

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 11th day of December 2020.

O.S. No. 51/2020

Plaintiff/s : Smt. Akhila @ Akhilabanu,
W/o. Syad Abhid,
Age 51 years, House Wife,
R/o S.V.T. Road,
Koppa 577 126.

(Represented by Sri. Prasanna T.D., Adv.,)

V/S

Defendant/s : 1. Smt. Mangala, W/o Dr. Praveena,
Aged about 45 years,
2. Dr. Praveena, S/o Late. Purushottama,
Aged about 50 years,
Both are R/o Tilak Road,
Koppa – 577 126.

(Represented by Sri. Mahendra S.B., Adv.,)

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**ORDER ON I.A. NO. 1 FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 OF C.P.C.**

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. seeking an order of temporary injunction restraining the defendants, their supporters or workers from trespassing or disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule 'A' property and from constructing any retaining wall adjacent to the suit schedule 'A' property and also constructing any building in the suit schedule 'B' property within the distance of 3 feet from the 'A' schedule property till disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff stated that she purchased the suit schedule 'A' property from one Smt. Rani, W/o Ramaiah under the registered sale deed and thereafter on the basis of the registered sale deed, the E-Swattu of

suit schedule 'A' property is entered into her name. It is alleged that except the plaintiff no other has right, title or interest over the suit schedule 'A' property.

Further it is alleged that the defendants have the 'B' schedule property in the eastern side of the suit schedule 'A' property and there is stone pillars and barbed wire fence which separates the suit schedule 'A' and 'B' properties. The plaintiff further stated that on 6.11.2020 when the plaintiff was not in station, the defendants with the help of JCB and their workers, removed the fence and encroached 3 feet width and 100 feet length of suit schedule 'A' property by excavating the land. By which the drinking water well of the plaintiff is damaged.

Further, it is stated by the plaintiff that when she has enquired with the defendants, they have answered adamantly and

threatened that they will encroach 3 X 100 feet property in suit schedule 'A' property and they will construct retaining wall to use the same for their commercial building purpose. On the said illegal act of the defendants the plaintiff even though complained to the police and the Pattana Panchayath, they have not taken any action. Hence, the present suit along with the I.A. is filed.

3. After service of summons, the defendants have appeared through their counsel and filed detailed written statement and memo by adopting the written statement as objection to the I.A.

In the written statement the defendants have denied the averments made by the plaintiff and also possession of the suit schedule 'A' property as described in the plaint and also denied the boundaries mentioned to the suit schedule 'A' property.

The defendants admitted their possession over the suit schedule 'B' property and denied the existence of stone pillars and barbed wire fence to the suit schedule 'A' property. Further submitted that the well which is in the back side of the suit schedule 'A' property is constructed by the father of the defendant No. 1 and on the request of the plaintiff, the permission is given to the plaintiff to use the said water as licensee.

The defendants further submitted that they being the owner of suit schedule 'B' property started to construct the building in the suit schedule 'B' property by leaving the 5 feet of 'B' schedule property in the western side as the well is situated in the said 5 feet. The place in which the well is situated is belongs to the defendants and not to the plaintiff. But the plaintiff has filed the present false suit to claim the right over the said well. The defendants further submitted that in the western side of the suit

schedule 'B' property even though there is some vacant land is left for the purpose of identification of boundary, the earlier vendors of the defendants have mentioned the western boundary of suit schedule 'B' property as plaintiff's property only for identification purpose. But as a matter of fact, in the western side of the suit schedule 'B' property there is an vacant land which is not in the form of site.

It is the case of the defendants that the said drinking water well is within the possession of the defendants and the defendants are constructing the building in the suit schedule 'B' property as per the approved plan and for the purpose of safety of the well and land they are constructing the strong retaining wall.

On 18.7.2020 the defendants have filed the application for licence to construct the building in the suit schedule 'B' property.

On the basis of said application the Officer of Pattana Panchayath has inspected the spot and excavation was done in the presence of plaintiff and other well wishers in the month of November. The plaintiff also filed the objection before the Pattana Panchayath for issuance of building construction licence. But, the officials of the Pattana Panchayath after inspection granted the licence. The defendants further submitted in the written statement that due to the construction of the defendants there is no harm to the plaintiff's property and the purpose of construction of retaining wall is to protect the well belongs to the defendants.

