

IN THE COURT OF III ADDL. CIVIL JUDGE & J.M.F.C.
AT KADUR

Present : Sri.Deepu M.T.,B.A.L, LL.B.
III Addl. Civil Judge & J.M.F.C.,
Kadur.

Dated this 4th day of June 2020

ORIGINAL SUIT NO.249/2019

Plaintiff: M.Srinivasa S/o late Mallaiiah,
Aged about 68 years,
Agriculturist, R/o
Sriramadevara Gudi Beedhi,
Kalidasa Nagara, Kadur Town,
Kadur Taluk, Chikkamagaluru
District.

[By Sri H.C.R.S., Adv.]

V/s

Defendant: Guru S/o Dayananda, Aged
about 42 years, Driver, R/o
Near Chowdamma Temple,
Madivalara Beedhi, Birur Town,
Kadur Taluk, Chikkamagaluru
District.

[By Sri M.N., Advocate]

ORDERS ON I.A.NO.II FILED UNDER ORDER 39 RULE 1
& 2 OF CPC

The plaintiff has filed this application seeking temporary injunction restraining the defendant from putting any further construction over the encroached B

schedule property and thereby change the nature of the B schedule property either by himself, his agents or family members or anybody on his behalf till pending disposal of the suit.

2. In the affidavit, in support of the application the plaintiff stated that the averments made in the plaint may kindly be read as part and parcel of this affidavit and further stated that he has filed this suit against the defendant for the relief of declaration to declare that he is the absolute owner of the suit B schedule property, which is the part and parcel of the suit A schedule property and for possession of the same and he also sought for the demolition of the foundation construction put up in the suit B schedule property. It is further stated that the defendant is fully aware that the suit is pending before this court. Despite of this fact, the defendant has been constructing the structure over the existing foundation structure and thereby trying to change the nature of the B schedule property. The act of the defendant is illegal. Hence, it is just and necessary to issue an interim order of temporary injunction from restraining the defendant from putting any further construction over the B suit property till the disposal of the suit on merits. If the application is not allowed, he will be put to untold hardship. The

plaintiff has got prima-facie case and balance of convenience in his favor. Hence, prayed to allow the application.

3. On the other hand, the defendant has filed objection contending that the application filed by the plaintiff is not maintainable either in law or on facts and the same is liable to be dismissed. Further submitted that the plaintiff has sworn to a false affidavit by suppressing the material facts and also prayed to treat the written statement as a part of his objection statement. The defendant further submits that the defendant is the absolute owner and lawful possession and enjoyment of the written statement schedule property. Originally the written statement schedule property was belonged to one Siddaraju S/o late K.S. Ramaiah and it is the old country tiled house property and the katha of the said property was stands in the name of said Siddaraju. Thereafter the said Siddaraju alongwith his wife Smt. Sarojamma, daughter Chaitra and son Chethan have jointly sold the written statement schedule property in favour of the defendant through the registered sale deed dated 25/02/2016 vide document No.6657/2015-16 for the valid consideration and put this defendant in possession over the written statement schedule property. From date

of purchase till this day, the defendant is the owner and in possession over the written statement schedule property.

4. It is further submitted that, since the written statement schedule property was the old dilapidated conditioned house property, after purchase of the said property the defendant has demolished the old house property in the presence of the vendor Siddaraju and the neighbours of the area and got converted the same into site property. Thereafter the wife of this defendant Smt Yashodamma R.A., has been allotted the house by the Rajeev Gandhi Grameena Vasathi Nigama Niayamitha and they have constructed the RCC house in an area measuring 34.71 Sq. mtr. out of total area 62.41 Sq. ft. by leaving vacant space around his property.

