

THE COURT OF THE CIVIL JUDGE & J.M.F.C

YELANDUR

DATED 30th DAY OF AUGUST 2019

PRESENT

**SRI. SHARATH CHANDRA.N [B.A.L., LLB.]
CIVIL JUDGE AND JMFC.,
YELANDUR**

O.S.No.78/2013

Plaintiff/s: Mr. Somanna
S/o Rachegowda
Aged about 58 years,
R/of Komaranapura Village,
Yelandur Taluk,
Chamarajanagara Dist.

(By Sri.CVR. Advocate)

V/s.

Defendant/s:1. The Secretary
Gumballi Grama Panchayath,
Yelandur Taluk,
Chamarajanagara Dist.

2. Mr.Papannegowda
S/o late Madegowda,
Aged about 58 years,
R/of Komaranapura Village,
Yelandur Taluk,
Chamarajanagara Dist.

(D1-By Sri.MR. Advocate)

(D2-By Sri.CRN. Advocate)

1. Date of institution of the suit	: 19.06.2013
2. Nature of suit:	: Declaration & Injunction Suit.
3. Date of Evidence	: 07.10.2015
4. Date of Judgment	: 30.08.2019
5. Total Duration	: Years Months Days
	06 02 11

(SHARATH CHANDRA.N.)
Civil Judge & JMFC,
YELANDUR.

JUDGEMENT

The Plaintiff has filed this suit seeking a declaration that he is having easementary right over the schedule 'B' property to get free flow of air and light to schedule 'A' property. Further he is seeking a relief of mandatory injunction against the 1st defendant to act according to law and to demolish the alleged deviated portions constructed by the 2nd defendant and consequentially to remove the same so that plaintiff will get free flow of air and light to his property. This apart plaintiff is seeking a relief of permanent injunction restraining the defendants from causing any further damage to

schedule 'A' property and also causing any damage to amenities blocking the schedule 'A' property. He is also seeking a relief of mandatory injunction directing the 2nd defendant to make good of the losses to the plaintiff by carry out necessary repairs to his property and also to restore the passage which was situated between schedule 'A' and 'B' property. The 2nd defendant has vehemently objected the plaintiff's case and sought for its dismissal.

The case set out by the plaintiff in brief is as follows:-

2. The suit schedule property is recognized as assessment No.25/1. The Plaintiff is the owner of his schedule 'A' property. In this property they are residing in an old mangalore tiled roof house. Towards the western side of schedule 'A' property there is a passage through which plaintiff gets air and light to his property. This passage is in existence since time immemorial. On the western side of that passage there is property No.29. This is described as schedule 'B' property in this suit. In schedule 'B' property there existed a old house the 2nd defendant who is the member of the 1st defendant grama panchayath demolished the old house and commenced a new construction. The plaintiff asked the 2nd defendant to give him the

license and the approved plan but the 2nd defendant refused to give any such information. The 2nd defendant by violating all the rules and regulations started constructing his house. The construction is in such a manner that it is completely blocking the air and light to the plaintiff's house. The 2nd defendant's illegal construction has in fact damaged the plaintiff's property. In this background plaintiff has filed O.S.No. 3/2013 seeking a relief of permanent injunction against the 2nd defendant. In that suit plaintiff had sought for an interim injunction which was refused by the court. Challenging the said order he filed M.A. before the 1st Appellant Court. However the said Appellant Court confirmed the order passed by the trial court. Challenging order passed in MA the writ petition is filed before the Hon'ble High Court and the same is pending adjudication. Now by misusing this order of dismissal on IA No.1 the 2nd defendant continued his construction and by completely violating the rules and the by-laws has put up his construction without leaving any setback resulting in complete blockage of air and light to the plaintiff's house. In spite of several requests the 2nd defendant did not heed to the requests of the plaintiff. Hence left with no other option the plaintiff has got issued a legal notice to the defendants to comply the rules and regulations that they ought to have followed. In this background

the plaintiff has approached this court seeking a relief which is explained above.

3. The suit summons is served on both the defendants the 1st defendant has appeared through his counsel Sri.MR but has not filed any written statement objecting the plaintiff's claim. The 2nd defendant has appeared through his counsel Sri.CRM and has filed a detailed written statement objecting the plaintiff's claim.

