

**IN THE COURT OF THE ADDL. CIVIL JUDGE
& J.M.F.C
AT HOLENARASIPURA**

PRESENT : Sri.Arun Chougule.,
B.A. LL.B.(Hons.)
Addl. Civil Judge and J.M.F.C.,
HOLENARASIPURA

Dated this the 24th day of September, 2020

O.S.NO.292/2019

Plaintiff/s :- Siddarth Bohra S/o Ganapathlal Bohra,
Aged about 52 years,
R/o Devanga street, Pete,
Holenarasipura town.
Hassan.

(By Sri.J.U.R., Advocate)

-V/s-

Defendant/s:- T.Nagaraj S/o Late S.H.Thimmaiah,
aged about 65 years,
R/o Nanjundeswara Nilaya,
Dasagowdara street,
Fort, Holenarasipura town,
Hassan district.

(By Sri.H.S.A., Advocate)

:: In IA.No. II::

Applicant/Plaintiff/s :- Siddarth Bohra S/o Ganapathlal Bohra

-V/s-

Opponents/Defendant/s :- T.Nagaraj S/o Late S.H.Thimmaiah

ORDER ON IA.No.II FILED BY THE PLAINTIFF
U/O.39 RULE 1 and 2 OF C.P.C.

The plaintiff has filed the present application under Order 39 Rule 1 and 2 of C.P.C., seeking temporary injunction against the defendant restraining him from demolishing the compound wall situated in the suit property till disposal of the suit.

2. The plaintiff has sworn to an affidavit along with the application stating that, he has filed the suit for permanent injunction in respect of the suit property having purchased the same under a registered sale deed dated 04.08.2010. It is stated that revenue records pertaining to the suit property are accordingly mutated in the name of the plaintiff. This being the fact, the defendant being a stranger to the suit property made an attempt to demolish the compound wall built by the plaintiff in the suit property. Hence, the plaintiff prays to allow the application.

3. The defendant filed a memo adopting his written statement as objection to the present application. In the written statement, the defendant contends that he has purchased an alienated site from one Smt. Saraswathamma and her children under sale deed dated 24.01.2013 and he is accordingly in possession and enjoyment of the same. It is contended that the plaintiff has illegally put up compound wall in the absence of the defendant and without fixing boundaries to the suit property. It is contended that the suit filed by the plaintiff seeking bare injunction without seeking the relief of declaration of title is not maintainable. On these grounds, the defendant sought to dismiss the application.

4. Learned counsel for the plaintiff did not appear before the Court despite due service of Court notice to the plaintiff. Hence, arguments of the plaintiff on the present application are taken not addressed. Heard arguments of learned H.S.A for defendant.

5. After hearing the arguments and perusal of pleadings and records, the following points arise for my consideration.

1:- Whether the plaintiff has made out a prima facie case?

2:- Whether balance of convenience lies in favour of plaintiff?

3:- Whether irreparable loss will be caused to the plaintiff if the temporary injunction as prayed is not granted?

4:- What order?

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

Point Nos.1 to 3:- In the Affirmative

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

REASONS

7. **Point Nos.1 to 3:** Since these points are inter-related, to avoid repetition of discussion of facts and evidence, they are taken up together for discussion.

The plaintiff has filed the present suit seeking the relief of permanent injunction seeking to restrain the defendant from interfering with his possession over the suit property bearing

Sy.No.113/9 measuring 5 guntas situated at Holenarasipura town of Hassan district.

8. As per the plaintiff, he is in possession and enjoyment of the suit property having purchased the same from one Renuka Prasad and his son Hemanth under registered sale deed dated 04.08.2010. The plaintiff alleges that the defendant being a stranger to the suit property is trying to demolish the compound wall built by the plaintiff in the suit property. The defendant, on the other hand, contends that the plaintiff has illegally put up the compound wall in the absence of defendant. It is contended that the plaintiff has put up the compound wall without getting the boundaries fixed to his property.

9. Under the present application, the plaintiff is seeking to restrain the defendant from demolishing the compound wall built by him in the suit property. Existence of said compound wall is not in dispute. It is relevant to note that the defendant merely contends that the plaintiff has built the compound wall without getting the boundaries fixed to his property. But there is no allegation that the plaintiff has built the compound wall by encroaching upon the property belonging to the defendant.

10. The plaintiff has produced original sale deed dated 04.08.2010 executed by one Renuka Prasad and his wife in favour of plaintiff in respect of the suit property. He has also produced certified copies of M.R.No.30/2010-11 and RTC pertaining to the suit

land, which show that name of the plaintiff is mutated in the records of the suit property as per the sale deed. The plaintiff has also produced photos showing existence of the compound wall.

11. The pleadings reveal that the dispute is with respect to the compound wall. The plaintiff states that he has constructed the same in his property whereas the defendant contends that plaintiff has built the same in his absence and without fixation of boundaries. This Court is of the opinion that the said dispute cannot be addressed at this stage without recording evidence of both the parties. This Court is of the further opinion that since the existence of compound wall is admitted, it is just and necessary to protect the same till disposal of the suit. As such, refusal to grant injunction as prayed by the plaintiff may lead to multiplicity of proceedings, thereby causing in convenience and loss to the plaintiff. On the other hand, no injustice or loss will be caused to the defendant. Hence, points under consideration are answered in the affirmative.

12. **Point No.4:-** In view of the above discussion, the following order is passed:

ORDER

The IA.No.II filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendant is hereby restrained by way of temporary injunction from demolishing the compound wall built by the plaintiff in the suit property till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed by her, revised by me and after corrections pronounced in the Open Court on this the 24th day of September, 2020)

(Arun Chougule)

Addl. Civil Judge and JMFC,
Holenarasipura