

KADG320029162023



**IN THE COURT OF
PRL. CIVIL JUDGE AND JMFC
AT, HARIHAR**

(Presided Over by SMT JYOTI ASHOK PATTAR)

O.S. No.294/2023

Dated this the 09th day of July, 2025

Smt. Vijayalaxmi .B. Kathare.

....PLAINTIFF

Vs.

Irfan

....DEFENDANT

PARTIES TO I.A. NO.IV

Smt. Vijayalaxmi .B. Kathare.

**....APPLICANT/
PLAINTIFF**

Vs.

Irfan

**....OPPONENT/
DEFENDANT**

i	Provision under which the application is filed	U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii	Relief sought for	T I

iii	The date on which the application is filed	15.11.2024
iv	Number of the application	04
v	The date on which the objections are filed by the defendants opponents	04.02.2025
vi	The date on which the orders were passed on the said application.	09.07.2025

ORDER ON I.A.No.IV

The present application is filed by the plaintiff U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC at the stage of hearing on IA. No.III seeking an order directing the defendant to maintain status by not putting up any sort of construction until disposal of IA.No.I.

2. In the accompanying affidavit, it is stated that the plaintiff is the absolute owner in possession of Site No.86 and she purchased the same under a sale deed dated: 15.11.1995. Accordingly she was in possession of the same and khata is made out in her name and also she has been paying the tax. That on 18.11.2011, plaintiff obtained a license from Grama Panchayath of Hanagavadi village for the purpose of constructing a building in the said site and she completed the construction of the building in the year 2012 and given it for rent. The defendant claims to be the owner of site 85, which is situated towards eastern side of her property, which

measures E-W 27 feet and N-S 47+46/2 feet. The said site was vacant until 21.11.2023, when the defendant unjustly started putting up construction over the said site No.85. The defendant started digging the ground in site No.85 and placed the pillars towards her property without leaving marginal space and also exceeded 3 feet towards western side i.e., E-W 30 feet x N-S 47+46/2 feet. Immediately, she approached the defendant and requested him to provide his license obtained from City Municipality and further requested him to leave 2 feet of marginal space towards plaintiff property, but the defendant unjustly proceeded with the construction work. Plaintiff has approached Commissioner of City Municipality, Harihar to take action against such illegal construction taken up by the defendant on 16.12.2023. The officials of City Municipality neither visited the spot nor taken any action. Consequently, plaintiff has filed the present suit on 18.12.2023. Inter alia, she has filed I.A. No.1 seeking an order ex parte temporary injunction restraining the defendant from putting up construction, which came to be allowed on the very day and the same was complied on 19.12.2023 and the matter was posted on 16.01.2024 for appearance of the defendant. Later, on 20.12.2023, the defendant got advanced the case and filed a memo stating that he had filed a caveat bearing No.39/2023, as such, the said interim order was kept in

abeyance and the matter was posted on 02.01.2024 for filing the written statement and for hearing on I.A. No. 1. That the defendant has been putting up illegal construction without obtaining license from competent authority and has not left any marginal space towards her property. She had produced photographs of the illegal construction put up by the defendant at the time of filing the suit, which was at an initial stage and that today, Plaintiff has filed the photographs taken up recently, which shows the illegal construction and unjust advantage taken up by the defendant, since no order of injunction is passed against him. That the act of the defendant obviously shows that his intention is to complete his illegal construction during pendency of the suit and thereby, drag the proceedings resulting causing irreparable loss and harassment to plaintiff and her family. The defendant has not yet filed the written statement and he is trying to drag on the proceedings by filing irrelevant applications and objections. In case, the defendant completes the alleged construction, plaintiff will be deprived of proper flow of light and air to her building and further, the present suit would become in-fructuous. Hence, prays to allow the application.

