

IN THE COURT OF PRL. CIVIL JUDGE, & JMFC., AT
CHAMARAJANAGARA

Dated this 21st day of October 2022

: **PRESENT:**

SRI. VENKATESHA.N., B.A.LL.B, LL.M.,
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA

O.S.44/2021

PLAINTIFF/s : **Basavanna,**
S/o Late S.V.Shivanna,
Aged about 50 years,
R/at, Ward No.2,
Somavarapete,
Chamarajanagara City.

V/s

DEFENDANT/s: **1. Mahadevappa @ Kontha,**
S/o Late Madappa,
Aged about 75 years,
R/at, Ward No.2,
Somavarapete,
Chamarajanagara City.

2. The City Municipality,
Chamarajanagara.

I.A.No. II

APPLICANT/s : **Basavanna (Plaintiff)**
(By S.N., Advocate)

V/s
OPPONENTS/s: Mahadevappa @ Kontha
(1st Defendant)
(By J.P., Advocate)

ORDER ON I.A. II

The Applicant/Plaintiff has filed I.A.No.II under Order 39 Rule 1 & 2 R/w 151 of CPC., seeking an order of ad-interim Temporary injunction restraining the 1st Defendant, his family members, workers, Servents, agents or anybody acting under him from illegally putting up any further construction on the 'B' schedule street till disposal of the suit.

2. The Applicant/Plaintiff has filed this suit against the Defendants for the relief of Mandatory Injunction in respect of 'B' suit schedule property. It is stated that, the averments made in the plaint may kindly be read as part and parcel of this affidavit to avoid repetition.

3. It is the case of the Plaintiff that, he is the owner of the 'A' schedule property and the 1st Defendant is the owner of 'C'

schedule property. There is a street situated between 'A' and 'C' schedule property which is described as 'B' schedule street. The 1st Defendant has no manner of right, title, interest or possession over the 'B' schedule street. In spite of that, by creating and concocting certain documents, the 1st Defendant is attempting to put up a toilet shed in the 'B' schedule street. Since the 'B' schedule property is a street and it is in the control of the 2nd Defendant CMC, the Plaintiff informed the illegal act of the 1st Defendant. But the 2nd Defendant did not take any action.

4. It has submitted that, the Plaintiff 'A' schedule property main door is situated on the northern side. Hence if the 1st Defendant put up any construction like toilet shed or toilet pit over the 'B' schedule street, the street will be closed and Plaintiff and his family members will be put to great hardship and irreparable loss. On the other hand, the 1st Defendant has no right to put up such illegal construction over a street.

The Plaintiff made all efforts to stop the illegal acts of the 1st Defendant. But all ended in vain. Hence the 1st Defendant is to be restrained from putting up such illegal construction over the street pending disposal of this suit. Hence this application.

5. The Plaintiff have prima-facie case. The balance of convenience is also in favour of Plaintiff. If an order of Temporary injunction as prayed for is not granted it will be put to irreparable loss and injury which cannot be compensated by awarding pecuniary damages. Besides very purpose of filing of this suit will be defeated. Hence Temporary Injunction may kindly be granted.

6. The Defendant has filed his objection to the IA stating that the application is not maintainable either at law or on facts. The Defendants denies that, the Plaintiff is the owner of 'A' schedule property. He admits that, he is the owner of 'C' schedule property. The Defendants contends that, the 'B' suit schedule street is not in existence. The 'B' suit schedule

property is part of 'C' schedule property. The Defendant No.1 and his family are residing in the 'C' schedule property since from several years. Since the 'B' suit schedule property is absolute property of the Defendant No.1. the Defendant No.2 can not take any action. Hence prays to dismiss the said Application.

7. Heard both side arguments.

8. The following points arise for my consideration:

1. Whether the Plaintiff has got prim-facie case to grant TI Order ?

2. Whether the balance of convenience lies in favour of Plaintiff ?

3. Whether the Plaintiff will be put to irreparable loss and injury, if the order of T.I. is not granted?

4. What order?

9. My answers to the above points are as follows:

Point No.1 : in the **NEGATIVE**

Point No.2 : in the **NEGATIVE**

Point No.3 : in the **NEGATIVE**

Point No.4 : As per the final order,
for the following: -

REASONS

10. Point No.1 to 3 :- The facts involved in Point No.1 to 3 are same. Hence they are taken up together for common discussion to avoid repetition.

The Applicant/Plaintiff has filed this suit against the Defendant for the relief of Mandatory Injunction in respect of suit 'B' schedule property. It is the contention of the Plaintiff that, between 'A' and 'C' schedule property there is a street which is described as 'B' schedule property. The Defendant No.1 has no right, title or possession over the 'B' schedule street. Now the Defendant No.1 has put up a basement on the 'B' schedule street and trying to construct toilet.

11. According to the Defendant No.1 there is no 'B' schedule street. The 'B' schedule street is part and parcel of 'C' schedule property.

12. According to the Plaintiff the 'B' schedule street is situated to the Northern side of 'A' schedule property. The

Plaintiff has produced the original E-Swattu. As per the schedule to the North it is stated as property of private individual and to the Western side it is mentioned as Road. According to the Plaintiff he has given requisition to the Municipal corporation to correct the schedule of the 'A' schedule property in the E-Swattu and mentioned to the northern side as Road. But till today the same has not been corrected. The Defendant No.1 has produced the copy of Sale deed dated 24.04.2006 and the Amendment Sale Deed dated 20.10.2009. As per the Amendment Sale deed dated 20.10.2009 the schedule of the 'C' schedule property has been corrected and to the southern side it is mentioned as Doddabasappa's house.

13. According to the Plaintiff there is a street between 'A' and 'C' schedule property. According to the Defendant No.1 there is no 'B' schedule street. It is his property. The Plaintiff has stated that, the 2nd Defendant is having control over the

'B' schedule street and he has filed a complaint against the Defendant No.1 regarding construction over the 'B' schedule street. But at this stage the Plaintiff has not produced any material to show that, he has filed complaint against the Defendant No.1. Admittedly the 'B' schedule property is not the property of the Plaintiff. But the Defendant No.1 claims that, it is his property. The measurement of the 'B' schedule street is not mentioned in the Plaint. These issues can be decided after a full fledged trial. At this stage the Plaintiff has not made out prima-facie case to grant Temporary Injunction Order. The balance of convenience also not lies in favour of Plaintiff. The Defendant is claiming that, 'B' schedule property is not a street and it is part of 'C' schedule property. Hence at this stage Temporary Injunction is not granted. It will not cause any irreparable injury or hardship to the Plaintiff. Hence Point No.1 to 3 are answered in **NEGATIVE**.

14. Point No.4:- For the aforesaid reason and discussion, I proceed to pass the following: -

ORDER

**I.A.No. II filed by the Plaintiff/
Applicant under Order 39 Rule 1 & 2
R/w section 151 of CPC is hereby
dismissed.**

Parties to bear their own costs.

(Dictated to the Stenographer on computer and computerized by her, corrected by me and then pronounced in the open court on this the **21st day of October 2022.**)

(VENKATESHA.N)
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGA