

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., JAGALUR
AT: JAGALUR**

**Present:- Sri. Mohammed Yunus Athani,
B.A.,L.L.B.
Civil Judge & J.M.F.C., Jagalur**

O.S.No.147/2017

Dated this the 19th day of November, 2022

PLAINTIFF:

H. Haleshappa S/o Halappa,
Age: 55 years, Occ: Agriculture,
R/o: Muggidaragihalli village,
Tal: Jagalur, Dist: Davangere.

(By Sri T. Sanna Obaiah, Advocate)

-V/S-

DEFENDANTS:

1. Mallikarjun S/o Kenchaveerappa
Age: 50 years, Occ: Agriculture,
R/o: Muggidaragihalli village,
Tal: Jagalur, Dist: Davangere.
2. Venkatesh S/o Thimmamma,
Age: 40 years, Occ: Agriculture,
R/o: Muggidaragihalli village,
Tal: Jagalur, Dist: Davangere.
3. Thimanna S/o Thimmamma,
Age: 44 years, Occ: Agriculture,
R/o: Muggidaragihalli village,
Tal: Jagalur, Dist: Davangere.

(Deft. No.1 by Sri V. Thippeswamy, Advocate)
(Deft. No.2 Ex-parte)
(Deft. No.3 by Sri C. Basavaraja, Advocate)

I.A.No.-VII

APPLICANT:

H. Haleshappa S/o Halappa.

V/s

OPPONENTS:

Mallikarjun S/o Kenchaveerappa
and others.

ORDERS ON I.A.No.-VII

This is an application filed by the plaintiff under Order XXXIX Rule 1 & 2 R/w Sec.151 of C.P.C., seeking temporary injunction order against the defendant, restraining the defendants, their agents or anybody claiming on their behalf, from carrying out any type of construction work in the suit schedule property, till disposal of the suit.

2. In support of above application, the plaintiff has filed an affidavit, wherein he has deposed that, the plaintiff has filed this

suit, seeking relief of declaration, mandatory injunction and perpetual injunction against the defendants. That, on the basis of Hakku Patra, the plaintiff is in possession and enjoyment of the suit schedule property, bearing R.S.No.80/1, measuring 04 acres 10 guntas, Pot-kharab 10 guntas, situated at Bilichodu village, Tal: Jagalur. The defendant No.2, at the instigation of the defendant No.1, in order to construct a building, has illegally and forcibly carried out half construction and it is still under construction. The plaintiff had lodged an oral complaint before the Police, against the defendants. But, the Police has asked the plaintiff to get order from the Court. Hence, the defendant No.2 at the instigation of defendant No.1, is illegally carrying out construction work. The plaintiff is an innocent person. Whereas, the defendants being political influenced persons, in order to cause loss to the plaintiff, are forcibly carrying out illegal construction in the suit property. That, if the present application is not allowed, the plaintiff will be put to irreparable loss and hardship. On the other hand, if the application is allowed, no loss or hardship will be caused to the defendants. Hence, prayed to allow the application.

3. On the other hand, the defendant No.1 has resisted the present interim application by filing objections, wherein he has contended that, the contents of the affidavit sworn by the plaintiff are all false. The plaintiff has already entered into the witness box and deposed in support of the case. The crux of the case has already been exposed and his oral evidence is on record. At this juncture, the plaintiff wants to protract the proceedings by filing the present application, which is not tenable in the eye of law. The plaintiff at one instant has sought for the relief of injunction to restrain the defendant No.2 and at the same time is blaming the defendant No.1, which cannot be believed. The plaintiff has not at all substantiated his case even after entering into the witness box. The defendants will be put to much loss and hardship, if the application is allowed. Hence, prayed to dismiss the application with exemplary costs.

4. I have heard the arguments of both the sides and perused the entire material on record.

5. The following points arise for my consideration:

POINTS

- 1. Whether the plaintiff ha made out a prima-facie case against the defendants ?**
- 2. Whether the balance of convenience lies in favour of the plaintiff ?**
- 3. Whether the irreparable loss or injury would be caused to the plaintiff, if the temporary injunction as sought for is not granted ?**
- 4. What order ?**

6. My findings on the above points for consideration are as under :

Point No.1: Affirmative.

Point No.2: Negative.

Point No.3: Negative.

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

REASONS

7. **Point No.1 to 3:** As all these points for consideration are inter-connected to each other, in order to avoid repetition of facts and circumstances of the case and for better appreciation of material on record, I take all the points together for common discussion.

