

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri.Ramamurthy N. B.A. LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 15th Day of April 2021.

ORIGINAL SUIT NO.10/2021

PLAINTIFF/s :

T.M.Krishnamurthy S/o late Mallappa,
aged 58 years, Employee at Railways,
R/o Banashankari Nilaya, Dr.Ammanna
Street, Tarikere Town, Tarikere Taluk.

(Reptd. By : Sri B.P.Rajashekar, Advocate.)

Vs.

DEFENDANT/s:

T.M.Maheshwarappa S/o late Mallappa,
aged 65 years, Retired Police, R/o
Kanamanahatti, Tarikere Town,
Tarikere Taluk.

(Reptd. By : Sri Hariprasad.K.N., Advocate.)

PARTIES TO I.A.NO.I

Applicant : T.M.Krishnamurthy

Vs.

Opponent : T.M.Maheshwarappa

ORDERS ON I.A.NO.I FILED U/O XXXIX RULE 1 AND 2
R/W SECTION 151 OF CPC.

The plaintiff has filed present I.A. seeking temporary injunction against the defendant to restrain him from interfering with his peaceful possession and enjoyment over the suit schedule property.

2. In support of the I.A. the plaintiff has filed his affidavit stating that, himself and defendant are brothers. He is the absolute owner in possession of the suit schedule property which is Mangalore tiled house situated at Kanamanahatti, Tarikere. He has succeeded the said property in pursuance of the registered partition deed dated 08.01.2003. Except him, nobody has got right, title, much less possession over the suit property. The defendant's property is situated towards eastern side of suit property. The defendant has filed O.S.No.282/2020 for the relief of permanent injunction against him which is pending for consideration.

3. The defendant has obtained building licence to construct his residential house in his property. The defendant has violated the conditions of said licence by putting pillars. The defendant is constructing the building without leaving any space towards eastern side of his property which may cause hurdle such that, free air and light. The Town Municipality has issued notice to him in pursuance of petition

of defendant dated 08.10.2020. The Town Municipality has directed to defendant that, if he has violate the building licence, the construction would be stopped. The defendant has to leave one meter space towards western side of his property. But he has not left one meter. The defendant has got no manner of exclusive right over the suit property. He is trying to interfere with his peaceful possession and enjoyment of the suit property and trying to obstruct him from enjoying the suit schedule property peacefully. Hence, prays for grant of temporary injunction against the defendant till disposal of the suit.

4. On other hand, the defendant has resisted the I.A. filed by the plaintiff stating that, it is true that the plaintiff and defendant are brothers, but it is not correct that the plaintiff is the absolute owner in possession of the suit schedule property. It is true that the defendant's property comes to the eastern side of suit property and he has filed O.S.No.282/2020 against the plaintiff. He has obtained building licence from Town Municipality to construct residential house, but he has not violated the conditions of said licence. The plaintiff has suppressed the true facts. He is the absolute owner in possession and enjoyment of the vacant site property measuring 183.018910 meters bearing property No.5/137/64 situated at Kanumanahatti, Tarikere Town. He has acquired the said property through registered partition deed dated 08.01.2003. Since partition, he is in

lawful possession and enjoyment of the said property. He has undertaken construction of building in the said property. As per building plan, the he intending to construct the building. His property is measuring 1.5 x 20 feet is in the property of the plaintiff. The plaintiff has filed false case to harass the defendant in all possible manner and to cause loss to him. The plaintiff has obstructed his construction work. Hence, he has filed O.S.No.282/2020 for permanent injunction against the plaintiff which is pending for consideration. He has stored building materials near his place. If the temporary injunction is granted, the defendant will be put to great hardship and inconvenience. The plaintiff has not made out prima facie case and balance of convenience and he was not come before the court with clean hands. The plaintiff is not entitled to get the relief as sought in the I.A. Hence, prays for reject I.A., with heavy cost.

5. Heard arguments of both counsels and perused the materials in file.

6. The following Points that arise for consideration are :

- 1) Whether the plaintiff has made out prima-facie case ?**
- 2) Whether the plaintiff has made out balance of convenience in his favour?**

3) Whether the plaintiff has made out that irreparable loss to him if temporary injunction refused?

4) What order?

7. My findings on the above points are as follows:-

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per the Order,

for the following:

REASONS

8. **POINT NO.1 TO 3** : These points are interrelated with each other. To avoid repetition of facts, these points are taken up together for common discussion.

9. The suit of the plaintiff is for permanent injunction and he has filed present I.A., for temporary injunction against defendant. According to the plaintiff, he is the absolute owner in possession of the suit schedule property measuring 8.6 x 120 feet and the defendant has interfering in his peaceful possession and enjoyment of the suit property. According to the defendant, he is constructing the house building as per the conditions of the building licence issued by the Town Municipality. His property measuring 1.5 x 20 feet is comes under the property of the plaintiff.

10. Upon careful perusal of the documents placed by the plaintiff, the certified copy of partition deed dated 08.01.2003 shows that, the suit schedule property is fallen to the share of the plaintiff measuring 8.6 x 120 feet bearing Assessment No.3104/3035 as per E schedule property of said deed. The certified copy of tax demand register shows the name of the plaintiff for suit property. The copy of notice issued by the Town Municipality, Tarikere shows that, they have stated to stop the construction work if the defendant has violated the conditions of the building licence. The photos placed by the plaintiff shows that building construction work was under progress. The photo placed by the defendant shows that, the house construction work was partly completed and building materials was stocked.

11. The counsel for the plaintiff argued that, the defendant has filed suit against the plaintiff with I.A., for temporary injunction and same was rejected. The defendant is constructing the house building by making interference in the peaceful possession and enjoyment of the plaintiff over the suit schedule property. The plaintiff is in peaceful possession and enjoyment of the suit property.

12. The counsel for the defendant argued that there is no interference and obstruction by the defendant in the plaintiff's possession over the suit property. He has constructing the house building as per terms of building

licence. Only to harass the defendant, the plaintiff has filed present suit.

13. It is relevant to note that as per partition deed, the suit schedule property fallen to the share of the plaintiff which was measuring 8.6 x 120 feet as stated in the I.A., schedule. The demand register also shows that the name of the plaintiff mentioned as a possessor for the suit property. The defendant has not placed any documents which shows that his property measuring 1.5 x 20 feet comes under the property of the plaintiff as stated in the objection. The defendant has denied the contention and possession of the plaintiff over suit property. The partition deed and demand register clearly shows that, the plaintiff is in possession of the suit property. Hence, by Considering the materials placed by both parties, opinion of this court is that, at this stage, the plaintiff has made out that there is a prima-facie case and balance of convenience lies in his favour and if temporary injunction refused, there is a irreparable loss to him. Hence this court answered Point No.1 to 3 in the Affirmative.

14. POINT NO.4 : For the above reasons and answer given to the Point No.1 to 3, this court proceed to pass the following

ORDER

I.A.No.I filed under Order XXXIX Rule 1 and 2 r/w Section 151 OF CPC is hereby allowed.

The defendant is restrained from interfering in the peaceful possession of the plaintiff over suit property till further order.

Cost shall follow the event.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day of 15th day of April 2021.)

Sd/-
(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.