

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

PRESENT BEFORE

*Sri. Santosh Srivatsava., B.A.L, L.L.B
II Addl.Civil Judge and JMFC.,
Arasikere.*

O.S.No.115/2018

Dated : 20th November 2018.

Plaintiff : H.N. Ranganath S/o Ningappa,
32 years, R/o Haralakatta Village,
Kanakatte Hobli, Arasikere Taluk.
(By.Sri.A.G.D., Advocate.)

V/S

Defendants : 1. Parvathamma W/o Late. Somaiah,
65 Years,
2. Ranganath S/o Late. Somaiah,
42 Years,
3. Kotresh S/o Late. Somaiah,
31 Years,
All are R/o Haralakatta Village,
Kanakatte Hobli, Arasikere Taluk.
(By Sri.K.A.R, Advocate)

ORDER ON APPLICATION FILED BY THE PLAINTIFF

UNDER ORDER 39 RULE 1 AND 2 OF CPC.

1. The plaintiff has filed I.A under order 39 rule 1 and 2 of CPC., praying this court to restrain the defendant from carrying out construction in the suit schedule property.

2. The plaintiff has sworn to the affidavit stated that suit schedule property is ancestral property which is inherited from his grand father and defendant doesn't have any right or whatsoever nature in the schedule property he does Coolie at Bangalore. His brother and father stay at suit schedule property and they don't have worldly knowledge of the same, misusing his absence they have encroached the Item no.2 of the schedule property. Aggrieved by the act of the defendant he has filed the complaint to the Grama Panchayath and Grama Panchayath didn't support his, hence he succeeded encroached 4 feet and carried out construction. When plaintiff requested them not to carry out construction they abused the plaintiff and carried out construction. Hence prays the Court to restrain the defendant in carrying out further construction in the schedule property.

3. The defendant has filed objection stating that is unknown about the fact that the suit schedule property is ancestral property of plaintiff and categorically denied the averments made in the plaint and submits that they are carrying out construction by demolishing the old house in their property. The defendant didn't encroach the plaintiff property and simply having malafide intention the plaintiff has filed the present suit to knock of the defendant's property. The cause of action filed by the plaintiff is false and he has not

given the correct description of the property. Now he has also given the wrong description of the property and plaintiff doesn't have any right in Janjar no.134 to the extent of 8X49 feet and one by name Kariyappa has right in Janjar no.134 and there is no empty space left out to the eastern side and there arises no chance of defendants encroaching the property and this defendant didn't encroachment 4 feet wide 49 feet long as alleged by the plaintiff. Hence prays to dismiss the I.A.

4. Peruse the records and heard from both the side.
5. Heard the arguments on both the sides.
6. The following points which arose for my consideration are as follows:

::POINTS::

1. Whether plaintiff has got prima facie case which would proceed for the trail of the suit?
2. Whether balance of convenience of his favour?
3. Whether irreparable loss to the plaintiff in the absence of temporary injunction?
4. What order?

7. My answers to aforesaid points are as follows:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

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

// REASONS //

8. POINT No.1 :-

The plaintiff at this stage has not produced any cogent evidence to show that the suit schedule property is the ancestral property of this plaintiff. The major dispute involved in this case is whether the defendant has encroached the suit schedule property belonging to the plaintiff. The plaintiff has produced document obtained from Grama Panchayath Adhikari. Wherein they submits that Janjar no.134 measuring 15X11 feet belongs to Ningappa S/o kariyappa and the boundaries are

East : Galli,

South : Rajappa's hut,

West : Road,

North : Galli.

and Janjar no.135 measures East-West 28.3, North-South 37.9 and boundaries pertaining to Janjar no.135 are

East : Road,

South : Galli,

West : Galli then Somajja's house, North : Ramanna's Field

and in between the space left out belongs to Kariyappa S/o Siddappa.

Now coming to the defendant contention he has submitted that he resides in Janjar no.136 site no.13 and the same measures 45X13.9 feet and towards this suit schedule property towards western side there is Galli and afterwords Grand father of Kariyappa property comes and there is a Galli between plaintiff and defendant and defendant never encroached Galli and plaintiffs property. Hence by observing pleadings of both parties it is the clear case of the encroachment alleged to have been made by the defendant. Whether the suit schedule property ancestral property of plaintiff and defendant is a subject matter of trial and cannot be decided at this stage. However the plaintiff has shown prima-facie case that he has got good case on hand. If the defendant is not restrained from carrying out construction then it would give rise to multiplicity of litigation. Hence to protect the suit schedule property it is just and necessary to restrain the act of the defendant. Hence I answer Point no.1 in Affirmative.

9. Point No.2 :-

Balance of convenience lies in favour plaintiff because comparatively he has produced the document of Grama

Panchayath which discloses that his father was the owner of Janjar No.134. At this stage the Court cannot get in to detail as to how and what manner the property came into the hands of plaintiff. At this stage the only question which arises whether the defendant has made alleged encroachment in plaintiff's land. If after finding of the trial it is found that the defendant has encroached and carried out construction then it would give raise to multiplicity of litigation and plaintiff would suffer financially. Hence in view of same, I answer Point no.2 in Affirmative.

10. Point No.3 :-

There are every chances of irreparable loss, which would suffer by plaintiff in absence of this interim Order. If after the trial it is found that the defendant has encroached the plaintiff property and carried out construction then comparatively more damage will be caused to the plaintiff then defendant. If it is found that the defendant has carried out construction in accordance with law, then the defendant has got right to claim the damages from the plaintiff. Hence I answer Point no.3 in Affirmative.

11. POINT No.4 :-

In view of the above said reasons, I proceed to pass the following:-

// ORDER //

The I.A no.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC., is hereby allowed.

The defendant or anybody claiming through them is hereby temporarily restrained from encroaching the schedule property belonging to plaintiff and carry out construction till disposal of suit.

This Order will not effect if the defendant is carrying out construction in his own property in accordance with law.

Call by : 24.11.2018.

(Dictated to the stenographer directly on computer, revised and corrected by me and then pronounced in the Open court on this, 20th day of November 2018.)

(Sri.Santosh Srivastava)
II Addl. Civil Judge & J.M.F.C,
Arasikere.