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**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: 25th Day of March 2022

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.VIII

Applicant : T.M.Krishnamurthy

Vs.

Opponent : T.M.Maheshwarappa

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ORDERS ON I.A.NO.VIII FILED U/O XXXIX RULE 1(a)
R/W SECTION 151 OF CPC.

The plaintiff has filed present I.A. seeking relief of temporary injunction against the defendant restraining him from taking further construction over the suit schedule property.

2. In the annexed affidavit, the plaintiff has stated that, himself and defendant are brothers. He is the absolute owner in possession of the suit schedule property. He has succeeded the said property in pursuance of the registered partition deed dated 08.01.2003. He has filed I.A.No.I under Order 39 Rule 1 and 2 CPC seeking temporary injunction against the defendant and this court has granted temporary injunction in favour of him and restrained the defendant from interfering in the suit schedule property and despite of the said order, the defendant has taken further construction in and over the schedule property which detriment his right. Except him, nobody has got right, title and 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

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against him wherein the interim application filed by the defendant is rejected.

3. The defendant has violated the conditions of building 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 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. The defendant is trying to interfere and obstruct him from enjoying the suit schedule property peacefully. Hence, prays for grant the order of temporary injunction restraining the defendant from taking further construction over suit property.

4. In the objections, the defendant has stated that the I.A. filed by the plaintiff is not maintainable either in law or on facts. The plaintiff has filed similar application at the time of filing the suit by suppressing the true facts and the same was allowed. Now again with sole intention to stop further finishing work of defendant house filed this I.A. He has filed this I.A., after construction of house work. Hence, similar

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application for same relief is not maintainable. The defendant has constructed house within his property without violating any procedure and not encroached the suit schedule property. The plaintiff and defendant got divided old house as per partition deed with definite measurement and defendant constructed house in the property allotted to him by obtaining licence from the municipal authority. The defendant neither interfered nor disturbed the plaintiff's possession over the suit property. It is true that the plaintiff is the owner of the suit property and the same was fallen to his share in the family partition. The defendant also absolute owner of his property which is allotted to him through partition and he is enjoying the same. The plaintiff misrepresented the fact to get advantage of dismissal of application in O.S.No.282/2020 of this defendant. The allegations made by the plaintiff are all false. The plaintiff has filed objections before the licence authority at the initial stage of construction of house by the defendant. The licensing authority after scrutinizing, overruled the plaintiff's objection. The defendant has not violated the rules of licence. The defendant is law abiding person and at no point of time, he disobeyed the order of the court. The plaintiff is not entitled for any relief at this stage. Hence, prays for reject I.A., with heavy cost.

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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 sufficient grounds to allow the application?

2) What order?

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

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

REASONS

8. **POINT NO.1** : In order to prove point No.1, the plaintiff has taken contention that he is the absolute owner of the suit property. Earlier he has filed I.A., seeking temporary injunction against the defendant and same was allowed. In spite of granting injunction against the defendant, the defendant continued to construct the house. According to the defendant, he is constructing the house as per rules of licence and not interfered in the suit property.

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9. It is relevant to note that, according to Order 39 Rule 1(a) of CPC, temporary injunction may be granted if any property in dispute in a suit in danger of being vested, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree.

10. According to the plaintiff, in spite of prohibitory order, the defendant has taken further construction over the suit property and the interim application in O.S.No.282/2020 was rejected. It is pertinent to note that, upon careful perusal of materials on record, the plaintiff got order of temporary injunction against the defendant as per order on I.A.No.I. In the objections, the defendant has not disputed the ownership of the plaintiff over the suit property and stated that he is constructing the house in his property. The defendant has not placed any materials which shows that he is constructing the house as per rules of licence and not interfered in the suit property. It is relevant to note that the photos placed by the plaintiff at the time of hearing on I.A.No.I clearly shows that the construction of house is at initial stage. The photos placed by the defendant counsel during hearing on this I.A., shows that the house construction is at finishing stage. This aspect clearly shows

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that even there is a prohibitory order against defendant, he has continued the construction work of his house. Such circumstances, opinion of this court is that, the plaintiff has made out sufficient ground to allow the I.A. Hence, I.A., filed by the plaintiff is liable to be allowed in the interest of justice. Hence, this court answered Point No.1 in the Affirmative.

11. POINT NO.2 : For the above reasons and answer given to the Point No.1, this court proceed to pass the following

ORDER

I.A.No.I filed under Order XXXIX Rule 3(a)
r/w Section 151 OF CPC is hereby allowed.

The defendant is restrained from taking
further construction work over the suit
schedule 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 25th day of March 2022.)

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