

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C, AT ALUR.

Present: Asha K.S, B.A.L.,L.L.B.,  
Civil Judge & JMFC, Alur.

Dated this 9<sup>th</sup> day of February - 2018

**O.S.No.60/2018**

Plaintiff / s : Abdul Khyum

-V/s-

Defendant / s : Muneer Pasha & another

**Parties to IA No.III**

Applicant / s : Abdul Khyum

-V/s-

Opponent / s : Muneer Pasha & another

**ORDERS IA No.III**

The application filed by the plaintiff under order 39 Rule 1 and 2 CPC supported by affidavit sworn by the plaintiff.

2. The averments of affidavit annexed to IA No.III under Order 39 Rule 1 and 2 of CPC with a prayer to pass an order of Temporary Injunction restrain the defendants

from putting up construction towards Eastern side of schedule property till disposal of the suit.

3. The application is supported by an affidavit duly sworn by the plaintiff he has stated that this suit filed by him against the defendants for the relief of injunction. It is further stated that schedule property was belonged to one Y.S.Arunkumar, from him plaintiff has purchased under the registered sale deed. As per sale deed khata has been changed in the name of plaintiff and plaintiff is in possession of the schedule property. The defendants are the adjacent owners and they encroached the plaintiff's property towards eastern side and trying to put up construction. The plaintiff has lodged complaint before the Police Station and there defendants have under taken to stop the construction but latter they started to construction. Hence, the IA.

4. The defendants have not appeared and not filed their written statement and objections to the IA No.III.

5. Heard arguments.

6. The following points that would arise for my consideration are:

- 1) Whether the plaintiff has made out a prima facie for the grant of T.I. as sought in I.A.III?
- 2) In whose favour the balance of convenience lies?
- 3) Whether on irreparable injury which cannot be compensated in terms of money would be caused to the plaintiff in the event of refusal of T.I. sought?
- 4) What order?

7. My answers to above points are as follows:

Point No.1 to 3: In the Affirmative.

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

### **REASONS**

8. **Point No.1 to 3** : Since these points are inter connected with one another, hence I have taken up these points together for common discussion to avoid repetition of facts.

9. It is the case of the plaintiff is that, he had purchased the schedule property from Y.S.Arunkumar under the register sale deed. From the date of purchased plaintiff is the possession of the schedule property. The defendants are the adjacent owners and trying to put up construction over the plaintiff's eastern side property.

10. To support his case plaintiff produced MR, RTC extract, complaint copy, Statement of defendant, photo. On perusal of these documents, it is very clear that, the plaintiff has purchased and he is in possession. The complaint and statement of defendant clearly shows that, the defendants are under taken before the Police Station i.e., they will not put up any construction.

11. As stated above the defendants have not appeared and not objected the case of the plaintiff. If the injunction order is not granted, the defendants will complete the construction. It will definitely give room

for multiplicity of proceedings, to avoid the same it is just and necessary to grant an order. If the defendants will continue the construction, it will cause irreparable loss to the plaintiff. As discussed above plaintiff has made out prima facie case and balance of convenience in his favour, as such I answered point No.1 to 3 in the **Affirmative.**

12. **Point No. 4:** In view of my above discussion, I proceed to pass the following:

### **ORDER**

I.A-III filed by the plaintiff Under Order 39 rule 1 & 2 CPC is hereby allowed.

The defendants or any body claiming under them are hereby temporarily restrained from putting up construction towards eastern side of the plaintiff's property till disposal of the suit.

Plaintiff's evidence by 22.2.18.

(Dictated to Stenographer, transcript by him, corrected and then pronounced by me in the Open Court on this the 9<sup>th</sup> day of February 2018)

Civil Judge,  
Alur.