The case set out by the 2nd defendant in brief is as follows:-

4. The 2nd defendant at the out set has denied the entire case of the plaintiff. Further he specifically contends that his property bearing assessment No.29 measuring East-West 19 feet and North to South 22 1/2 feet consists of country tiled house. Earlier there was a old house in this property, as it was in a dilapidated condition the 2nd defendant removed the old construction and by taking permission from the grama panchayath has put up a new construction.

5. When the 2nd defendant proceeded with new construction the plaintiff in order to harass the defendant has filed the O.S.No. 3/2013 and he had sought temporary injunction order during the

pendency of the suit. The said IA was dismissed by the trial court. Challenging the said order of the trial court he filed MA before the 1st Appellant Court. The 1st Appellant Court dismissed the appeal. As the I.A. was dismissed the 2nd defendant proceeded and completed the construction.

6. Earlier there was a common wall on the eastern side of the 2nd defendant's property and the western side of the plaintiff's property. At no point of time the plaintiff had a passage on the western side. That apart the 2nd defendant had left a setback of 1 $\frac{3}{4}$ feet on the eastern side of his property and 1 $\frac{1}{2}$ feet on the western side of his property. In fact the place at present on the eastern side of 2nd defendant's property belongs to him. Such being the case the plaintiff is making false allegations that 2nd defendant has encroached his passage. The 2nd defendant's property measures east-west 19 feet. But the house is constructed in the measurement of 15 $\frac{3}{4}$ feet. Under these circumstances there is no question of existence of alleged pathway or space on the western side of plaintiff's property. There is no vacant space existence that belongs to the plaintiff on the western side of his property. Hence this suit is not maintainable and it is liable to be dismissed.

7. Based on the above set of pleadings this court has framed the following four issues.

Issue No.1:- Whether the plaintiff proves that he is owner and in possession of schedule 'A' property?

Issue No.2:- Whether the plaintiff proves that he has right of easement of light and air from the 'B' schedule property ?

Issue No.3:- Whether the plaintiff proves that the 2nd defendant has damaged his property and that he is entitled for damages?

Issue No.4:- What order or decree?

8. The burden of all the substantial issues is cast on the plaintiff. He in order to discharge his burden has entered the witness box and he is examined as PW1. Ex.P1 to 21 are marked through him. The counsel for the 2nd defendant CRN has cross-examined the PW1 in length. The 1st defendant did not choose to lead any evidence nor has filed his written statement. The 2nd defendant did not lead any evidence inspite of giving ample opportunity. Hence the stage of defendant's evidence was closed. The Ld. counsel for the plaintiff has addressed his arguments. The counsel for the 2nd defendant had sought time to address his arguments but he did not choose to avail the opportunity.

9. I have examined the pleadings and evidence on record. It is pertinent to note that the plaintiff had sought for appointment of court commissioner during the trial. This court allowed that application and the Jr. Engineer attached to Town Panchayath, Yelandur was appointed as court commissioner. Both the plaintiff and the defendants have filed their memo of instructions instructing the court commissioner work had to be carried out. Accordingly the court commissioner visited the spot and made inspection and submitted his report. To such report the plaintiff and the 2nd defendant filed statement of objections. But none of the parties choose to summon the court commissioner to cross-examine him. This court had made an order that the objections of the both the parties will be consider after the completion of the evidence. But after the completion of evidence neither of the parties pressed on the objections nor had they sought to summon the court commissioner. Hence the court commissioner report will be considered along with the merits of the case. It is the part of the record. With this in background, I answer the issues framed in the following manner:-

Issue no.1:- In the Negative.

Issue no.2:- In the Negative.

Issue no.3:- In the Negative.

Issue no.4:- As per the final, order for the following:

REASONS

10. **Issue No.1** :- The plaintiff claims that he is the owner of schedule 'A' property. He claims that he has right of easement of light and air to schedule 'A' property and that the defendant is interfering with the right of easement of light and air. As regards to the easement of light and air it is the matter of discussion in Issue No.2. Firstly, the plaintiff has to show he is the owner of schedule 'A' property. The 1st defendant has not contested the case though he has entered appearance through his advocate. This may be for the obvious reason that there is no direct relief sought against the 1st defendant except for a direction to follow the rules and guidelines. The main relief is against the 2nd defendant. The 2nd defendant in his written statement denies the plaintiff's case. The 2nd defendant also denies that plaintiff is not the owner of schedule 'A' property. Hence the burden is cast on the plaintiff to first prove that he is the owner of schedule 'A' property. In order to prove his aspect he has entered the witness box and he is examined as PW1. He has filed his affidavit re-iterating the plaint averments. Hence it may not be necessary to reproduce the same at this stage. As far as documentary evidence are concerned Ex.P1 to 21

are marked. First let me discuss the documentary evidence and then the oral evidence.

