

ORDER ON IA.No.III

This application has been filed by the defendants U/Sec.151 of CPC praying to direct the plaintiff not to disturb the water line work of the defendants house.

2. This application has been resisted by the plaintiff by filing objection.

3. Before going to the details of the application and objection it is necessary and prudent to mention the, brief facts of this case are:-

The plaintiff has filed this suit against defendant nos.1 to 4 for the relief of declaration to declare that the plaintiff is the absolute owner of the suit schedule 'B' property and a consequential relief of permanent injunction is also claimed. It is the case of the plaintiff that the eastern half side of the suit schedule 'A' property is belonging to defendants and the western half side of the suit schedule 'A' property is belonging to him. The water tank/sump (ತೊಟ್ಟಿ) is in the middle of the properties of the plaintiff and the defendants, the property measuring 5 feet in the 'B' schedule property has been shown as 'C' schedule property. In simple words 'A' schedule property is the entire house no.776 measuring 16 ankanas, western half side of the suit schedule 'A' property is shown as suit schedule 'B' property and the part

of the 'B' schedule property i.e., 5 feet has been shown as the 'C' schedule property. It is the further case of the plaintiff that, the plaintiff has purchased 'B' and 'C' schedule properties via registered sale deed dated 21.07.1948, though at the time of the purchase the plaintiff was minor, his mother by name Nanji @ Nanjamma has acted as his guardian. The mother of the plaintiff Nanji @ Nanjamma was in possession of the suit schedule 'B' & 'C' suit properties during her lifetime and after her death the plaintiff has continued his possession over the 'B' and 'C' properties as its absolute owner as he was the sole LR of deceased Nanji @ Nanjamma, the plaintiff is paying necessary revenue tax to the concerned Authorities with regard to suit schedule 'B' and 'C' properties. However the defendant no.1 interfered with the possession of 'B' & 'C' schedule properties and also obstructed for the use of the water sump which is situated in the suit schedule 'C' property. Since there were day to day oral quarrels between plaintiff and the defendants, the plaintiff decided to construct the wall in between the property of the plaintiff and the defendants. Before constructing the wall the plaintiff has approached the concerned Gram Panchayath requesting the officials to measure the properties and to fix the boundary. When the officials of the Gram Panchayath visited the spot and tried to measure the properties, the defendants have not allowed, finally the officials have advised the plaintiff to approach the Civil Court.

4. On the other hand, these defendants contend that the father of the defendant no.1 by name Chikkarangaiah had purchased the property from his vendor by name Puttamadaiah @ Moogaiah and Rangaiah for the valuable consideration of Rs.200/- through registered sale deed dated 01.08.1973, the said property is the part and parcel of the plaint 'C' schedule property. Subsequently the said Chikkarangaiah has died leaving behind the defendant nos.1 to 4 as his legal heirs. After the death of Chikkarangaiah the defendant nos.1 to 4 are in peaceful possession and enjoyment of the said property and its absolute owner. The defendant nos.2 to 4 are the grandchildren of late Chikkarangaiah, the plaintiff is no manner of right, title or interest over the suit property. Further it has been contended by the defendants that the husband of the defendant no.1 by name Mallaiah had purchased the vacant site property measuring east-west 16 feet and north-south 14 feet from one Madaiah S/o Rangaiah for valuable consideration of Rs.50/- through registered sale deed dated 01.11.1956 and the husband of the defendant no.1 Mallaiah had purchased the property measuring east-west $3\frac{3}{4}$ yard and north-south 6 yards totally 3 ankanas house from one Rangadasi and his son Krishnamurthy through registered sale deed dated 20.11.1967 for valuable consideration of Rs.300/-. The said properties are the part and parcel of suit schedule 'A', 'B' & 'C' properties. The said Mallaiah died leaving behind defendant nos.1 to 4 as his legal heirs. After the death of Mallaiah, the defendant nos.1 to 4 are in peaceful possession

and enjoyment of the said properties as their absolute owners. Since the defendant nos.2 to 4 are the children of Mallaiah, the defendants have got good right, title and interest over the said properties.

5. Though this suit is filed by the plaintiff, the defendants have moved this application by invoking the provision of Section 151 of CPC. In this IA.No.III the defendants are claiming the relief against the plaintiff for direction to the plaintiff to not to disturb water line work of the defendants house, other words, the defendants are seeking the relief of injunction against the plaintiff.

6. As per U/O XXXIX Rule 1(a) of CPC the defendants would have moved this application which says that whether in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any parties to the suit..... if at all if the water line of the defendants is being damaged by the plaintiff, certainly the application for temporary injunction U/O XXXIX Rule 1(a) of CPC would have been maintainable. Be that as it may, it is well settled law that mere non quoting of the provision of law in the application nor mere quoting of the wrong provision of law in the application by itself is not a ground to reject or dismiss the application, what the Court has to do is to analyze whether it is having the power and legal Authority to grant the relief

claimed by the applicant in the application or not? As mentioned above certainly this Court is empowered to grant the relief as per U/O XXXIX Rule 1(a) of CPC as this provision does not distinguish between the plaintiff and the defendant that who should be the applicant.

7. In the case on hand, the defendants have made the bald prayer for the direction to the plaintiff not to disturb water line work, neither in the application nor in the affidavit annexed to IA.No.III the details have been mentioned that which is that water line, where exactly it is situated and how the defendants are disturbing. This application is very vague, on this ground itself it is not maintainable.

8. Further the defendants claim that the property purchased by the father of defendant no.1 on 01.08.1973 is a part and parcel of this 'C' schedule property, the properties purchased by the husband of the defendant no.1 on 01.11.1956 and 20.11.1967 are the part and parcel of suit schedule 'A', 'B' and 'C' properties. Though it is pleaded in the 8th paragraph of the written statement that the sale deeds, EC and other relevant revenue documents pertaining to the schedule properties have been furnished, however absolutely no such documents have been furnished by the defendants. Be that as it may, there is a serious dispute with regard to the identification of the properties, since the identification of properties are in dispute an injunction order can never ever

be granted against either of the parties. At this juncture, I would like to rely upon the ruling of **The Hon'ble High Court of Karnataka in WP No.63885 of 2016 (GM-CPC), between B.C Manjunath and another Vs Y.Jayarama Reddy (DD:23.01.2024), wherein it was held:-**

“the discretionary relief of temporary injunction cannot be granted when the property in dispute itself is not identified”.

For all these reasons, I hold the defendants have not made out the prima-facie case for granting temporary injunction, since the defendants have not made out the prima-facie case, the question of discussing the other two ingredients i.e., balance of convenience and causing of irreparable damage doesn't arise. For all these reasons, I proceed to pass the following:-

ORDER

The IA No.III filed by the defendants U/Sec.151 of CPC is treated as if it is filed U/O XXXIX Rule 1(a) of CPC and the same is hereby dismissed.

For cross-examination of PW1 by 09.09.2024.

27.06.2024
**The Civil Judge & JMFC.,
Yelandur.**