

**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT KADUR**

***Present : Sri.C.N.Chandan, B.Sc., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Kadur.***

Dated this 27th day of November 2019

ORIGINAL SUIT NO.615/2018

PLAINTIFF/S:

V.S.Paramesha S/o Sannabootha
Bhovi, aged 48 years, Contractor,
R/o Lakshmisha Nagara, 1st Cross,
Kadur Town, Kadur Taluk,
Chikkamagalur District.

[By Sri H.Thippesh, Advocate.]

Vs.

DEFENDANT/S:

T.R.Manjunatha S/o late K.Ramanna,
aged 61 years, Retired Employee of
Labour Department, R/o 1st Cross,
Lakshmisha Nagara, 1st Cross,
Kadur Town, Kadur Taluk,
Chikkamagalur District.

[By Smt.B.R.Reshma, Advocate.]

PARTIES TO I.A.NO.I

Applicant/s: V.S.Paramesha

Vs.

Respondent/s: T.R.Manjunatha

ORDER ON I.A.NO.I

The plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC, seeking to restrain the defendant from interfering to suit property and to restrain him from dispossessing the plaintiff forcibly from the suit property.

2. a) In support of the application, the plaintiff has sworn to an affidavit stating that, the plaintiff is the owner of suit property. He has purchased the suit property from one Sathyan. It is averred that he purchased 75 x 80 feet, out of which he has erected the structure measuring 75 x 40 feet and left vacant site vacant site is measuring 75 x 40 feet for his own use.

b) It is averred that the defendant is having his property on the southern side of the suit property. It is alleged that the defendant is having property measuring 35 x 55 feet wherein he has constructed the building measuring 55 x 65 feet i.e., more than the area owned by him. It is averred that the plaintiff on three sides covered the suit property by erecting the compound and he is intending to construct the compound on the southern side, but wherein the defendant is obstructing and interfering for the construction of the said compound. The

defendant based on the false and concocted document, he is interfering to the plaintiff's peaceful possession. Hence, sought to restrain the defendant and his men from interfering to his peaceful possession.

3. The defendant has resisted the said application, interalia contending that the defendant has filed O.S.No.565/2018, now the same is pending for adjudication before the 3rd Additional Civil Judge (earlier before the 2nd Additional Civil Judge). It is the case of the defendant that defendant's father was owning the property in Sy.No.139/1a2 which originally measuring 70 x 40 feet. Thereafter the property is converted for non-agricultural purpose and after deducting some area, as per the rules of Town Planning, the khata is changed to an extent of 55 x 35 feet. Out of 55 x 35 feet the defendant constructed the house property measuring 15 x 47 feet, wherein towards his northern side he has left 13 feet space (5+8) and 12 feet towards his south. It is contended that the plaintiff is trying to encroach the property of the defendant. It is further contended that the plaintiff is not having prima facie case nor the balance of convenience lies in his favour and by giving false boundary, he has filed this

suit. On these grounds, sought to dismiss the application.

4. Heard the arguments. Perused the materials on record.

5. Now the points that would arise for my consideration are:

- 1) Whether the plaintiff has made out prima facie case?
- 2) Whether the plaintiff proves that balance of convenience lies in his favour?
- 3) Whether the plaintiff proves that he will going to suffer irreparable loss and injury in case the application is rejected?
- 4) What order?

6. My answers to the above points are as under:

Point No.1 : In the Affirmative;

Point No.2 : In the Affirmative;

Point No.3 : In the Affirmative;

Point No.4 : As per final order;

for the following:

REASONS

7. **POINT NO.1:** On going through the materials on record, wherein it can be gathered that the present suit is filed by the plaintiff against the

defendant for perpetual injunction. It is the case of the plaintiff that the plaintiff is owning 75 x 80 feet property, out of which he has constructed residential building measuring 75 x 40 feet and towards his southern side, he has left vacant space measuring 75 x 40 feet, wherein he is intending to construct the compound for which there is an obstruction and interference by the defendant. It is the specific allegation of the plaintiff that, the defendant owning 35 x 55 feet property, wherein he has constructed the residential house and commercial complex which totally measures 55 x 65 feet. Even though the defendant is not having any sort of right or title over the suit property, he is trying to interfere to the peaceful possession of the plaintiff.