It is the case of the defendants that the defendants are constructing the retaining wall within the property belongs to the defendants and not in the property of the plaintiff i.e. suit schedule 'A' property. The defendants have every right to construct the building as per the approved plan in their site. The

plaintiff has not produced any documents pertaining to the vacant land which is existing to the back side of the suit schedule 'A' property. Further, the defendants submitted that in the eastern side of the suit schedule 'B' property there is a road measuring more than three and half meters. The plaintiff has filed the present suit by giving false schedule and trying to obstruct the construction of the defendants which is as per the license. Hence, prays for dismissal of the I.A.

4. Heard the counsel for plaintiff and defendants. Upon perusal of the averments in affidavit accompanying the application, the objection putforth by the defendants and other materials submitted by the plaintiff and defendants, the following points were arisen for my consideration:

- 1) Whether the plaintiff has made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that the balance of convenience lies in her favour?
- 3) Whether the plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted?
- 4) Whether the plaintiff is entitled for order of discretionary relief of temporary injunction as prayed in I.A. No. I ?
- 5) What order?

5. My findings 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 : In partly affirmative

Point No. 5 : As per the final order
for the following reasons.

REASONS

6. **Point No.1:** In this application the plaintiff is seeking relief under Order 39 Rule 1 and 2 C.P.C. Bare reading of this provision, it is clear that with an application seeking order of an injunction the plaintiff must prove that she has a prima facie right, title and interest in the suit schedule property as well as the provision clearly indicates that the right and title has to be examined with the contents of affidavit and supporting documents annexed to the application. Further, the provision is very much clear that not only upon considering the affidavit to prove right, title and interest, the plaintiff has to prove actionable claim against the defendant, then only the court can issue any order of injunction under this provision.

7. In the present case the plaintiff has filed detailed affidavit in support of I.A. For that the defendants have filed the detailed objection.

8. Prior to plunging into appreciation of the application on merits, first let us look into certain basic facts pertaining to the present case. As the facts of the case and objections are already stated at the inception of this order, hence, once again reiterating the same is not required at this stage.

9. The plaintiff is claiming the ownership and possession over the suit schedule 'A' property. Further, the plaintiff has also admitted that the defendants are the owners of the suit schedule 'B' property, which is in the eastern side of the suit schedule 'A' property. The defendants admitted that they are constructing the building in the suit schedule 'B' property which belongs to them.

It is alleged by the plaintiff that the defendants are constructing the building without license and by violating the building bylaws without leaving set back and also by encroaching the 3 feet in the eastern side of the suit schedule 'A' property which belongs to the plaintiff. The defendants in the written statement have denied the contentions urged by the plaintiff and submitted that they are constructing the building with valid license and they have not made any encroachment and also constructing the retaining wall within the property belongs to them. In support of their case the defendants also produced two gift deeds and also approved plan to construct the building in the suit schedule 'B' property.

10. The allegation of the plaintiff is that the defendants are constructing the building by encroaching the eastern side portion of the suit schedule 'A' property and also by violating the terms of

license issued by the Town Panchayath, Koppa. In support of her contention the plaintiff has produced the copy of sale deed which evidentiates her purchase of suit schedule 'A' property by one Smt. Rani, W/o Ramaiah. The plaintiff further produced the copy of E-Swattu which also at this stage prima facie shows that the plaintiff is in possession of suit schedule 'A' property. The defendants denied the boundaries mentioned to the suit schedule 'A' property. But, on perusal of the E-Swattu to the eastern side of the suit schedule 'A' property, the property No.1-1-63 is situated. The property No. 1-1-63 is admittedly the property of the defendants i.e. suit schedule 'B' property. The defendants also produced the two gift deeds to prove their ownership over the suit schedule 'B' property. On perusal of the gift deed, dated 8.7.2015 to the western side of the defendants' property the house of the plaintiff is situated. As per the gift deed, dated 4.3.2020 to the western side of the another part of suit schedule

'B' property, the property No. 1-1-61 is situated and as per the E-Swattu and pleadings of plaintiff the property No.1-1-61 is belongs to the plaintiff. These documents evidentiating at this stage that to the eastern side of the suit schedule 'A' property, the 'B' schedule property is situated. The boundary of the suit schedule 'A' property as per the E-Swattu and the sale deed of the plaintiff, dated 3.12.1992, the eastern side boundary of the suit schedule 'A' property is defendants' property. In the same way, as per the gift deed of the defendant No.1 and E-Swattu of 'B' schedule property, the western side boundary of the defendants' 'B' schedule property is up to plaintiff's 'A' schedule property.

11. The defendants in the written statement claiming the existence of some vacant land in the back side of the plaintiff's property in between the suit schedule 'A' property and 'B' property. It is the allegation of the defendants that even though

there is vacant land between the property of the defendant 'B' property and the property of the plaintiff, the vendors of the defendants have mentioned the western boundary to the 'B' schedule property as plaintiff's property only for identification purpose. The contents of the written statement is hereby reproduced:

“‘ಬಿ’ ಸ್ವತ್ತಿನ ಪಶ್ಚಿಮಕ್ಕೆ ಖಾಲಿ ಜಾಗವಿರುತ್ತದೆ. ಆದರೂ ಚಿಕ್ಕಬಂದಿಯ ನಿರೂಪಣೆಯ ಕಾರಣಕ್ಕಾಗಿ ಹಾಗೂ ಗುರುತು ಹಚ್ಚುವ ಕಾರಣಕ್ಕಾಗಿ ಹಾಗೂ ಪ್ರತಿವಾದಿ ಸ್ವತ್ತಿನ ಪೂರ್ವ ಮಾಲೀಕರ ಸ್ವತ್ತಿನ ಆಸ್ತಿ ದಾಖಲೆಗಳಂತೆ ಪ್ರತಿವಾದಿಯ ಸ್ವತ್ತಿನ ಆಸ್ತಿ ದಾಖಲೆಗಳಲ್ಲಿ ಪಶ್ಚಿಮ ದಿಕ್ಕಿಗೆ ವಾದಿಯ ಆಸ್ತಿ ಎಂದು ನಮೂದಾಗಿದ್ದು, ವಾಸ್ತವದಲ್ಲಿ ಮೇಲೆ ಹೇಳಿದಂತೆ ಈ ಪ್ರತಿವಾದಿಗೆ ಸಂಬಂಧಿಸಿದ ನಿವೇಶನದ ಪಶ್ಚಿಮಕ್ಕೆ ಖಾಲಿ ಜಾಗವಿರುತ್ತದೆ ಹಾಗೂ ಅದು ನಿವೇಶನದ ಸ್ವರೂಪದಲ್ಲಿರುವುದಿಲ್ಲ. ”

12. The defendants are claiming their ownership over the well. The present suit is filed for the relief of permanent injunction and the matter of possession plays prominent role for the adjudication of the suit filed for the relief of permanent injunction. To prove the said allegation the defendants have not produced any documents. As per the E-Swattu of the defendant No. 1 discloses that there is no property is left in the western side between the defendants' 'B' schedule property and the plaintiff's 'A' schedule property. The documents produced by the plaintiff prima facie establishing her ownership and possession over the suit schedule 'A' property. In the same way, along with the admission of the plaintiff and the documents produced by the defendants prima facie established their possession and ownership over the suit schedule 'B' property.

13. The next allegation over the defendants is that the defendants are constructing the building without valid license and by violating the terms of building bylaws. The same is denied by the defendants. The plaintiff has produced the complaint given by her to the Pattana Panchayath and also notice issued by the Town Panchayath, Koppa, dated 12.11.2020. The defendants to deny the said allegations produced the approved plan issued by the pattana panchayath.

