

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

Dated on this the 22nd day of August, 2022.

:PRESENT:

**SRI. SHIVAKUMARA G.J.,
B.A.L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet**

O.S. No.11/2020

PLAINTIFFS:-

Sri. B. Vellangiri
S/o Late. Bettaiah
Aged about 75 years,
R/at 2nd Division, Ward No.10
Halladakeri, Gundlupet Town
(By Sri. H.S.P., Advocate)

V/s

RESPONDENTS:-

- 1. Sri. Shivanna**
S/o Late.Nagegowda
Aged about 71 years,
- 2. Sri. S. Manu**
S/o Shivanna
Aged about 40 years,
Both are R/at
Aralikatte Street
Kurubageri
Gundlupet Town.

(By Sri. P.S.G., Advocate)

Parties to I.A No.I

Applicant : **Sri. B. Vellangiri**
- Plaintiff
V/S

Opponents : **Sri. Shivanna and another**
- Defendants

ORDER ON I.A.No.I

This is an application filed by the plaintiff under **order 39 rule 1 and 2 of CPC** for claiming ad interim temporary injunction against the defendants from not putting up any further construction in the 'C' schedule property till disposal of the suit.

2. The brief facts of the plaintiff's case is that :

The plaintiff has purchased the B schedule property through Sale Deed and he continued in peaceful possession and enjoyment of the property and thus the plaintiff has become the owner of the property. Accordingly, the khatha is also changed in the name of the plaintiff. It is also contended that the boundaries mentioned in the sale Deed is one and the same. It is also the case of the plaintiff that by virtue of

a Sale Deed dated 21.09.2005 the '**B**' Schedule property has been acquired. The plaintiff is pleaded that the road is existing in the '**A**' property as '**C**' schedule to reach the plaintiff '**B**' schedule property. Under such circumstances, the plaintiff has claimed the relief of declaration that the plaintiff is the owner of '**B**' and '**C**' portion shown in the rough sketch and also to restrain them from putting up construction in the '**C**' property and also to grant the relief of injunction. Hence, the suit has been filed and consequently as now the 1st defendant is claiming the right over the '**C**' property and they are putting up construction as unauthorised construction. In such a event, the plaintiff will be put to greater hardship and lot of inconvenience. Hence, he has filed the suit and an application for granting ad interim temporary injunction restraining the defendant from putting up construction over the '**C**' schedule property. He has also contended that the plaintiff has got a prima facie case in his favour and balance of convenience also lies in his

infavour and greater hardship will be caused to the plaintiff if an order of injunction is not granted.

3. For this application, the defendants No.1 and 2 have filed objection by IA No.I. About the possession of the property that is Schedule 'C' property as mentioned in the rough sketch Annexed to the plaint is specifically denied. It is contended that rough sketch prepared by the plaintiff does not lawfully reflect the existing features of the property. There is no prima facie case in his favour and there is no balance of convenience infavour of the plaintiff and balance of convenience lies infavour of the defendants and greater hardship will be caused to the defendants if an order of injunction is granted and continued as prayed.

4. Thereafter, I have heard the arguments of both the plaintiff and defendants counsels.

5. The following points that arise for my consideration :-

1. Whether plaintiff has got a prima-facie case in his favour?
2. In whose favour the balance of convenience lies?
3. Who will be put to greater hardship, if the injunction order is not granted ?
4. What Order?

6. My answers to the above points are as follows for the following reasons:-

- Point No.1:- In the Negative
Point No.2:- In favour of defendant
Point No.3:- In favour of defendant
Point No.4:- As per final order

For the following:

REASONS

7. Point No.1:- It is the specific case of the plaintiff is that, Since this is a suit filed by the plaintiff for the relief of declaration and consequential injunction restraining the defendants from trespassing to the 'C' property and also restraining the defendants from obstructing the road existing in the 'A' property as 'C' schedule to reach the plaintiff 'B'

schedule property. The plaintiff has to establish the fact that there exist a road in the suit **'A'** schedule property as **'C'** schedule property and that road was used by the plaintiff, the **'B'** schedule property measuring 01.08 guntas in Sy. No. 260 which is situated towards the southern portion of **A** schedule property. **'A'** schedule property is shown as Sy. No.260 (defendants property). To give a clear picture to plaintiff has produced the rough sketch establishing the properties of the plaintiff as well as 1st defendant. It is also the case of the plaintiff that by virtue of a Sale Deed dated 21.09.2005 the **'B'** Schedule property has been acquired. But it is to be specifically noted in the schedule mentioned to the sale Deed it is mentioned as Sy.No. 260 measuring 1.08 guntas. That is a sale Deed executed by the defendants infavour of plaintiff. The sale Deed dated 21.09.2005 infavour of the plaintiff also states the very same number that is Sy.No.260. But whereas in this case, the plaintiff has claimed **B** schedule property the Sy.No.260. To establish the fact that the plaintiff is in possession of Sy.No. 260 has produced the

sale deed. The document produced by the plaintiff establishes only the acquiring of a right in Sy.No. 260 of 0-1.08 gunts. The defendants have also not disputed the execution of sale deed.