11. The plaintiff in his plaint and in his affidavit claims that he is the owner of schedule 'A' property. Nowhere he has explained as to how he got this property. Whether it is by purchase or through a partition. The plaintiff is silent about this aspect. All of a sudden plaintiff produce Ex.P1 and 2 which are the sale deed dated 04.05.1935 and 18.11.1946. Regarding these two sale deeds there is no averment in the plaint. In the cross-examination it comes to light that Ex.P1 is the documents which is executed by the 2nd defendant's father and his grandfather. Ex.P2 is the sale deed of the plaintiff's father to show that he has purchased the property. Only in the cross-examination it comes to light about these aspects. Now the other documents which plaintiff has relied upon to show that he is the owner of schedule 'A' property is the assessment register of schedule 'A' property which is marked as Ex.P16. It is for the year 2013-2014. The plaint is shown as the owner the measurement given for the assessment is length 12+32 feet breadth 6+15 feet. It is relevant to note that the 2nd defendant along with his written statement has

produced a rough sketch. In the rough sketch the 2nd defendant has described the plaintiff's property. The measurement shown in the rough sketch of plaintiff's property is same as the measurement given in Ex.P16. By seeing the rough sketch which becomes clear that the plaintiff property is not actually in the shape of square or rectangle. It is in 'L' shape.

12. Another aspect which comes to light in the course of cross-examination which I would discuss bit later is that in a partition plaintiff got schedule 'A' property. Based on the said partition plaintiff got the assessment in his name. Hence from the documentary evidence one aspect is clear that the plaintiff is not the purchaser of the schedule 'A' property. It came to his share through a partition. Though the plaintiff has not said about this fact in detail this is apparent from the documentary and oral evidence. Though there may not be any direct documents of schedule 'A' property which reflects plaintiff's name the assessment reflects its name. That apart in the cross-examination of PW1 the 2nd defendant on many occasions as suggested referring to plaintiff's house. Hence it become clear that the 2nd defendant though in his written statement has denied the every

averment, he admits the existence of the plaintiff's house. Whatever may be the measurement of the place it is not concerned for the present issue. But the fact is from the evidence it is clear that plaintiff is the owner of schedule 'A' property. Accordingly, I answer **Issue No.1 in the Affirmative.**

13. **Issue No.2:-** The main subject matter of this issue is about the question of easement. Plaintiff claims right of easement of light and air to defendant's house. Nevertheless the plaintiff has not clearly said as to what is the nature of the easement that he is claiming i.e., whether it is a easement of necessity or a easement of prescription. He simple says right of easement. He has not explained as to whether the easement is of absolute necessity or whether he has acquired the easement over the prescription. One aspect is the plaintiff has not clearly stated the nature of the easement. However what is important to first find out is whether before claiming the right of easement whether exists those elements to claim easement. Mainly whether plaintiff is getting light and air from the western side of his property? Another aspect is whether there is a vacant space annexed to the plaintiff's property on the western side?. Firstly it is necessary to find

out the plaintiff's claim that there is a vacant space. Nevertheless for the sale deed that the plaintiff has produced he has not shown anyway that there is a vacant space towards the western side of schedule 'A' property. Per contra, the 2nd defendant has produced the rough sketch which would show the factual situation of the property according to him

14. The plaintiff has produced the assessment register which is marked as Ex.P16. In the assessment register there is no reference to the vacant space. At this stage it is also important to note the findings of the court commissioner who visited the spot. The court commissioner in his report has prepared a sketch showing pictorial representation of plaintiff's and defendant's property. In the sketch the court commissioner has stated or shown that the plaintiff's property is in the entire extent of the assessment measurement. He has not shown any vacant space which is apparently annexed to the plaintiff's property. That apart there are no documents which the plaintiff's shown that there is a vacant space. Per-contra it is the 2nd defendant contention that he has left a space of $1 \frac{3}{4}$ feet on the eastern side and $1 \frac{1}{2}$ on the western side of his property. He claims that the vacant space $1 \frac{3}{4}$ feet on the eastern side would come

between house of plaintiff and the 2nd defendant. The 2nd defendant has shown this aspect in his rough sketch and is also corresponds to the commissioner's report. The commissioner in his report has also stated that the 2nd defendant has left the space 1.5 feet on the eastern side. With these aspects kept in mind let me examine the oral evidence of PW1.