14. It is the counter allegation of the defendants that even though they are constructing the building as per the terms of the license, the plaintiff is making false allegation. But, the defendants have every right to construct the building as per the licence issued to them in the 'B' schedule property. The defendants are not claiming any right in the suit schedule 'A' property. The plaintiff is claiming her ownership over the well

and on the other hand, the defendants are claiming their ownership over the well. The defendants in the written statement averred that the plaintiff using the water of the said well as a licensee. Whether the said well is situated in the 'A' schedule property or 'B' schedule property need to be considered at the time of trial. By these allegations, it prima facie establishes the matter for trial. The defendants neither claiming any right in the suit schedule 'A' property nor established better title or interest on the suit schedule 'A' property. Even though the boundaries are denied in the written statement, at this stage, the plaintiff prima facie established that the boundaries of suit schedule 'A' property. Thereby, the defendants have no authority to interfere in the property of the plaintiff. The plaintiff by proving her possession at this stage established prima facie case in her favour. On other hand, the plaintiff also established that the defendants have no right, title or interest in respect of suit

schedule 'A' property. As such, the point No. 1 is answered in the affirmative by holding that there is a prima facie case for trial.

15. **Point No. 2 and 3:** These two points are inter connected with each other, hence, they are taken together for discussion in order to avoid repetition of same facts. As discussed in point No. 1 the plaintiff prima facie established her possession over the suit schedule 'A' property. In this case the plaintiff filed affidavit by claiming her ownership on the suit schedule 'A' property and also admitted the ownership and possession of defendants over the suit schedule 'B' property. On the other hand, the defendants claiming their ownership on the 'B' schedule property, but not claiming any right in the suit schedule 'A' property. The defendants claiming their ownership only on the suit schedule 'B' property and submitted that they are constructing the building within their property.

16. It is the contention of the plaintiff that the defendants have not left the set back as per the building by-laws and the defendants have encroached the portion of plaintiff's property to the extent of 3 feet width 100 feet length. When there is an allegation of encroachment by the defendants as alleged by the plaintiff, it will cause irreparable loss and injury to the plaintiff if the defendants succeeded in encroachment. The learned counsel for plaintiff argued that just because the defendants have invested huge amount, if the construction is allowed to be continued in the suit schedule 'A' property, it will cause irreparable loss and damage to the plaintiff as it will effect the right of plaintiff over the enjoyment of the suit schedule 'A' property. No doubt that the defendants have every right to construct the building in their property, but no person is permitted to enrich himself at the cost of others. If the construction of the defendants is stopped, it will

certainly cause irreparable loss and injury to the defendants. But, if the preventive relief is not given to the plaintiff in respect of suit schedule 'A' property and if it is turned out that the defendants constructed their building in the suit schedule 'A' property, it will cause irreparable loss and injury to the plaintiff. Further, it may also lead to complicate the issue and multiplicity of proceedings. Thus, to protect the suit schedule 'A' property, the balance of convenience is also lies in favour of plaintiff. By considering all these facts the balance of convenience also lies in favour of the plaintiff, because the defendants have no right to make any construction in the suit schedule 'A' property. But the defendants have every right to proceed with their construction in their suit schedule 'B' property. The plaintiff is claiming to protect her possession and the interference of the defendants in the suit schedule 'A' property. Considering these points, the balance of convenience and irreparable loss is in favour of the

plaintiff. As such, the point No. 2 and 3 are answered in the affirmative.

17. **Point No. 4:** The plaintiff has proved the prima facie case, balance of convenience and irreparable loss in her favour. The plaintiff alleged that the defendants are constructing the building by encroaching the portion of the plaintiff's suit schedule 'A' property and also alleged that the defendants are not leaving the set back and also constructing the building by violating the building bylaws.

18. It is settled law that the building bylaws and the issuance of license is derogative power of the licensing authority. In this case, the licensing authority is Pattana Panchayath, Koppa. If the allegation is only violation of the building bylaws and the conditions of license, then this court cannot interfere in that

situation to decide the violation of the building bylaws. If any violation in the building bylaws, it has to be adjudicated before the licensing authority. If the licensing authority found violation of building bylaws, it has every power to take appropriate action. In this case there is not only allegations of violation of building bylaws but also there is an allegation of encroachment over the suit schedule 'A' property. If the suit schedule 'A' property is protected, no hardship is going to be caused to the defendants. On the other hand, if the suit schedule 'A' property is not protected, certainly it will be caused irreparable loss and injury to the plaintiff as the nature of the suit schedule 'A' property is going to be changed.

