern side of his property.

4. The only dispute between the parties is in regard to existence of property bearing Kaneshumari No.15/2 measuring East to West 26 feet and North to South 22 feet as claimed by the plaintiff. Therefore with this back drop of admitted and disputed fact I proceed to examine the material placed by the parties. The plaintiff has relied upon Assessment and Demand Register, Encumbrance Certificate, Tax paid receipts, Photographs and C.D. The appellant / defendant has relied upon copy of Relinquishment Deed, ದೃಢೀಕರಣ ಸರ್ಟಿಫಿಕೇಟ್, copy of letter issued by P.D.O. to Tahasildar, certified copy of Katha Extract, Tax paid receipts and Demand & Assessment Register.

9. The Demand and Assessment Register produced by both the parties indicates that the Panchayath authorities have maintained records in respect of both the properties claimed by plaintiff and defendants. The Assessment and Demand Register of property of plaintiff starts from 1994, the Assessment and Demand

Register pertains to the property of defendant start from the year 2004. The question before court is as to whether the property claimed by both the parties is one and the same or it is two different properties. The Trial Court has opined in its finding on Para No.18 that there is no dispute between parties in regard to identity of property. In fact the material pleading on record indicate the dispute over identity of property claimed by them. The material on record such as Photographs produced by the appellant would indicate lying up of vacant space towards the Southern side of house of plaintiff. The Photographs indicate digging of land by the defendant for erection of structure over the said property. Therefore at this stage the plaintiff has knocked the doors of Civil Court. Therefore it would indicate that both the parties are lying up of their hands over said vacant space. Therefore the court has to consider about the right title and interest of parties over the said vacant space. The plaintiff claimed that he has constructed house over property bearing Kaneshumari No.15/1 to an extent of 26 X 25 feet and kept open the land in property bearing Kaneshumari No.15/2 to an extent of 26 X 22 feet which is the subject matter of suit. The defendant has contended that the plaintiff has constructed house over both the parties and did not leave any vacant space.

10. Admittedly, the material on record such as the application filed father of plaintiff Narayanappa before panchayath authorities dated 06-02-2004 indicates that he has constructed house over property bearing Kaneshumari No.15/1 & 15/2 to an extent of 40 X 36 feet. He claims in the said letter that he has left open space in the said property bearing Kaneshumari No.15/1 & 15/2. Therefore he sought rectification of measurement of property in Form No.9 & 10. **The said recitals of letter are extracted hereunder :**

“....ಈ ಮೇಲ್ಕಂಡ ವಿಷಯದ ಬಗ್ಗೆ ತಮ್ಮಲ್ಲಿ ಕೋರುವುದೇನೆಂದರೆ, ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ಖಾಯಂ ಆಗಿ ವಾಸವಿರುತ್ತೇನೆ. ನನ್ನ ಬಾಬು ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು, ಜಾಲ ಹೋಬಳಿ, ದೊಡ್ಡಜಾಲ ಗ್ರಾಮದ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಯ ನವರತ್ನ ಅಗ್ರಹಾರ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಖಾನೇಷುಮಾರಿ ನಂ.15/1, 15/2ರಲ್ಲಿ ನಮ್ಮಗಳ ಪಿಕ್ರಾರ್ಜಿತಿವಾಗಿ ಬಂದು ನಮ್ಮ ಅಣ್ಣ - ತಮ್ಮಂದಿರುಗಳಿಗೆ ಭಾಗವಾಗಿ ನನ್ನ ಭಾಗಕ್ಕೆ ಬಂದಿರುವ ಸ್ವತ್ತು ಒಟ್ಟು 60 ಅಡಿಗಳು ಪೂರ್ವ ಮತ್ತು ಪಶ್ಚಿಮ - 58 ಇರುವ ಖಾಲಿ ಜಾಗದಲ್ಲಿ 40 X 36 ಅಡಿಗಳಲ್ಲಿ ಕಲ್ಲು ಮಾಳಿಗೆ ಮನೆಯನ್ನು ಕಟ್ಟಿಕೊಂಡು ಉಳಿಕೆ ಜಾಗದಲ್ಲಿ ನಾನೇ ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿ ಇರುತ್ತೇನೆ. ಆದರೆ ಪಂಚಾಯಿತಿ ವತಿಯಿಂದ ಹಾಕಿರುವ ಫಾರಂ ನಂ.10 ಮತ್ತು 9ರಲ್ಲಿ ಅಳತೆಯು ಕಡಿಮೆ ತೋರಿಸುತ್ತಾರೆ. ಸದರಿ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣಕ್ಕೆ ನಾನು ಪ್ರತಿ ವರ್ಷ ಕಂದಾಯ ವೆಚ್ಚವನ್ನು ಕಟ್ಟಿಕೊಂಡು ಬರುತ್ತಿರುತ್ತೇನೆ. ಆದ್ದರಿಂದ ತಾವುಗಳು