8. It is the specific case of the plaintiff that, he is the absolute owner in possession of suit schedule property bearing R.S.No.80/1, measuring 04 acres, phot kharab 10 guntas, total 04 acres 10 guntas, situated at Bilichodu village, Tal: Jagalur. That, originally the said property belongs to one Basappa, who is the father of Kenchavva. The said Kenchavva is the mother of plaintiff. After the death of said Basappa, in the partition taken place on 24/01/1957, in between Kenchavva and her sisters Parvathamma and Dyamavva, the suit schedule property fallen to the share of mother of the plaintiff namely Kenchavva. After the death of Kenchavva, the suit property has devolved on the plaintiff, who is the lone son of deceased Kenchavva. Thereafter, in the partition dated 17/12/2015, taken place in between the

plaintiff and his two children, the suit property has fallen to the share of plaintiff. As per mutation entry bearing M.R.No.H49/2015-16 dated 23/01/2016, the name of the plaintiff has been entered in the revenue records of the suit property. The suit schedule property is shown in letters 'ABCDE' in the hand sketch annexed to the plaint. The defendants are having no right, title or interest over the suit schedule property. That on 15/03/2017, when the plaintiff had been to his relatives home at Davanagere the plaintiff No.1 to 3 colluding with each other, have encroached the suit schedule property. The defendant No.1 has encroached $0-0\frac{3}{4}$ portion of the suit schedule property, shown in letters 'KFJI' and constructed a A.C. sheet house. Likewise, the defendant No.2 and 3 have encroached $0-0\frac{1}{4}$ portion of the suit schedule property, shown in letters 'LMN' and laid a stone basement in order to construct a house. That, the defendants without obtaining necessary construction permission from the from the Gram Panchayat have carried out construction work, by encroaching the suit schedule property. That, the plaintiff had filed an application before the Land Survey Department, Jagalur, for measuring the suit

schedule property and the encroachment made by the defendants. Accordingly, on 05/04/2017 the surveyor had visited the suit property and after conducting survey has given a report stating that, out of suit schedule property shown in letters 'ABCDE', the defendant No.1 has encroached $0-0\frac{3}{4}$ portion, shown in letters 'KJFI' and the defendant No.2 has encroached $0-0\frac{1}{4}$ portion, shown in letters 'LMN'. Even then, the defendants have not taken any steps to get demolish the construction made in the above encroached portion of the suit schedule property. That, even after lodging complaint by the plaintiff with respect to illegal act of defendants, before the Tahasildar Jagalur and Bilichodu Police Station, it did not yield any fruit. Hence, the plaintiff is constrained to file this suit.

9. On the other hand, the defendant No.1 in his written statement, has denied the entire plaint averments as false and not tenable either in law or on facts. Further she has specifically contended that, the defendant is not having any house in his name and he is residing in a house which is not standing in his name. At Muggidaragihalli village, which is far away from the location suit schedule property. Since, the defendant is not the

owner of the alleged house, the question of encroachment of suit schedule property by him does not arise. The defendant No.1 is not the necessary party to this suit. The suit is bad for misjoinder of necessary party and hence, liable to be dismissed. Further it is contended that, the allegation made by the plaintiff that, defendant No.1 has encroached 0-0¾ portion of the suit schedule property is totally false. That, the plaintiff has not mentioned the unit of measurement of the alleged encroached portion, whether it is inch, meter, feet, guntas or acres. That, the plaintiff has not produced any document to show the ownership of the defendant over the house, alleged to have been constructed by him by encroaching the suit schedule property. Hence, prayed to dismiss the suit of the plaintiff with costs and compensatory cost of Rs.20,000/- .

10. On meticulously going through the pleadings of both the sides and the revenue records placed on record by the plaintiff, prima-facie reveals that, the plaintiff is the absolute owner in possession of suit land bearing R.S.No.80/1, measuring 04 acres, Phot Kharab 10 guntas, total 04 acres 10 guntas, of Bilichodu village, Tal: Jagalur. Further it reveals that, originally

the suit property was standing in the name of the maternal grandfather of the plaintiff namely Basappa. After the death of said Basappa, in the partition taken place in between his three daughters, the suit land has fallen to the share of Kenchavva, who is the mother of plaintiff. But, it is pertinent to note that, as per the partition deed dated 24/01/1957, which is already marked as Ex.P.30 in the evidence of P.W.1, clearly speaks that, **03 acres 20 guntas**, out of **R.S.No.80/1** of Bilichodu village has fallen to the share of mother of the plaintiff Kenchavva. The plaintiff is claiming that, the suit property bearing R.S.No.80/1, measuring 04 acre 10 guntas, has fallen to the share of his mother, which is totally contrary to the recitals of alleged partition deed, dated 24/01/1957.