19. In the I.A. the plaintiff prayed to restrain the defendants from constructing the retaining wall attaching to the suit schedule

'A' property and also restraining the defendants from constructing any building within the 3 feet from the suit schedule 'A' property.

20. As discussed in point No. 1 and 2, the plaintiff established her possession over the suit schedule 'A' property. She is claiming her possession over the suit schedule 'A' property on the basis of the sale deed. The defendants submitted that they are constructing the building as per the approved plan. As discussed above, the violation of building bylaws has to be adjudicated before the appropriate authority and the defendants have to construct the building by giving the set back as per the approved plan. This court cannot direct the defendants to construct the building by leaving 3 feet space from the plaintiff's property. Because, how much set back has to be left, will be decided in the approved plan and the same has to be followed by the defendants. If this court ordered to construct the building by leaving 3 feet, it

will amounts to the interference with the order made by the licensing authority while approving the building plan. Hence, this relief cannot be granted.

21. The plaintiff prayed to restrain the defendants from constructing any retaining wall attaching to the suit schedule 'A' property. But the defendants contended that the construction of the said retaining wall is necessary for the protection of the well and also the upper portion land. In the plaint itself the plaintiff submitted that the 'B' schedule property comes in the downwards possession to suit schedule 'A' property (ದಾವಾ ಸ್ವತ್ತಿನ ಪೂರ್ವ ಭಾಗದ ತಗ್ಗು ಪ್ರದೇಶದಲ್ಲಿ ಪ್ರತಿವಾದಿಯ "ಬಿ" ಸ್ವತ್ತು ಬರುತ್ತಿರುತ್ತದೆ). Whether the construction of retaining wall is necessary or not cannot be decided at this stage. The plaintiff has not filed any expert report to show that the construction of the retaining wall is not necessary and it is causing damages to her property. Without

such technical report at this stage this court cannot restrain the defendants from constructing the retaining wall.

22. The interim order will be the antidote to protect the existing nature of the property. In this regard, it is just and necessary to quote the following judgment to know the value of the interim order.

ILR 1988 Kar. 2817

(Life Insurance Corporation V/S Bangalore LIC Employees) (equivalent citation 1988 KLJ 455, 1988 (2) Kar. L.J. 455)

“The preventive remedy of injunction is thus granted as a instant antidote to stop or prevent the invasion of the plaintiff’s right in regard to which a complaint is made. The court having regard to the expediency involved should not embark upon a nit-picking operation at that stage by holding a mini trial to lay thread–bear the case of the plaintiff to find out if a prima facie case is made out or not. It

would be sufficient if the court is assured that questions raised by the plaintiff are not vexatious or too casual. But there are such as to merit serious consideration at a subsequent stage. That such is the content and frontiers of the expression prima facie case is also the view of Govinda Bhatt Justice (as his Lordship then was) in the case of State of Karnataka V/S S.Venkataraju, 1975 (1) Kar. L.J. 142 and Jaganatha Shetty (J) (as his Lordship then was) in J.Krishnamurthy V/S Bangalore Turff Club in ILR. Kar. 1975, 1957)”

23. In the present case the plaintiff has made out the prima facie case and if the injunction is not granted and if the possession of the plaintiff over the suit schedule 'A' property is not protected, it may lead to multiplicity of proceedings. As per section 37 of the Specific Relief Act the temporary injunctions can be granted in the pending trial of suit and it will be regulated under the Code of Civil Procedure. If any constructions is made in the suit schedule 'A' property, it may lead to further

multiplicity of proceedings. But the plaintiff has no right to stop the construction work of the defendants in the suit schedule 'B' property. By considering all these reasons, the plaintiff made out sufficient grounds to protect her possession over the suit schedule 'A' property. Accordingly, point No. 4 is answered in the partly affirmative.

24. **Point No. 5:** On the above said reasoning, proceeded to pass the following order.

ORDER

I.A. No. 1 filed by the plaintiff under order 39 rule 1 and 2 of C.P.C. is hereby partly allowed.

The defendants, their supporters or workers are hereby restrained from trespassing or disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule 'A' property, till the disposal of this case or till further order.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 11th day of December, 2020)

Sd/-xxxx 11/12/2020
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.