3. Per contra, the defendant filed objection and contended that the plaintiff and defendant properties adjacent properties. That since from 14.03.2020, the

defendant is in possession and enjoyment of his property. That in the month of November, 2023 the defendant started construction over his property. That the plaintiff has already constructed a building in her property by encroaching one and half feet (1 ½ feet) of defendant site/property at West-South. The plaintiff has constructed entire building without leaving any space. Even after the appointment of Court commissioner and spot survey it is noticed that the plaintiff has encroached one and half feet space in defendant's site and advised not to give trouble to the defendant and remove the Stair case situated in West-South side of defendant property. But the plaintiff has filed this application instead of complying the same. On these grounds prays to reject the application.

4. Heard both the side.

5. The following points arise for the Court determination;

- 1 Whether the plaintiff has made out prima-facie case?
- 2 Whether plaintiff has made out the balance of convenience in their favour?
- 3 Whether the plaintiff will be put to irreparable injury, if the temporary injunction as claimed by is refused?
- 4 What Order?

6. This Court findings on the above points are as under:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

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

REASONS

7. Point No.1 to 3: In order to get the order of temporary injunction plaintiff has to show that, prima facie case is in her favour and balance of convenience lies in her favour. Further she has to show that in case of temporary injunction order as sought by is not granted, she will be put to heavy and irreparable loss, which cannot be compensated in terms of money.

8. Keeping the above cardinal principles in mind, this Court has gone through the materials placed on record. It is the specific case of the plaintiff that, the defendant has constructing building in his property which is adjacent to the property of plaintiff without following by-laws and thereby causing nuisance to the plaintiff. In order to prove the prima facie case the plaintiff has produced the following documents i.e, Copy of Sale deed, Grama Panchayath Tax Register, Municipal Council Form II S.A.S Form, Building constructed license by Grama Panchayath, Photos and Letter. Per contra the defendant contended that it is plaintiff who has constructed building by encroaching the property of defendant and relied on the following

documents i.e., Xerox N.A. copy dated: 22.01.1985, Copy of Sale deed dated: 01.08.1985, Copy of Sale deed dated: 20.04.1995, Copy of Sale deed dated: 13.08.1997, Copy of Sale deed dated: 14.03.2022, Copy of Hakku Wargavane Patra dated: 09.05.2022, Copy of Khata extract two dated: 24.11.2023, Copy of Kandayam paid receipt dated: 09.11.2023, Copy of EC dated: 03.01.2023, Copy of Building Permit application dated: 24.11.2023 and Rough Building plan.

9. That it is pertinent to note that, admittedly the plaintiff is in possession of suit schedule property and on perusal of materials on record also the plaintiff is in possession of suit schedule property. But the specific contention of the defendant is that the plaintiff herself has encroached his property. Such being the case contentions taken by the defendant are matter of trial. But at this stage the Court cannot held mini trial and adjudicate the matter on merits.

10. That it is pertinent to note that the plaintiff has not shown any schedule in the application in respect of which property she is seeking for the relief. Without there being proper identification of the property no relief can be granted. That the defendant sought for status-quo order for not putting up any sought of construction until disposal of I.A. No.I. But in the affidavit, plaintiff herself stated that since no order of injunction is passed against the defendant unjust advantage taken up by defendant and he has

proceeded with illegal construction. But the materials on record reveals that the defendant has already constructed a building. Therefore the application filed by the plaintiff does not survive for consideration. Thus, the plaintiff failed to establish prima facie case in her favour for the reasons stated supra. Hence the other two principles i.e. balance of convenience and irreparable loss does not taken for consideration. Therefore, this Court is of the opinion that, the point No.1 to 3 are answered in the Negative.

11. Point No.4: In view of the above discussion, this Court proceed to pass the following:

ORDER

I.A.No.IV filed by the plaintiff
U/O XXXIX Rule 1 and 2 of CPC., is
rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this the 09th day of July, 2025).

Sd/-
(Jyoti Ashok Pattar)
Prl. Civil Judge & JMFC,
Harihar.