ಸ್ಥಳ ತನಿಖೆಯನ್ನು ಮಾಡಿ ಫಾರಂ ನಂ.10 ಮತ್ತು 9ರಲ್ಲಿ
ಅಳತೆಯನ್ನು ಹಾಕಿ ಕೊಡಲು ತಮ್ಮಲ್ಲಿ ಕೊಠರತ್ತೇನೆ....”

Therefore the said letter would indicate he has already constructed house to an extent of 1,440 square feet over property bearing Kaneshumari No.15/1 & 15/2.

11. He has to clearly mention as to the exact measurement of open space left by him in the said letter. He has not mentioned the measurement of open space left by him. According to plaintiff, the measurement of both property bearing Kaneshumari No.15/1 & 15/2 is 60.03 square meter which comes to nearly about 645.835 square feet. According to father of plaintiff he owns an area measuring 58 X 60 feet over both the property bearing Kaneshumari No.15/1 & 15/2. According to him, he has constructed house to an extent of East to West 40 feet and North to South 36 feet which comes to nearly about 1,440 square feet. The pleading of plaintiff indicates measurement of said house as East to West 26 feet and North to South 25 feet. Therefore the said assertion is contrary to the letter addressed by his father to the Panchayath authorities. The Photographs produced by defendant indicates that the said house has been constructed more than 26 X 25 feet. However the

Panchayath records such as Assessment Register pertains to the year 2016-17 indicate existence of vacant space. Therefore the primary burden is on the plaintiff to show that the vacant space lying on the Southern side of his house property belongs to him. The Trial Court has emphasized on the activity of defendant over construction of house over the said vacant space to grant the interim relief of injunction. The finding of trial court in inferring the possession of plaintiff over disputed portion of property is not in tune with the document relied upon by the parties. There is lot of difference about the measurement of property claimed by the plaintiff to the document relied upon by him. If the exclusive possession of either of party is inferred over the said disputed open space, it amounts inferring their entire case itself. Therefore the duty is cast on Trial Court to examine as to whether the said open space belongs to plaintiff or it belongs to defendant. To undertake the said exercise the comprehensive trail is required.

12. On careful re-appreciation of material on record I am of the opinion that the finding of Trial Court in inferring the exclusive possession of plaintiff over the disputed property is not proper. The material document relied upon by the plaintiff itself inconsistent with each other. He himself has asserted in the plaint that he could not

mutate his name over dispute open space. Therefore the Trail Court could have directed the parties to relegate their issues by seeking declaratory relief over suit property. The fact remains that the defendant has undertaken the activity of construction over said open space with an intention to built permanent structure. He has also not produced the old records to show that the said property belongs to his ancestor. The assertion of defendant over said property starts in the year 2004. He has to prove that the said property was standing in the name of his ancestor before getting release of said property. Therefore there are complex issues involved in the suit and parties could be directed to relegate their case by producing comprehensive document. The issue which need to be examined is as to who is the owner and in possession of said open space. Therefore the possession of both the parties cannot be inferred at this stage on the basis of material produced by them. Therefore the parties could be directed to maintain status-quo by keeping open the said property without making any construction. Therefore I hold that the order of Trail Court in inferring the prima-facie possession of plaintiff over said disputed open space is not in tune with the material produced by the parties. **Therefore I hold above point in the Party Affirmative.**

13. **Point No.2** : In the light of aforesaid finding on the above said point, I proceed to pass the following :

O R D E R

The Miscellaneous Appeal filed by the Appellant / Defendant under Order 43 Rule 1(r) of C.P.C. is hereby allowed in part and order of Trial Court dated 17-09-2022 passed on I.A. No.1 is hereby modified to the following extent :

Both plaintiff and defendant shall maintain status-quo in regard to disputed open space lying by the side of house of plaintiff. The Photographs indicate digging of foundation. The plaintiff and defendant shall not make any permanent structure over the said property till disposal of suit. Considering the nature of relief no order as to cost. The parties shall bear their own cost.

Office to send the copy of Order
to the Trial Court.

(Dictated to the Typist directly on computer, corrected and signed by me and then pronounced in the open court on this the 03rd Day of March, 2023).

(PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.