15. The 2nd defendant has cross-examined PW1 in length. PW1 admits "2 ನೇ ಪ್ರತಿವಾದಿಯ ಆಸ್ತಿಯ ಅಳತೆ 19x22 1/2 ಅಡಿಗಳು ಎಂದರೆ ಸರಿ". This supports the contention of the 2nd defendant that he has constructed his house within this property. PW1 further admits "ಆ ಲೈಸೆನ್ಸ್‌ಪ್ರಕಾರ 2 ನೇ ಪ್ರತಿವಾದಿ ನಾಲ್ಕು ದಿಕ್ಕುಗಳಲ್ಲಿ ತಲಾ 1 1/2 ಅಡಿಗಳ ಖಾಲಿ ಜಾಗ ಬಿಟ್ಟು ಮನೆ ಕಟ್ಟುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ". PW1 has admitted that the 2nd defendant has left 1 1/2 feet on all the four sides of his house. From the records it is clear that the court commissioner has visited the spot and has prepared a mahazar. Regarding this PW1 says "ಸಾಕ್ಷಿಯು ಕೋರ್ಟ್ ಕಮಿಷನರ್ ಸ್ಥಳಕ್ಕೆ ಬಂದು ಪರಿಶೀಲನೆ ಮಾಡಿ ಪ್ರತಿವಾದಿ ತನ್ನ ಆಸ್ತಿಯ ನಾಲ್ಕು ದಿಕ್ಕುಗಳಲ್ಲಿ ತಲಾ 1 1/2 ಅಡಿ ಖಾಲಿ ಜಾಗ ಬಿಟ್ಟು ಕಟ್ಟುತ್ತಿರುವುದು ನಿಜವೆಂದು ವರದಿ ಸಲ್ಲಿಸಿದ್ದಾರೆ ಎಂಬ ಸೂಚನೆಗೆ ನೇರವಾಗಿ ಉತ್ತರಿಸದೇ ಬೇರೆ ಉತ್ತರ ನೀಡಿದ್ದು ಸಾಕ್ಷಿಗೆ ಪ್ರಶ್ನೆಗೆ ನೇರವಾಗಿ ಉತ್ತರಿಸಿ ಎಂದು ಹೇಳಿದ ನಂತರ ಸೂಚನೆ

ಸುಳ್ಳು ಎಂದು ಹೇಳಿದ್ದಾರೆ. ಕಮಿಷನರ್ ಬಂದಾಗ ನಾನು ಸ್ಥಳದಲ್ಲಿದ್ದು ಅವರು ಮಾಡಿದ ಮಹಜರ್ ಸಹಿ ಹಾಕಿದ್ದೆ ಎಂದರೆ ಸರಿ". From his answer it is apparent that PW1 is very reluctant to admit the fact that court commissioner has visited the spot. This may be say because the court commissioner has stated that the 2nd defendant has left vacant setback of 1.5 feet on the eastern side of his property. PW1 admits to have signed the mahazar which was prepared by the court commissioner in the spot.

16. Another aspect that comes to light which is also relevant for Issue No.1 is that the plaintiff is not able to disclose the exact measurement which was purchased by his father. PW1 in his cross-examination as stated that "ನನ್ನ ತಂದೆ ಎಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡಿದ್ದರು ಎಂದರೆ ಅದು ಅಂಕಣದ ಆಸ್ತಿ ಇರುತ್ತದೆ. ನನ್ನ ತಂದೆ ಒಟ್ಟು 6 ಅಂಕಣದ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡಿದ್ದರು". This shows that the plaintiff is not able to clearly state the exact measurement which his father purchased. He has stated that his father has purchased the property in terms of (Ankana). This is obvious because in the olden days the house properties were mainly recognized in ankanna and not identified in terms of feet. Hence plaintiff has not been able to show the entire exact measurement which was purchased and the vacant

space abutting to schedule 'A' property. None of the documents reflects this aspect. Plaintiff is asked about the measurement for which he has filed this suit for which he states "ನಾನು ಈ ದಾವೆಯನ್ನು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಬಗ್ಗೆ ತಂದಿದ್ದೇನೆ ಎಂದರೆ ಪೂರ್ವ ಪಕ್ಕಿಮ 32 ಅಡಿ ಉತ್ತರ ದಕ್ಷಿಣ 15 ಅಡಿ ಆಸ್ತಿಗೆ ತಂದಿದ್ದೇನೆ".

