

**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE
AND JMFC AT CHANNAGIRI.**

**Present:- Smt.Pooja Belakeri, B.A., LL.B., LLM.,
II Addl. Civil Judge and JMFC,
Channagiri.**

Dated : This the 11th day of February 2020

O.S.No.174/2017

Between:

Sri. Munavar & Others : **PLAINTIFFS**
(By Sri. M.N., Adv.,)

And

R.Rajappa : **DEFENDANT**
(Deft - By Sri.MTS., Adv.,)

ORDER ON I.A.No.I

Munavar and others : **Applicant.**

V/s.

R.Rajappa : **Respondent**

ORDERS ON I.A.No.XXXII

The plaintiffs have filed the present I.A No.1 under order 39 Rule 1 and 2 R/w 151 of Code of Civil procedure praying for the relief of temporary injunction restraining the Defendants from putting up any additional construction over the 'B' Schedule property pending till disposal of the suit.

On the other hand the Defendant has filed I.A 32 under order 39 Rule 1 and 2 of CP.C praying to grant temporary

injunction against the Plaintiffs restraining them and from their supporters from obstructing the repair works to be effected by defendant to the passage of 3 feet width and also to the water and toilet pipes existed in the said passage.

2. In support of the I.A No. 1 the 1st plaintiff has filed the affidavit, the brief averments of the affidavit are as under: That the 2nd and 3rd plaintiffs are his brothers, they are the absolute owner in possession and enjoyment of the property measuring 22ft x 30 ft consisting of Sheet roofed building and 37 ft x 110 ft vacant space, both are single site bearing Assessment No. 822/716 + 717+718 bounded by East Property of R.Rajappa and T.M Rajappa, West- Property of Masalera Krishnoji Rao, North- Conservancy, South Shivamoggha Holehonnur Road. The said property was purchased in the name of Plaintiff No.3 and his brother K.Alla Baksh from the vendor H.S Dinesh Kumar through the registered Sale Deed dated 15-12-2005. And the said vendor of Plaintiff No.3 has purchased the said property from M.Rama Rao on 02-05-1990. The above said property has fallen to the share of plaintiffs through a partition deed dated 27-08-2013. Since the date of purchase in the year 2005 all the sons of Kalandar Khan were in possession and enjoyment of the said property.

Further plaintiff submits that the defendant has purchased the vacant site measuring about East West 15ft and North- South 30ft through the registered sale deed dated 02-08-1989 from his vendor K. Omprakash S/o

Karisiddappa bounded by East- The Property of Mahalingappa West- The property of Rama Rao (Plaintiffs vendor) North Rama Rao and South PWD Road. At the time of sale the wrong boundaries have been given in the sale deed by incorporating new boundaries. After his purchase the defendant has constructed the building in the entire property which he has purchased, subsequently he has encroached the 3 ft towards eastern side of the plaintiff's property and extended the same attached to his building as explained in the 'B' schedule of the plaint. Though the plaintiffs have requested no efforts were made by the defendant and further presently the defendant is trying to put up the additional construction to strengthen the encroached portion hence the present application.

3. After the service of Notice on I.A No.1 and suit summons the defendant had appeared through his Advocate and filed his objection and written statement to the main suit.

The averments of the defendant in the objections are as under:

That the plaintiffs are neither the owner nor in possession of the 'A' Schedule suit property at the time of alleged sale deed was made. And the measurement and boundaries mentioned in the afore said sale Deeds do not bind on the plaintiffs as they are not party to the said documents. And the plaintiffs have suppressed the material

facts of previous proceedings in relation to the property owned and possessed by this defendant between the original owner Rama Rao at the first instance while he was forming the sites. The 'B' schedule property is the passage area out of 7 feet 3 feet is used to put up sajja, the defendant was carrying on the repairs in the passage area in which there are damages due to natural calamities caused to the water and toilet pipes at the same time though the plaintiffs have no rights to restrain the defendant to make the said repairs in the passage area have filed this false suit. There is no prima facie case in favour of the plaintiffs if the said repairs are not affected it may result in damage of passage area and may damage the building which he own thus the balance of convenience lies in favour of the defendants hence prays to reject the application.

On the other hand the Defendant has filed the application and in affidavit sworn that 'B' suit schedule property is the part and parcel of his property which is the passage of his building and the said passage is used to reach the second floor of his building except the said passage there is no other way to access the reach the building. The passage is the only access to the shops situated in his building toward west. In the second floor of the building there are bath rooms and toilets rooms and pipe line connection running from second floor to the first floor and then connected to the sanitary pit. The said pipe lines are used since 1989-90 hence there is damage of said pipelines due to

natural calamities hence pipers are under leakage condition which requires the immediate repairs hence prays to allow the application and grant temporary injunction to allow him to affect the repair works against plaintiffs.

