

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

-: PRESENT :-

**Sri.Malleshi Parashuram Mohite.,
B.A(Law).,LL.B.,
Prl. Civil Judge & Prl.J.M.F.C., Dharwad**

Dated this the 08th day of July -2024

Original Suit No.773/2023

BETWEEN

Sri. Ashok S/o Mallappa Shatoji

.....Plaintiff

(By Sri.R.R.K., Adv.)

V/s.

1. The Zonal Commissioner
and others.

.....Defendant

**(By.Sri.D.B.P., Adv. For defendant No.1 & 2)
(By.Sri.S.T.P., Adv. For defendant No.3)**

PARTIES TO I.A. No.II & IV

Sri. Ashok S/o Mallappa Shatoji

.....Applicant/defendant

V/s.

1. The Zonal Commissioner
and others.

.....Opponent/plaintiff

COMMON ORDER NO.II & IV

This is IA No.II filed by the plaintiff against the defendants for temporary injunction restraining them from demolishing the suit property till disposal of suit.

2. In the accompanying affidavit it is stated that the present suit is filed for the relief of permanent injunction against the defendants. Defendant No.1 without inquiring his property and due to pressure of defendant No.2. The defendant No.1 is trying to demolish the suit property highhandedly and evict him from the suit property. He is respectable person in the society. If the defendants evict him he will be put irreparable loss and inconvenience caused to him. He has got prima-facie case and balance of convenience in his favour. Hence, prays to allow the application.

3. On the other hand, defendant No.3 has filed objection to application and contended the suit is not maintainable without seeking declaration. Plaintiff has not approached with clean hands. Plaintiff has not obtained

layout permission from the development authority. Plaintiff has purchased 05 guntas of land in Sy. No.112/1A/1 measuring 02 acres 13 guntas. Defendant No.3 is the owner of plot No.25 who is opposite plot owner of plaintiff property. There is 9 mtr., rough road between plaintiff and defendant No.3 property. There is gatar adjacent to 9 mtr., road towards southern side of plaintiff property. Towards eastern side in 1.5 gutnas plaintiff has illegally constructed building and encroached the public road. Inspite of requisition made by the defendant No.3 and correspondence letter made to the defendant No.1 and 2 plaintiff did not heed the request. Hence, on these ground prays to reject the application.

4. I.A No.IV filed by the defendant No.3 for temporary injunction restraining the plaintiff from construction of building by encroaching public road. In the application it is contended that, plaintiff has illegal constructed at 1.5 guntas toward eastern side as contended in his objection to the I.A No.II. Plaintiff started illegal

construction by encroaching public road which is measured 9 mtr., between plaintiff and defendant No.3 property. Defendant No.1 and 2 have given notice to the plaintiff not to make illegal construction of building by encroachment. Till today plaintiff is construction by encroaching property at 9 mtr., road. The act of plaintiff is caused inconvenience to the public for their movement. Hence, on these grounds prays to reject the application.

5. Plaintiff has filed objection to the application and contended that defendant No.3 has no locus standi to file this application against the plaintiff. The property of defendant No.3 is not adjacent to his property. He has not made encroachment as alleged against him. There is no report by the defendants in respect of encroachment. Hence, on these grounds prays to rejection of application filed by defendant No.3.

6. I have heard the arguments on both sides. Perused the materials available on record.

7. The following points would arise for my consideration;

1. Whether applicant/plaintiff has made out prima-facie case?
2. In whose favour the balance of convenience lies?
3. Who will be put to irreparable loss or injury if temporary injunction is not granted?
4. What order ?

8. My answer to the above points are held as under.

- Point No. 1 : In the affirmative.
- Point No. 2 : In favour of the plaintiff.
- Point No. 3 : Plaintiff will be put to irreparable loss.
- Point No. 4 : As per final order for the following.....,

: R E A S O N S :

9. **POINTS NO. 1 to 3 :-** These points are inter-linked with each other, hence they are taken together for common consideration in order to avoid repetition of facts.

10. The present suit is filed by the plaintiff against the defendants for the relief of permanent injunction. The plaintiff has come up with application seeking temporary injunction against the defendants restraining them from demolish of suit property. It is the contention of the plaintiff that, defendant No.1 is trying to demolish the property of the plaintiff on the investigation of defendant NO.2. Plaintiff has made out prima facie case, balance of convenience lies in his favour. On the other hand defendant No.3 filed objection to the applciatjon and contended that plaintiff not approached with clean hands and made illegal contruction on 1.5 guntas towards eastern side of plaintiff's property. Who has purchased 05 guntas of property in Sy. No..112/1A/1 total measuring of 02 acres 13 gunats. Defendants have issued notice and measure the property of the plaintiff wherein the found that the plaintiff has encroached the property of public road, which is width of 9 mtr. Further, the defendant No.3 has filed the application seeking temporary injunction against the plaintiff seeking restraining the pliantiff from encroachment of public road.

The plaintiff objected to the application filed by the defendant. In support of his claim plaintiff and defendants have produced the photographs of the suit property. Plaintiff further produced the notice issued by the defendants and property extract of the plaintiff, wherein plaintiff is the owner of 05 gutnas of land. Further produced property assessment document, copy of sale deed and etc. whereas defendant has produced the circular of Government and notices of defendants. At this juncture, there is no document produced by the defendant to established that the plaintiff has encroached the public road and constructed building unauthorizedly. Except the notice the defendant have not produced any report in respect of encroachment made by the plaintiff on public way. Therefore, under such circumstances to protect the right of the plaintiff at this juncture the reason assigned by the plaintiff in his application and objection raised to the application filed by the defendant No.3 is tenable and deserves to be allowed. The plaintiff made out prima-facie case. Under such circumstances, if the defendant No.1 is

allowed to demolish the construction of property then the plaintiff will be put to irreparable loss. The balance of convenience lies in favour of plaintiff than the defendants. At this stage the defendants have not made out grounds to allow the I.A No.IV. Hence, I answer point No.1 in the affirmative and points No.2 and 3 in favour of plaintiff.

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

ORDER

I.A No.II filed by the plaintiff U/O.39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

I.A No.IV filed by the defendant No.3 U/O.39 Rule 1 and 2 R/w Sec.151 of CPC is hereby rejected.

Accordingly, defendants are hereby restrained from demolish of suit property till disposal of suit.

Parties are directed to co-operate for speedy disposal of suit.

No order as to cost.

(Dictated to the stenographer transcribed and computerized by her, then script corrected and signed by me and pronounced in the open court dated this **08th day of July 2024**).

(Malleshi.Parashuram. Mohite)
Prl.Civil Judge & Prl. JMFC,
Dharwad.