Further PW1 is asked about Ex.P16. He says "ನಿಷಿಃ16 ನಾನೇ ಹಾಜರು ಮಾಡಿದ ಅಸೆಸ್‌ಮೆಂಟ್ ಎಂದರೆ ಸರಿ". Upon questioning further he says "ನಿಷಿಃ16 ರ ಕಾಲಂ ನಂಬರ್ 9 ರಲ್ಲಿ ಗುಡಿಸಲು ಮನೆ, ಹಂಚಿನ ಮನೆ, ಶೀಟ್ ಮನೆ ಅಥವಾ ಖಾಲಿ ನಿವೇಶನ ಇದೆ ಎಂಬ ಬಗ್ಗೆ ಯಾವುದೇ ನಮೂದಾತಿ ಇಲ್ಲ ಎಂದರೆ ಎರಡು ಅಂಕಣದ ಹಂಚಿನ ಮನೆ ನನ್ನ ಭಾಗಕ್ಕೆ ಸೇರಿದೆ". Ex.P16 clearly does not show as to the existence of house or vacant site. He further says "ನನ್ನ ದಾಖಲೆಯ ಕಾಲಂ ನಂ: 8 ರಲ್ಲಿ ಉದ್ದ 12+32 ಅಗಲ 6+15 ಎಂದು ನಮೂದಾಗಿದೆ ಎಂದರೆ ಅದು ನನ್ನ ಅಣ್ಣತಮ್ಮಂದಿರ ಭಾಗಕ್ಕೆ ಬರುವ ಆಸ್ತಿಯನ್ನೂ ಸೇರಿಸಿ ಬರೆಯಲಾಗಿದೆ". Though he says that the measurement of the properties of his brother is also included, this is contrary to Ex.P16. The measurement which he admits correspondence to Ex.P16.

17. PW1 further states "ನನ್ನ ತಂದೆ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡಿದ ನಂತರ ಅಸೆಸ್‌ಮೆಂಟ್ ಯಾರ ಹೆಸರಿಗೆ ಮಾಡಿಸಿದರು ಎಂದರೆ ನನ್ನ ಅಣ್ಣ ಸಿದ್ಧರಾಮೇಗೌಡನ ಹೆಸರಿಗೆ ಮಾಡಿಸಿದ್ದರು. ನನಗೆ ವಿಭಾಗವಾದ ನಂತರ ನನ್ನ

ಹೆಸರಿಗೆ ಅಸೆಸ್‌ಮೆಂಟ್ ಮಾಡಿಸಿಕೊಟ್ಟರು". He adds "ನನ್ನ ಹೆಸರಿಗೆ ಅಸೆಸ್‌ಮೆಂಟ್ ಮಾಡಿಸಿಕೊಂಡು ಎಷ್ಟು ವರ್ಷಗಳಾದವು ಎಂದರೆ ಮೂರುವರೆ ವರ್ಷ ಆಗಿವೆ". This admission makes it clear that in a partition plaintiff got the schedule 'A' property. When question is asked about partition, PW1 says "ದಾವಾ ಸ್ವತ್ತು ವಿಭಾಗದಲ್ಲಿ ನನಗೆ ಬಂದಿತ್ತು ಎಂಬುದನ್ನು ತೋರಿಸಲು ವಿಭಾಗ ಪತ್ರವನ್ನು ಹಾಜರುಮಾಡಲಾಗಿದೆಯೇ ಎಂದರೆ ಇಲ್ಲಾ ವಿಭಾಗದ ಬಗ್ಗೆ ಭಾಪಾ ಕಾಗದ ಕೊಟ್ಟಿದ್ದೇನೆ. ಅದರ ಆಧಾರದ ಮೇಲೆ ಅಸೆಸ್‌ಮೆಂಟ್ ಮಾಡಿಸಿಕೊಂಡಿದ್ದೇನೆ. ನಾನು ಭಾಪಾ ಕಾಗದವನ್ನು ಹಿಂದೆ ಹಿರಿಯ ವಿಭಾಗ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನನ್ನನ್ನು ಪ್ರತಿನಿಧಿಸುತ್ತಿದ್ದ ವಕೀಲರ ಕೈಗೆ ಕೊಟ್ಟಿದ್ದೆ". PW1 is questioned about the measurement of his property for which he answers "ಹಿಂದಿನ ದಾವೆಯಲ್ಲಿ ನನ್ನ ಮನೆಯ ವಿಸ್ತೀರ್ಣ ಉದ್ದ 12+32 ಅಗಲ 6+15 ಎಂದು ಬರೆಯಿಸಿದ್ದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಪ್ರಶ್ನೆಯನ್ನು ಮೂರು ಬಾರಿ ಪುನರಾವರ್ತನೆ ಮಾಡಿಸಿಕೊಂಡು ಕೇಳಿದರೂ ನನಗೆ ಅರ್ಥವಾಗುತ್ತಿಲ್ಲ ಇನ್ನೊಮ್ಮೆ ಕೇಳಿ ಎಂದು ಹೇಳಿದ್ದಾರೆ". This shows that PW1 is hesitant in admitting the measurement. As regards the measurement, the admissions of PW1 correspondence with the measurement in Ex.P16.

