

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND JMFC,
AT ARSIKERE.**

PRESENT BEFORE

***Sri. Ameet Ghatti., B.A.L, L.L.B
II Addl.Civil Judge and JMFC.,
Arasikere.***

O.S.No.431/2020

Dated, this 16th DECEMBER 2020.

Plaintiff/s : Heggade Sathyanarayana
S/o Mahabaleshwara S/o Mahabaleshwara
71 years,
R/o Agahara Extension, Banavara Hobli,
Arasikere.

(By Sri.KVH, Advocate)

V/s

Defendant/s : Renukamma W/o Thimmaiah,
53 years,
R/o Agahara Extension, Banavara Hobli,
Arasikere.

(By Sri.B.K.V., Advocate)

COMMON ORDER ON I.A No.I AND III FILED U/O XXXIX

RULE 1 AND 2 OF CPC BY THE PLAINTIFF.

The Plaintiff has filed the present application with a prayer the court to restrain the defendant from trespassing the 2nd item of the suit schedule property and continue further construction by way of mandatory injunction against defendant till disposal of the suit.

2. The application is supported with the affidavit duly sworn by the plaintiff stating that, plaintiff is the owner and in possession of the suit schedule properties. Originally the property in question belongs to ownership of Siddappa and B.S.Rangaswamy. This plaintiff got purchase the suit schedule properties under registered sale deed dated 5-07-1995 from them. Further stated that he has purchased another site previously it belongs to Gajanan @ G K Bhat under the registered sale deed.

3. Further, stated that after purchasing the suit seclude property, by obtaining license from Banavara panchayath put construction living 15 feet in the eastern portion. As per the license. Further, stated that defendant illegally and unauthorizedly trespassing into the item no.2 of the suit schedule property. The defendant encroached and put up foundation on 2nd item of the suit schedule property. Plaintiff requested the defendant but defendant did not heed his request and constructed over the 2nd item of the suit schedule property. Hence, plaintiff constrained to file the suit and prays to allow the IA no.1.

4. After filing of the suit, summons was issued to the defendant. Defendant appeared through his counsel filed written statement and objection to the IA no.1. In the objection, it is contended that defendant the suit of the plaintiff is not maintainable in the eyes of law. Further denied each and every

allegation of the plaintiff. Further, contending that defendant purchased the vacant site by way of registered sale deed dated: 03-12-2018. Further contending that after the license from the concern authority. Defendant has started the constructing the RCC roofing house. Further, contended that the defendant already constructed lintel level and yet complete RCC roofing. Further defendant have invested the huge amount on men and on materiel on constructed as per license. Further defendant contending that the plaintiff in order harass the defendant has filed false suit. Hence, prays to reject the IA no.1.

5. Heard arguments of plaintiff and defendant. I have perused the material available on record.

6. Upon hearing arguments and materials placed on record, following points that arise for my consideration:

POINTS

1. Whether Plaintiff has made out a prima facie case?

2. whether balance of convenience lies in favour of the plaintiff ?

3. Whether irritable loss sustainable by the plaintiff if injunction not granted ?

5. What Order?

7. My findings to the above Points are as follows:

POINT NO.1 : In the Negative

POINT NO.2 : In the Negative

POINT NO.3 : In the Negative

POINT NO. 4 : As per order

For the following: -

R E A S O N S

8. **POINT NO.1 AND 2:-** Let me make it clear that, at this juncture only that whatever observations made and the opinion expressed are only for the purpose of the disposal of this I.A. as it is a premature stage. These, observations shall not carry any weightage in the final disposal of the case.

9. It is the case of the plaintiff is that plaintiff is the owner of the suit schedule property by virtue of registered sale deed executed by the Siddappa, B.S Rangaswamy and from Gajanan on 05-07-1995 and 05-08-2011. By virtue of registered sale deed plaintiff is owner and in possession of the suit schedule properties. The defendant illegally encroached the item no 2 suit schedule property and making illegal construction over the suit schedule property. In order to prove this contention plaintiff has produced true copy of the sale deeds, sketch, photographs alienation order and other documents. Which show that plaintiff is the owner of the suit schedule properties.

