

## **ORDER ON IA No. I**

This is an application filed by the plaintiff under Order XXXIX Rules 1 & 2 of CPC praying to issue ad-interim temporary injunction against the defendants, their agents or anybody acting on their behalf to take away the properties which have been stored adjacent to the suit schedule property.

Though the defendants have appeared through their counsel, neither objections to this I.A nor W/S is filed.

To decide this IA, the following points arise for the consideration of this Court :-

### **POINTS**

1. Whether the plaintiff has made out a prima facie case?
2. Whether the balance of convenience lies in his favour?
3. Whether the plaintiff suffers from irreparable damage if TI is not granted?

Heard the ld. counsel for the plaintiff. Perused the relevant materials available on record and have heard both the sides.

Having done so, the answers to the aforesaid points are as hereunder:-

Point No.1 : In partly the Affirmative.

Point No.2 : In partly the Affirmative.

Point No.3 : In partly the Affirmative.

**Point Nos.1 to 3:-** Since, these points are inter connected to each other, in-order to avoid the repetition of facts & findings, all these points are taken up together from common discussion at one stretch.

The brief facts of the case of the plaintiff/applicant is that he is the absolute owner of the suit schedule property, the defendant nos.1 and 2 are construct in the house near to the suit property. For the purpose of construction of the house the defendant nos.1 and 2 have purchased M-sand, bricks, stones etc and they have stored the same very adjacent to the wall of the plaintiff, which touches the wall of the plaintiff. From this act of the defendant nos.1 and 2, the difficulty has arisen for the plaintiff for ingress and angress and also the rain water is being stored which causes lot of inconvenience for the plaintiff and further there is a lack of sun light and air for the house of the plaintiff.

It is true that the defendant nos.1 and 2 have not stored anything in the house/premises of the plaintiff. But the photograph furnished by the plaintiff clearly reveals that the construction materials have been stored very adjacent to the wall of the plaintiff and also the bricks have been kept abutting to the window. Because of this storage of building materials, certainly it is causing hardship for the plaintiff and also there will be lack of sun light and air.

Therefore, in the absence of any defenses, this Court is of the firm opinion that, the plaintiff has made out the a prima facie case only with regard to the storage of the building materials abutting/touching to the wall of the plaintiff's house. **Since these materials have not been kept in the promises of the plaintiff, they cannot be ordered to be shifted to some other place just because some inconvenience is being caused to the plaintiff because of the construction.**

If this injunction is not granted, certainly irreparable damage will be caused to the plaintiff and the balance of convenience certainly lies in favour of the plaintiff. Therefore, I answer all these **Point Nos.1 to 3 in partly the Affirmative.**

Having answered Point Nos.1 to 3 in partly the Affirmative, I proceed to pass the following;

**ORDER**

The IA No.I filed by the plaintiff U/O. XXXIX Rules 1 & 2 of CPC is hereby partly allowed.

The defendants no.1, 2 and 3 are hereby restrained from keeping any materials which blocks the window of the plaintiff house and also further restrain from keeping anything touching the wall of the house of the plaintiff.

Further the defendant nos.1, 2 ad 3 are hereby directed to take away the properties/building materials which have been kept touching the wall of the house of the plaintiff which is damaging the wall of the house of the plaintiff.

For plaintiff evidence by 04.08.23.

29.05.2023  
**Civil Judge & JMFC.,  
Yelandur.**