18. As discussed above, the real question is to find out whether plaintiff has right of easement. For that it is also necessary to know whether the plaintiff has any door or window on the western side of his property. To understand this aspect it is necessary to examine

the photographs the plaintiff has produced and marked as Ex.P15 to 16. Ex.P8 is confronted to the plaintiff and he admits that the door seen in Ex.P8. It is the main door of his house. Now this main door is on the eastern side of his property. Ex.P7, 9, 10 and 13 are the walls of the plaintiff's house. In none of these photographs a door or window is seen. Now Ex.P7 and 9 are the photograph based on which the plaintiff tries to show the construction of the 2nd defendant. The plaintiff argues that because of this construction it is obstructing his light and air. But the fact is there is no window or door that existence in these walls. Similarly in Ex.P19 plaintiff's house wall can be seen. In this wall also there is no window or door. Hence their arise a question as to how the plaintiff's easement of light or air is effected when there is no light or air which can pass from the western side of plaintiff's property. PW1 in his cross-examination admits "ನನ್ನ ಮನೆಗೆ ಮತ್ತು ನನ್ನ ಅಣ್ಣ ಸಿದ್ಧರಾಮೇಗೌಡನ ಮನೆಗೆ ಬಾಗಿಲುಗಳು ಪೂರ್ವ ದಿಕ್ಕಿನಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ನನಗೆ ಮತ್ತು ನನ್ನ ಅಣ್ಣನಿಗೆ ಸದರಿ ಪೂರ್ವ ದಿಕ್ಕಿನಲ್ಲಿರುವ ಬಾಗಿಲುಗಳು ಬಿಟ್ಟರೆ ಮನೆಯಿಂದ ಹೊರಗೆ ಹೋಗಲು ಬೇರೆ ಬಾಗಿಲುಗಳು ಇಲ್ಲ ಎಂದರೆ ಸರಿ". He further says "ನನ್ನ ಮನೆ ರಾಮೇಗೌಡನ ಮನೆ ಮತ್ತು ಸಿದ್ಧರಾಮೇಗೌಡನ ಮನೆ ಮೂರು ಮನೆಗಳಿಗೂ ಪಶ್ಚಿಮ ದಿಕ್ಕಿನಲ್ಲಿ ಉತ್ತರದ ಕಡೆ ನೇರವಾಗಿ ಒಂದೇ ಗೊಡೆ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಗೊಡೆಗೆ ಯಾವುದೇ ಕಿಟಕಿ ಇಲ್ಲವೇ ಬೆಳಕಿಂಡಿಗಳು ಇಲ್ಲವೆಂದರೆ ಸರಿ".

