

IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C. AT TARIKERE

O.S.No.60/2024

PLAINTIFF
Sri. K.M. Shambanna

vs.

DEFENDANTS
Sri. Onkarappa.C.V. and another

Date: 03.12.2024

Proceedings or Orders of the Judicial Officer

ORDERS ON IA.NO.III

1. The instant application is filed by the Applicant/ Defendant No.1 U/o. XIX rule 1 r/w. Section 151 of CPC with the prayer to permit him to produce affidavits of the abutting land owners which would help the Court in considering the application filed by the Plaintiff seeking temporary injunction.

2. In the affidavit appended to the application, it is ventilated that, the instant suit is one which is filed for the relief of permanent prohibitory injunction in respect of the suit schedule properties. The Plaintiff has claimed possession of his land in Sy.No.337/1 upto the northern side of Halla and Plaintiffs are not at all in possession of lands beyond such hall and to establish such fact, it becomes just and necessary to affidavit evidence of the witnesses who are abutting land holders. Hence, the prayer is to allow the application.

3. Resisting the application, the Opponents/ Plaintiffs have filed objection with the contention that, the application is not maintainable in law or on facts. The application is filed only with an intention to harass the Plaintiffs, prolong the proceedings and avoid the orders

that could be passed against the Defendants. The suit is one for bare injunction and sufficient documents have already been placed by the Plaintiffs to show the aspect of possession, but no documents have been produced by the alleged land holders, who are set to own land adjacent to the suit properties. The alleged witnesses are non other than the relatives of Defendant No.1, who at his instance have filed false affidavits before the Court. The application is devoid of any merits. Hence, prays to dismiss the application.

4. Heard both sides. Learned counsel for Applicant/ Defendant No.1 banks on the decision of the Hon'ble High Court of Karnataka in 1982 AIR (KAR) 81.

5. Having heard and after perusal of materials placed on record, the sole point that would now arise for my consideration is as under -

"Whether the Applicant/ Defendant No.1 has made out sufficient grounds to allow the application in I.A.No.III?"

6. My answer to it is in the '**Affirmative**' for the following reasons -

7. The suit is one which is filed for the relief of permanent prohibitory injunction. The suit now is at its initial stage, wherein the application filed by the Plaintiff seeking the relief of temporary injunction as per I.A.No.I is under consideration and at this juncture, the Applicant/ Defendant No.1 has come up with instant application with the prayer to permit him to file affidavits of abutting land owners which according to him would assist the court in fair disposal of the application filed by the Plaintiff in I.A.No.I.

8. As aforesaid, the suit is still at the nascent stage of considering the application filed by the Plaintiff seeking the relief of temporary injunction in I.A.No.I and considering the fact that, both sides have made elaborate submissions on such application and have also produce various documents in support of their submissions, the affidavits of the alleged abutting land owners could only corroborate the version of the Opponent/ Defendant No.1 in resisting the application filed seeking the relief of temporary injunction and that alone cannot be considered as a clinching material in deciding the entitlement or otherwise of the Plaintiff in being entitled for the relief of temporary injunction. This being said, the instant application is only in the nature of production of certain document and such being the case, no serious hardship would be caused to the Opponent/ Plaintiff, if the Applicant/ Defendant No.1 is permitted to produce the affidavits of the abutting land owners and if the Opponent/ Plaintiff would otherwise succeed in showing that, he is entitled for the relief of temporary injunction which would be adjudicated at the time of deciding such application on merits. With the aforesaid discussions, I answer the sole point that has arisen for my consideration in the '**Affirmative**' and I proceed to pass the following -

ORDER

I.A.No.III filed by the Applicant/ Defendant No.1 U/o. XIX rule 1 r/w. Section 151 of CPC is hereby allowed.

Resultantly, the affidavits filed alongwith the application are taken on record.

sd/-

**C/c. Addl. Civil Judge J.M.F.C:
Tariekre**

Since both Parties have already made submissions on I.A.No.I, the suit stands posted for orders on I.A.No.I. For orders on I.A.No.I. call on: 07.12.2024.

sd/-

**C/c. Addl. Civil Judge J.M.F.C:
Tariekre**