10. In order to disprove the contention of the plaintiff, defendant has filed objection to the application contending that he has purchased the property by virtue of registered sale deed dated 03 -11-2018. Further contended that after obtaining the license from the concerned authority the defendant has

constructed the house by investing the huge amount. Further contending that already constructed lintel level and had to complete RCC roofing. The plaintiff in order to harass the defendant has filed the false case. In order to prove this contention he has produced photocopies, sale deed . Building permission letter, sketch, E Swathu, which reveals that defendant is owner of his property .

11. On perusal of the records, it reveals that the present suit is field by the plaintiff for seeking relief of mandatory injunction against the defendant. Plaintiff stated that plaintiff is the owner of the suit schedule properties and defendant illegally making construction over the item no 2 of the suit schedule property. On the other hand defendant contended that the he as purchased the property under registered sale deed and after he has obtained the license from the concern authority and constructed the house on his own property.

12. The case itself shows that the defendant has made construction over his property. Further, as per the pleadings of the plaintiff himself, as on the date of the filing of the suit, the construction was going on. Further, photographs produced by the plaintiff and defendant, which clearly reveals that, the entire construction work is almost completed only putting roof is pending.

13. The prayer of the plaintiff is to stop further construction of the defendant by way of granting temporary mandatory injunction. As per the provision of Principles governing mandatory injunction-Two conditions must be fulfill.

1. There must be application part of the defendant to perform certain acts the breach of which application must be alleged by the plaintiff.
2. Relief must be enforceable by the court.

14. Upon carefully perusal of the document of both the parties, it shows that defendant is the owner of his property and property standing in his name. Further, the defendant has taken construction work by obtaining permission by competent authority. The allegation of the plaintiff regarding encroachment made by the defendant with respect to item No.2 of the suit schedule property requires full-fledged trail. The relief of interim mandatory injunction granted generally to preserve, restore the statuesque of the last point uncontested status which proceeded the pending controversy until the final hearing. As per the provision of section 39 of Specific Relief Act Mandatory injunction cannot be granted by way of interim relief as a grant of such injunction would be tantamount to a grant of final relief which would seriously prejudice the defendant. It is common knowledge that, if proposed construction is stopped definitely defendant would be put to heavy and irreparable loss rather than plaintiff. On the contrary, if the defendant is permitted to continue with

the construction over and if the ultimate suit is decreed, the risk will be at the defendant himself. Further the grievance of the plaintiff can be matured by imposing condition on the defendant that, Defendant is directed to remove the construction put up by him on his won cost is the plaintiff succeed proving in this case. After disposal of the case. Therefore, looking to the facts and circumstances of the case, at this stage, this is not the stage to consider detailed evidence and document. Further, this is not the stage to hold mini trial and technicalities are not warranted at this stage. Thus, at this stage the plaintiff has not made out prima facie case. Accordingly, I answer point no.1 in the Negative.

15. POINTS NO.2 AND 3:- These points are taken up for common discussion in order to avoid repetition of facts. For granting equitable remedy of temporary injunction existence of prima-facie case is a must. Existence of prima-facie case is the harbinger to investigate in to other points.

The proposition of law as been laid on decision reported in ***ILR 1989 KAR 1701 in the case of Gowrishankar Swamigalu V/s Siddagangamat*** “wherein Hon’ble court held that if there was no prima facie at all or the case put forward was so weak and tented having little prospect of being accepted by the court, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would fail at the very first stage itself”.

Further, Hon'ble Supreme Court in case a reported in **2009-AIR (SCW) 7581 KASHI MATH SAMSTHAN VS. SRIMAD SUDHINDRA THIRTHA SWAMY** - has held that if a party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

16. The plaintiff in this case has failed to make out prima facie case. It is common knowledge that, if proposed construction is stopped definitely defendant would be put to heavy and irreparable loss rather than plaintiff. Therefore, in view of the ratio laid down in the decision referred supra. I need not to examine this point in the point of view of plaintiff. Under the circumstances balance of convenience does not lie in favour of plaintiff. The Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensure before the legal right would be established in a trial and that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Accordingly, I answered Points No.2 and 3 in negative.

17. **POINT NO.4:-** In view or the above reasons I proceed to pass the following:

ORDER

I.A.No.I filed by the Plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., is hereby dismissed.

No order as to cost.

(Sri Ameet Ghatti)
II Addl. Civil Judge and JMFC,
Arsikere.