19. Another aspect is that, in Ex.P8 in which it can be seen that some portion of the roof of the plaintiff house is left vacant. It can be clearly seen in Ex.P11. This is inside plaintiff's house. It is not the allegation of the plaintiff that either the 2nd defendant or somebody cut his roof. It appears that plaintiff himself cut the roof in order to get air and light to his property. When PW1 is questioning about this he says "ನಿಷಿರಿ ರಲ್ಲಿ ಕಾಣುತ್ತಿರುವಂತೆ ನನ್ನ ಮನೆಯ ಬಾಗಿಲಿನ ನೆಲಕ್ಕೆ ಇರುವ ಸೂರನ್ನು ಗರಗಸದಿಂದ ಯಾರು ಕುಯಿದ್ದಾರೆ ಎಂದು ಕೇಳಿದರೆ ಸಾಕ್ಷಿಯು ಪ್ರಶ್ನೆಗೆ ನೆಲವಾಗಿ ಏನನ್ನೂ ಹೇಳಿಲ್ಲ". The pictures and the admissions of PW1 clearly draws an inference that for the plaintiff house except the main door there is no window or door. Hence the plaintiff has kept open certain portion of his roof in the middle of the house in order to get air and light. Hence there is no question of easement that exists. When there is no question of existence of easement the 2nd defendant cannot interfere with it. The 2nd defendant has questioned PW1 that the 2nd defendant has not caused any inconvenience to the plaintiff for which he denies but questioned further the plaintiff is not able to say as to what is the nature of inconvenience that has caused him. PW1 says "2 ನೇ ಪ್ರತಿವಾದಿಯ ಮನೆಯಿಂದಾಗಿ ನನ್ನಗಾಗಲೀ ನನ್ನ ಅಣ್ಣನಿಗಾಗಲೀ ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ತೊಂದರೆಯಾಗಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಏನು

ತೊಂದರೆಯಾಗಿದೆ ಹೇಳಿ ಎಂದರೆ ಸಾಕ್ಷಿಗೆ ತೊಂದರೆ ಏನೆಂದು ಹೇಳಲು ಸಾಧ್ಯವಾಗಿಲ್ಲ". Hence all this aspects if read together it clearly shows that plaintiff does not have the facility of air or light from the western side of his house. Such being the case there is no question of existence of easement. Hence **Issue No.2 deserves to be answered in the Negative.**

20. **Issue No.3:-** In the third issue plaintiff has to prove that whether the 2nd defendant has caused damage to the plaintiff and whether the 2nd defendant is liable to make good of the damages. The evidence above discussed has made it clearly that the plaintiff has no facility of air or light towards the western side of his property. Nor he is able to show that he has the vacant space which the 2nd defendant has encroached. Such being the case there is no question of damaging the plaintiff's property. Consequentially question of holding 2nd defendant liable for such damage does not arise.

21. In this case the court commissioner is appointed who has submitted his report with a detailed sketch. In the sketch he has clearly shown that the 2nd defendant has left setback within his property. That apart the plaintiff is not able to show that he has left setback for his house.

22. Another aspect which comes to light is before filing this suit plaintiff files an earlier suit against the 2nd defendant alone seeking permanent injunction him. It appears that because of the pendency of the injunction suit the 2nd defendant was not able to carry out his house construction for considerable amount of time. Subsequent to that suit this present suit is filed. The earlier suit is dismissed. It appears that the plaintiff's intention was to prevent the 2nd defendant from putting up his house.

23. Though the plaintiff alleges that the 2nd defendant has not left setback as per the Panchayath Raj Act and he has not obtained any approved plan from the authorities, the plaintiff himself is not able to show whether he has left setback to his house or he had obtained permission before constructing the house. Apparently the plaintiff house is very old. Obviously there may not be any plan for construction of that house.

24. Considering all these aspects I am of the opinion that the plaintiff has not approached the court with clean hands. He has miserably failed to prove Issue No.1 and 2. Consequentially suit

deserves to be dismissed. Accordingly, I answer **Issue No.3 in the Negative.**

25. **Issue No.4:-** For the reasons discussed in the Issue No.1 to 3, I proceed to pass the following:-

ORDER

Suit of the plaintiff is dismissed with cost.

Draw decree accordingly.

(Dictated to stenographer, transcribed by her and corrected and pronounced by me in the Open Court, this the 30th day of August 2019)

(SHARATH CHANDRA.N.)
Civil Judge & JMFC,
YELANDUR.

ANNEXURE

Witnesses examined for the Plaintiffs:

PW1 : Somanna

Documents marked for the Plaintiffs:

Ex.P1	:	Registered sale deed
Ex.P2	:	Registered sale deed
Ex.P3	:	Registered sale deed
Ex.P4	:	Registered sale deed
Ex.P5	:	Tax Receipt
Ex.P6 to 15	:	Photographs
Ex.P15(a)	:	CD

Ex.P16 & 17 : Assessment registers
Ex.P18 & 19 : Legal Notices
Ex.P20 : Postal Receipt
Ex.P21 : Postal Acknowledgement

Witnesses examined for the Defendants:- -NIL-

Documents marked for the Defendants:- -NIL-

(SHARATH CHANDRA.N.)
Civil Judge and JMFC,
YELANDUR.

TR