11. It is specific contention of the plaintiff that, the defendant No.1 has encroached 0-0 $\frac{3}{4}$ portion, shown in letters 'KJFI' and the defendant No.2 has encroached 0-0 $\frac{1}{4}$ portion, shown in letters 'LMN', out of suit schedule property measuring 04 acres 10 guntas, shown in letters 'ABCDE', in the plaint hand sketch. But, it is pertinent to note that, the plaintiff has not mentioned

the units of the alleged encroached portion, out of suit schedule property. The plaintiff has not mentioned specifically the alleged encroached portion mentioned in the plaint is in inch, feet, meter, gunta or acre. Further, it is pertinent to note that, even nothing with respect to same has been mentioned in the survey report, issued by the Land Survey Department, Jagalur. Further it is pertinent note that, the plaintiff in his plaint itself has pleaded that, the defendant No.1 has already carried out construction of his A.C. sheet house and the defendant No.2 and 3 have already constructed up to basement level. But, the plaintiff has not filed any application seeking temporary injunction order against the defendants at the time of filing of this suit or at any earliest stage of the case. It is pertinent to note that, in the present case the evidence of plaintiff and his witnesses has already been recorded. At this stage, the plaintiff has filed the present interim application, seeking ex-parte temporary injunction against the defendants, on the same grounds mentioned in the plaint. The plaintiff has not shown any new grounds or change of circumstances, in his affidavit filed

along with the present application, which prompted him to file the present interim application.

12. Further it is pertinent to note that, the plaintiff/P.W.1 has clearly admitted in his cross-examination, at page No.5, that the hand sketch produced along with the plaint is not prepared by his advocate as per his instructions and he does not know that in the said hand sketch, it is mentioned that $\frac{3}{4}$ portion out of the suit schedule property has been encroached. Further it is pertinent to note that, for the first time during his cross-examination, the plaintiff has stated that, the defendant No.1 has encroached 18 x 20 feet land, out of suit schedule property, towards the western side. The burden is on the plaintiff to establish the said fact through cogent evidence. Whether the defendant No.1 has encroached $0-0\frac{3}{4}$ portion, shown in letters 'KJFI' and the defendant No.2 has encroached $0-0\frac{1}{4}$ portion, shown in letters 'LMN', out of the suit schedule property or not, can be adjudicated after a full pledged trial. At this stage, admittedly, the defendant No.1 has already constructed his house in the alleged encroached portion of the suit schedule property and the defendant No.2 & 3 have also already taken up

construction work and completed up to basement. Further, the photographs produced by the plaintiff clearly goes to show that, the defendants have collected lot of construction material in order to carry out construction work. In such circumstances, if the temporary injunction order as sought by the plaintiff is passed, the defendants will be put to much loss and hardship, rather than the plaintiff.

13. It is settled principle of law that, the object of the interlocutory injunction is to protect the plaintiff against the injury by violation of his right, for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty were resolved in his favour at the end of trial. The Court has to protect the plaintiff's interest for violation of his rights, the injury that may be suffered by the defendants in case the injunction order is passed against him.

14. The Hon'ble Supreme Court in the case, **Colgate Palmolive (India) Ltd. V/s Hindustan Lever Ltd.**, reported in **AIR 1999 SC 3105**, has clearly held that:

“ Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other consideration which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy: (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

15. Likewise, the Hon'ble Supreme Court in the case, **M/s. Gujarat Bottling Co. Ltd. V/s Coca Cola Company**, reported in **AIR 1995 SC 2372**, has clearly held that:

“The grant of interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests- (i) whether the plaintiff has a prima facie case, (ii) whether the balance of convenience is in favour of the plaintiff and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction order has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation

are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action of the uncertainty were resolved in his favour at the trial. The need for such protection is however to be weighted against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated”.

16. Therefore, in the light of ratio laid down in the above cited decisions and for the reasons stated above, restraining myself from giving further opinion on the pleadings and documents placed on record by the plaintiff and defendants, this Court is of the opinion that, though the plaintiff has made out a prima-facie case against the defendants, the balance of convenience lies in favour of defendants. Further, if the temporary injunction order

as sought by the plaintiff is granted, the defendants will be put to much loss and hardship, rather than the plaintiff. Hence, holding that the plaintiff has failed to establish all the three requirements for the relief of temporary injunction, I answer the Point No.1 in **Affirmative** and the Point No.2 & 3 in **Negative**.

17. **POINT No.4:** In view of above conclusion, I proceed to pass the following:

ORDER

**The I.A.No.VII filed by the plaintiff
U/O XXXIX Rule 1 and 2 R/w Sec.151 of
C.P.C. is hereby dismissed.**

No order as to costs.

(Dictated to the Stenographer, directly on computer, corrected by me and then pronounced in the Open Court on this the 19th day of November, 2022)

**(Mohammed Yunus Athani)
Civil Judge & J.M.F.C., Jagalur.**