5. It is further submitted that the plaintiff is not having any property around the written statement schedule property hence, the question of defendant is having the property towards the eastern side of the plaintiff schedule property and the defendant has encroached the property of the plaintiff measuring East-West 9 feet and North-South 17 feet does not arise at all. Since the plaintiff is not having any property around the property of the defendant, the question of encroaching the property of

the plaintiff towards the eastern side and to construct the structure over the said property does not arise at all. The plaintiff on the support of some persons who are not in good terms with the defendant, was tried to obstruct and interfere with the possession of the defendant over his written statement schedule property. The defendant with great difficulty has resisted the same, the plaintiff in order to succeed in his illegal attempts and in order to give unnecessary trouble to the defendant and to have gain had filed O.S.414/2016 for the relief of Permanent Injunction on the file of 2nd Addl. Civil Judge at Kadur. In the said suit this defendant has appeared before the court and filed written statement by contesting the case by condoning that the plaintiff has given the false boundaries to the plaintiff schedule and he has also stated in the para 4 of the plaintiff in O.S.414/2016 as well as in the plaintiff schedule that the defendant's property is situated towards the eastern side and in the same plaintiff, the plaintiff has stated that the defendant is trying to encroach the plaintiff schedule property towards the northern side, which clearly goes to show that the plaintiff is not in a possession over the property as mentioned in the plaintiff schedule in O.S. No. 414/2016. At no point of time, the defendant has encroached the property of the plaintiff and constructed

the structure and the plaintiff is not having any property around the written statement schedule property. Hence, the plaintiff is not entitled for any relief and question of granting the interim relief does not arise at all. Hence prayed to dismiss the application.

6. Heard the arguments on both the parties. Perused the materials on record.

7. The following points would arise for my consideration:

1. Whether the plaintiff has made out prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and injury, if temporary injunction is not granted?
4. What order ?

8. My answers to 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

9. **POINT NO.1:** It is the settled principle of law that

grant of temporary injunction is a discretionary relief. The burden is on the plaintiff to establish by evidence that there is a prima facie case. In the case on hand, the plaintiff in order to prove that he has a prima facie case has to establish that he is the owner of the plaint A schedule property measuring East-West 18 feet and North-South 41 feet and the defendant herein is constructing his house in a portion of the plaint A schedule property on its eastern side to an extent measuring East-West 9 feet and North -South 17 feet and refer to as plaint B schedule property. In the instant case, the defendant disputes the identification of the plaint schedule property and he contended that the plaint schedule property is not situated in the boundaries of the property of the defendant. The plaintiff in order to made out prima facie case has furnished legal notice, postal receipt, acknowledgement, order sheet, plaint, written statement, IA and objections in O.S. O.S. 414/2016, Assessment extract of the plaint A schedule property, 8 photographs and C.D.

10. It is the specific case of the plaintiff that the defendant has encroached plaint B schedule property and is going to construct building over the same. The defendant on the other hand disputes the identification of

the plaint A schedule property and contends that the plaint A schedule property is not situated in the boundaries of the property of the defendant. The plaintiff in order to make out a prima facie case has relied on the legal notice, postal receipt, acknowledgement and order sheet, and copies of plaint, written statement, IA and objections in O.S. 414/2016 on the file of II Additional Civil Judge, Kadur, Assessment extract pertaining to plaint A schedule property, 8 photographs alongwith C.D. A perusal of the assessment extract pertaining to plaint A schedule property discloses that the said property stands in the name of the plaintiff and the description of property mentioned in the assessment extract and plaint A schedule property are one and the same. In order to establish the boundaries of the plaint A schedule property, the plaintiff has not furnished any documents. The very contention of the defendant is that the property of the defendant is not situated in the boundaries of the plaint A schedule property. Such being the case, the plaintiff has to furnish documents showing boundaries of his property. In the Assessment register extract pertaining to A schedule property the boundaries of the plaint A schedule property is not mentioned. Moreover the plaintiff has not produced any title documents with respect to plaint A schedule

property and revenue document furnished by the plaintiff cannot be proof of title.

11. In support of the case of the defendant, he has furnished the copy of the sale deed dated 25/02/2016 and E-katha of written statement schedule property, House grant certificate and 4 photographs. A perusal of the said sale deed with respect to written statement schedule property clearly shows that the property of the plaintiff is not situated in the boundaries of the schedule of the said sale deed i.e, written statement schedule property. It is the assertion of the plaintiff that the property of the defendant is situated towards eastern side of the plaintiff's schedule property. Such being the case, in the said sale deed the property of the plaintiff must be mentioned in the western side boundary of the written statement schedule property. Moreover the plaintiff has not disputed the said sale deed produced by the defendant nor has produced any document to infer the contrary. Therefore, as per the sale deed dated 25/02/2016 furnished by the defendant, the property of the plaintiff is not situated on the western side of the written statement schedule property. Further the E-katha produced by the defendant pertaining to the written statement schedule property also does not disclose the name of the plaintiff

O.S.No.249/2019

towards western side of the written statement schedule property. Such being the case at this stage this court is of the opinion that the property of the defendant is not situated in the boundaries of the plaint A schedule property.

12. On careful perusal of photographs furnished by both the parties, it appears that the construction work of the defendant's house is almost complete. Moreover, as per the pleading of the plaintiff, the plaint A schedule property consists of house and vacant site property measuring East-West 18 feet and North-South 41 feet out of which the defendant has encroached East-West 9 feet and North-South 17 feet. Even if this argument made by the counsel for the plaintiff is accepted as correct, no documents have been produced by the plaintiff to show the measurement of the vacant site and house property therein. Also no documents have been produced to show that there existed a vacant site belonging to the plaintiff upon which the defendant has put up construction. Under the circumstances the argument of the plaintiff that the defendant had encroached an extent of East-West 9 feet North-South 17 feet which is shown as B schedule in the plaint cannot be accepted at the stage. Moreover the plaintiff has not pleaded the extent of house property and

O.S.No.249/2019

vacant site property separately. A perusal of assessment extract depicts only the measurement of plaint A schedule property and it does not show separate measurements of vacant space and building area in plaint A schedule property. Such being the case the plaintiff has failed to establish the measurement of vacant site and house built area in plaint A schedule property. Further the plaintiff has failed to prove that the property of the defendant is situated in the eastern side of the plaint A schedule property and the defendant is constructing over the plaint B schedule property. Moreover, the photographs furnished by both the parties show that the construction work of defendant is almost completed. Hence, at this stage there is no question of restraining the defendant from putting up further construction over the B schedule property. Hence at this stage it can be said that the plaintiff has failed to make out a prima-facie case in his favour. Under these circumstances, I answer point No.1 in the Negative.

13. **Points No.2 and 3:** Points No.2 and 3 are taken up together for common discussion to avoid repetition of facts. As the plaintiff has failed to establish a prima-facie case in his favour these two points do not survive for consideration as Prima facie case is harbinger

O.S.No.249/2019

to other considerations. In this regard it would be relevant to refer to the decision rendered by Hon'ble High Court Of Karnataka In *Gowrishankar Swamigalu V/s. Siddhaganag Mutt & Ors* reported in ILR 1989 KAR 1701, wherein the Hon'ble High Court of Karnataka held as follows:-

"...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."

Accordingly, these two points are answered in the 'negative'.

14. Point No.4: In view of the reasons and discussions made in Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, same is corrected and then pronounced by me in the open court on this the 4th day of June 2020).

(DEEPU M.T.)
III Addl. Civil Judge and JMFC.,
Kadur.

O.S.No.249/2019

13

O.S.No.249/2019

Order pronounced in the open Court (vide separate) and its operative portion is as follows:

: O R D E R :

I.A.No.II filed by the plaintiff under

Order 39 Rule 1 and 2 of CPC is

hereby dismissed.

For issues by 04/07/2020

(DEEPU M.T.)

III Addl. Civil Judge and
JMFC, Kadur.