8. Per contra, it is the case of the defendant that the defendant has left 13 feet space on the northern side of his property wherein the plaintiff used to park heavy vehicles in the said area and he is making attempt to erect the shed and encroach the property of the defendant. On these grounds sought to reject the application.

9. On going through the materials on record, wherein it clearly appears that there is a dispute between the parties to the suit in respect of the suit

property and it appears that there is a triable case which needs intervention of this court for adjudicating the right of the parties. Here even though the defendant has contended that the plaintiff has given wrong boundary. This court has carefully gone through the schedule mentioned in the plaint in O.S 585/2018, wherein on the northern side of the suit property (O.S.No.585/2018) it is shown that the property of defendant i.e., the plaintiff of this case is situated. Thereby one thing is clear that the property of the plaintiff and defendant are abutting to each other.

10. Even though in the written statement the defendant has denied that the plaintiff is not having property measuring 75 x 80 feet, wherein it appears that it is only a bald denial. In this regard in order to show that the plaintiff is having right to an extent of 75 x 80 feet, the plaintiff has furnished copy of the sale deed dated 09.02.2010. Wherein on going through the recitals of the said sale deed, it can be gathered that the said sale deed is executed by one T.D.Sathyan in favour of the present plaintiff and through the said sale deed, he has conveyed title to an extent of 75 x 80 feet.

11. Further on perusal of E-assessment extract wherein it can be gathered that based on the sale deed, the khata has been changed in the name of the plaintiff to an extent of 557.32 square meters and out of 557.32 square meters, the plaintiff has constructed the structure totally measuring including the plinth area is 204.386 square meter. Thereby remaining area is the vacant site which belongs to the plaintiff. The plaintiff has also furnished photographs of the disputed area wherein on going through the said photographs, it can be noticed that in between the property of the plaintiff and defendant, there is a vacant space and according to the plaintiff the said vacant space belongs to him and wherein according to the defendant he has left 13 feet of vacant space on his northern side. Even on perusal of the photograph, it can be gathered that the vacant space that could be seen in photograph is more than 13 feet. However, here it is pertinent to note that the plaintiff is alleging that the defendant is having only 35 x 55 feet and he has constructed the building measuring 55 x 65 feet.

12. When some allegation is made against the defendant and while dealing an application under Order 39 Rule 1 and 2 of CPC, even though the court

does not consider the evidence while adjudicating the application under Order 39 Rule 1 and 2 of CPC, As the extent of the defendant property is denied at least to show prima facie he is owing 55X 65 feet, the defendant would have furnished at least the khata extract to show that what is the extent of land owned by him. In spite of the specific allegation that the defendant has constructed the structure in more extent than the property owned by him, the defendant except denying, he has not furnished single piece of document at least to show that he is having the property measuring 55 x 35 feet and out of which he has constructed house measuring 15 x 47 feet.

13. On going through the pleadings and materials available on record, wherein prima facie it appears that the plaintiff is the owner of the property measuring 75 x 80 feet and it appears that he is in possession over the said extent of land. Thereby the plaintiff has made out prima facie case. Hence, I answer Point No.1 in the Affirmative.

14. **POINT NO.2 AND 3** : These two points are taken up together for common discussion in order to avoid the repetition of facts and evidence. As per the reasons assigned in point No.1, the plaintiff has

made out a prima facie case and he has shown that he is enjoying the suit property. When this being the fact, if the defendant is not restrained by an order of temporary injunction, then much inconvenience will be caused to the plaintiff than that of the defendant.

15. On going through the materials on record, the dispute is with respect to the vacant space. If temporary injunction is granted in favour of the plaintiff, no hardship will be caused to the defendant, because no construction is made in the said area and the person who succeeds in their case can very well utilise the said area. Wherein at this juncture, the plaintiff has made out a prima facie case that he is in possession over the suit property. As per the reasons assigned above, the plaintiff has established prima facie case and if the defendant is not restrained as sought, then the plaintiff will be put to much inconvenience and hardship than that of the defendant. Hence, I answer Point No.2 and 3 in the Affirmative.

16. **POINT NO.4:-** For the reason assigned in Point No.1 to 3, I proceed to pass the following :

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendant and his men are hereby restrained from interfering with the plaintiff's peaceful possession over the suit property till the disposal of this suit.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 27th day of November, 2019).

Sd/-

(C.N.CHANDAN)
Prl. Civil Judge and JMFC.,
Kadur.