4. Heard both sides the following points arise for my consideration:

1. Whether the Plaintiff has proved the prima facie case?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss or injury if the Temporary injunction is not granted?
4. What order?

5. My findings on the above points are as follows:

Point No.1 :- In the Affirmative

Point No.2 :- Partly Affirmative.

Point No.3 :- Partly Affirmative.

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

REASONS

6. POINT NO.1: It is the contention of the Plaintiffs that they are the absolute owner in possession and enjoyment of the property measuring 22ft x 30 ft consisting of Sheet roofed building and 37 ft x 110 ft vacant space,

both are single site bearing Assessment No. 822/716 + 717+718 bounded by East Property of R.Rajappa and T.M Rajappa, West- Property of Masalera Krishnoji Rao, North- Conservancy, South Shivamoggha Holehonnur Road. Further it is the contention of the Plaintiffs that the defendant has purchased the vacant site measuring about East West 15ft and North- South 30ft through the registered sale deed dated 02-08-1989 from his vendor K. Omprakash S/o Karisiddappa bounded by East- The Property of Mahalingappa West- The property of Rama Rao (Plaintiffs vendor) North Rama Rao and South PWD Road. At the time of sale the wrong boundaries have been given in the sale deed by incorporating new boundaries. After his purchase the defendant has constructed the building in the entire property which he has purchased, subsequently he has encroached the 3 ft towards eastern side of the plaintiff's property and extended the same attached to his building as explained in the 'B' schedule of the plaint. On the other side the defendant contends that the Plaintiffs are not the party to the sale deed hence and at the time of making of sale deed these Plaintiffs were not in possession and owners of the 'A' schedule property hence the sale deed does not bind on the Plaintiffs hence there is a triable issue involved in the pleadings of both the parties, Hence I answer this point in the **AFFIRMATIVE.**

7. POINT NO.2 & 3: it is the dispute which could be trace out from the affidavit and pleadings of the Plaintiffs and objections the Plaintiffs alleges that the defendant owned a property through sale deed and in the said sale deed there is a wrong mention of boundaries and measurement and after the purchase of the property the defendant has constructed the building in his entire property subsequently the defendant has encroached the 3 feet easter side of the Plaintiffs property as per 'B' schedule. But the Defendant contends that the construction of sajja is made in the Passage area which is 7 feet in extent out of 3 feet is constructed as sajja to decide on this point whether the Defendant has encroached the Plaintiffs property as per 'B' schedule property and there is need of building plan of both the parties which is not submitted without the building plan the court cannot decide about the encroachment of the defendant in the 'B' schedule property. Further it is the contention of the Plaintiffs that there is an additional construction by the defendant to strengthen the encroached portion but for this the defendant submitted that in the passage area of 7 feet about 3 feet sajja is constructed and it has been damaged due to water toilet water so the repair work was carried out by the defendant as the sajja is already constructed and there are no documents is submitted by the Plaintiffs to show the additional construction by the Defendant in the encroached portion. Though the Plaintiffs have not produced the building Plan on the other side the

defendant has also not produced the Building plan or the layout plan as pleaded in the written statement I have perused the documents one document advertising about the sale of sites reveals the 7 feet of passage but in the said passage whether the defendant has permission to build the sajja becomes the question and it needs trial. Hence, at this stage this court is of the opinion that keeping the disputed 'B' schedule property as it is through status quo will balance the convenience of both the parties. Hence, I answer this point in the **Partly Affirmative**.

8. **POINT NO.4 :-** For the above reasons I proceed to the pass the following :-

ORDER

The I.A. No.I filed by the plaintiffs is hereby partly allowed.

The plaintiffs and defendants are hereby ordered to maintain status quo in respect of 'B' schedule property.

In view of the orders on IA No.I, the IA No.32 is hereby disposed off.

(Dictated to the stenographer, transcribed by him and corrected by me, then pronounced in the open court dated this the 11th day of February 2020)

(Smt.Pooja Belakeri)
II Addl. Civil Judge & JMFC,
Channagiri.

(Vide seperate order pronounced in the open Court)

ORDER

The I.A. No.I filed by the plaintiffs is hereby partly allowed.

The plaintiffs and defendants are hereby ordered to maintain status quo in respect of 'B' schedule property.

In view of the orders on IA No.I, the IA No.32 is hereby disposed off.

**II Addl. Civil Judge & JMFC,
Channagiri.**