8. Further it is also to be noted the document produced by the plaintiff and defendants specifically states that the property was originally belonging to 1st defendant. The 1st defendant is retained the portion of the property and sold out the 01.08 gaunts in favour of the plaintiff. The prima facie case is a where the plaintiff establishes an arguable case. But on the Sale Deeds is relating to the **B** schedule property Sy.No. 260, the defendants have leave the road on the Eastern side of the suit **B** schedule property, but the the plaintiff claiming the road towards Western side of the **B** schedule, as per the sale deed boundaries the western side the plaintiff own property is existence as "ನಿಮಗೆ ಸೇರಿದ ಮನೆ" it means the purchaser house, the purchaser of the '**B**' schedule property is non other than the plaintiff of this suit.

In the contrary the defendants have produced the copy of the sale deed dated: 29.11.2000, as per the sale deed the defendants have sold the 0-02 guntas of the property in sy No.260 in favour of the Nanjappa and Moorthy, as per the Sale deed schedule in the western side of the Nanjappa and Moorthy property the plaintiff house is existence. But on careful scrutiny of the plaint schedule boundaries, the plaintiff now where mentioned the existence of his own house on the eastern side of the suit '**B**' schedule property. In such a circumstances, the identification of property of the plaintiff is in dispute. Unless until that is establish by the plaintiff through evidence. The question of considering the case of the plaintiff as a prima facie case in his favour does not arise at all. On the contrary, the defendant has produced cogent and specific document to consider the case of the defendant in their favour for the purpose of disposal of IA I. In such a circumstances, it is the duty of the plaintiff to establish prima-facie that he is in possession and enjoyment of the '**C**' schedule property as a road. But where as in this

case the plaintiff has not establish the fact of existence of road and use of road by him. At the prima facie as per the Rough sketch produced by the plaintiff the conservancy Galli of 4 feet is existence towards East to west from main road, not as per 'C' schedule property. Mere production of RTC will not **ipsofacto** establishes the existence of road. And more particularly when the plaintiff is claiming the declaration with respect to existence of a road atleast for the disposal of IA I and II and the plaintiff has to prima facie establish that there exist a road as stated in the plaint, Under such circumstances, I am of the opinion that the plaintiff has miserably failed to prove a prima facie case in his favour. Hence, I have no hesitation to hold that the plaintiff has no prima facie case in her favour. Hence, I have no hesitation to answer point No.1 in the **Negative**.

9. Point No.2 & 3 :- These two points are interlinked to each other and both these points are to be answered on the same set of facts and circumstances and reasoning. In order to

avoid the repetition of facts and circumstances and reasoning I am discussing both these points together.

10. Since the point No.1 has been answered in negative the question of considering these two points for discussion does not arise at all. But however, for the purpose of disposal of IA No.I and II to pass suitable order on IA I and II and to consider the case of the defence of the defendant and hardship of the defendant. I am of the opinion that, the point No.2 and 3 will have to be consider together., It is the specific case of the defendants that the plaintiff has no balance of convenience in his favour. It is the specific case of the defendants that the defendant has completed the half of the construction and now if an order of injunction restraining the defendants from putting up construction is order then defendant will be put to greater hardship and lot of inconveniences. On the other hand, the defendants have successfully establish the facts to grant an order of injunction. Accordingly, the injunction has been granted

through a consider order. When such being the case, now if the defendants are restrained by an order of injunction and putting up construction, I am of the opinion that the defendants will be put to greater hardship rather than the plaintiff. Because the burden is upon the plaintiff to establish about of identity of the property. Now at this stage, that is to say for the disposal of IA I the document produced by the defendants can not be stated as not a reliable one. Because the contrary has to be proved by the plaintiff during the course of trial. In the same way, the plaintiff has also miserably failed to establish prima facie that the 'C' schedule property is a road and he acquired the road.

11. Further, as per the decision reported in **2008 (11) SCC 1 in case of Mandali Ranganna & Ors etc., -Vs- T.Ramachandra & Ors**, the Hon'ble Apex Court held that, “Huge construction made by the respondents application filed by the appellants seeking a injunction restraining the respondents from raising the construction in the schedule

property and transferring or alienating the right in respect of property during the pendency of suit is not correct". In such a circumstances, I am of the opinion that if the ad interim temporary injunction is granted as prayed for by the plaintiff in this case greater hardship will be caused to the defendants which can not be compensated in terms of money. Hence, I have no hesitation to answer point No.2 and 3 infavour of defendants.

12. Point No.4 :- In view of the above discussion, I pass the following order.

ORDER

IA - I filed by the plaintiff U/o 39

Rule 1 & 2 of CPC is hereby dismissed

as no merits.

(Typed by me, corrected and then pronounced by me in the open court this the 22th day of August 2022)

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Gundlupet.

