

KABR030014992022



IN THE COURT OF THE PRINCIPAL CIVIL JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU

PRESENT: SRI. D.RAMESH, B.AL., LL.B.,
Pri. Civil Judge, Bengaluru Rural District, Bengaluru.

Dated this 10th Day of June, 2024

OS. No.1325/2022

PLAINTIFF:

Sri.Trilok Chandar,
S/o Sugunathaiah,
Aged about 46 years,
R/at Krishana Kuteer White House,
8B Opposite FCI Gate, 2nd Lane,
K. Channasandra,
Bangalore -560067.

(By Sri. M.S.A.K., Advocate)

-V/s-

DEFENDANTS:

1. Sri.H.M.Pavan,
S/o Late H.M.Muniswamaiah,
Aged about 40 years,
2. Smt.M.Ashwini
D/o late H.M.Muniswamaiah,
Aged about 42 years,
3. Smt.M.Malini
D/o late H.M.Muniswamaiah,

Aged about 45 years,

Defendants 1 to 3
R/at No.381,
Narayanappa Garden,
Whitefield Main Road,
Bangalore-560066.

4. The Commissioner
Bruhat Bengaluru Mahanagara
Palike, Corporation Buildings
Bengaluru -560002.
5. The Assistant Executive Engineer
Bruhat Bengaluru Mahanagara
Palike, Whitefield Sub-Division,
Bengaluru -560066.

(Def NO.1 by Sri G.S.S., Advocate)
(Def NO.2 & 3 by Sri K.C.Y., Advocate)
(Def NO.4 & 5 by Sri K.V.B., Advocate)

PARTIES ON I.A. No.II

APPLICANT: Trilok Chandar

-V/s-

OPPONENTS: H.M.Pavan and others

Provision of application : U/Order XXXIX Rule 1 and
2 R/w Section 151 of CPC

Relief sought for : Temporary Injunction

Date of Application : 28.10.2022

Number of the application: II

Date of objection : 24.03.2023

Date of orders : 10.06.2024

ORDERS ON INTERLOCUTORY APPLICATION No.II

The plaintiff has filed the application U/O.39 Rule 1 and 2 R/w section 151 of CPC to pass an ex-parte ad-interim order of temporary injunction against the defendant No.1 to 3, from putting up further construction on the western side of the suit schedule property, on Sy.No.134/1, 134/8 and 134/9, Bidarahalli Hobli, Channasandra, Bangalore East Taluk, pending disposal of this suit, in the interest of justice and equity.

2. The brief averments of the affidavit are as follows:

That, defendant No.1 to 3 have started construction of hospital in the land, measuring 34 Guntas, unauthorizedly. It is further significant to add at this stage that the said owners have not obtained the necessary permission including the license and the sanction plan from the competent authority, for putting up any construction on the said land in question. In this regard, in response to an application dated 22.09.2022, from one of the occupants of the area, the office of the Assistant Director, Town Planning, Mahadevapura

Division, BBMP, Bangalore, has issued an Endorsement dated 26.09.2022, to the effect to that it has not issued any sanction plan or license for the aforesaid survey numbers, for putting up of any type of construction. The said construction without obtaining necessary license and sanction plan from the competent authority is totally illegal. The defendant No.1 to 3 have encroached the public road lying between the property of the plaintiff and defendant No.1 to 3, by putting up a compound wall, to an extent of 1.33 meters of the road, thereby reducing the width of the road to a mere 2.44 meters from the earlier existing 3.67 meters. The encroachment is more than 4 feet in width, which is causing a lot of inconvenience and hardship to the plaintiff and the other occupants of the locality. Hence the plaintiff has filed present application.

3. On the other hand, the defendants have filed memo for adoption of written statement as objection to this application.

4. Upon hearing arguments and perused the written argument filed by the plaintiff and perusal of materials placed on records, the following points would arise for my consideration.

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

2. Whether the plaintiff has made out balance of convenience lies in his favour?

3. Whether the irreparable injury caused to the plaintiff, if the I.A is not allowed?

4. What order ?

5. I answer the above points as follows:-

POINT No.1: In Affirmative

POINT No.2: In Affirmative

POINT No.3: In Affirmative

POINT No.4: As per the final order for the following:

REASONS

6. POINT No.1 to 3:- These points are interlinked to each other, hence both are taken up together for common discussion to avoid the repetition of facts.

7. It is the case of the plaintiff that, the plaintiff is the absolute owner of the schedule property having purchased under registered sale deed dated 31.10.2015. On the North Western side of the plaintiff's property abutting the road lies property bearing Sy.No.134/1, 134/8 and 134/9 belonging to defendant No.1 to 3 respectively. It is his further case that he learned that defendant No.1 owns an extent of 18 Guntas,

defendant No.2 and 3, are the owners of 8 Guntas each, in the said survey numbers, totally measuring 34 guntas. The defendants have got converted their land from agricultural to non agricultural residential purpose vide order dated 30.12.2021. The conversion order is granted only for the purposes of constructing residential houses. But the defendants are constructing the hospital unauthorizedly. The defendants have not obtained necessary permission including the license and the sanction plan from the competent authority, for putting up any construction on the said land in question. The BBMP issued endorsement dated 26.09.2022 to effect that it has not issued any sanction plan or license for the above said survey number. It is further case of the plaintiff that the defendants have encroached public road laying between the property of the plaintiff and defendant no.1 to 3 by putting up a compound wall, to an extent of 1.33 meters of the road, thereby reducing the width of the road to a mere 2.44 meters from the earlier existing 3.67 meters. The encroachment is more than 4 feet in width, which is causing a lot of inconvenience and hardship to the plaintiff and the other occupants of the locality.

8. The defendants have not denied the ownership and possession of the plaintiff pertaining to plaint schedule property. They have also not deny the construction of

hospital in their property. They have also not deny about not obtaining license and sanction plan from the concerned authority, but they have only stated that it is curable defect. They have admitted that they have got converted their property from agricultural to non agricultural purpose. Their specific case is that plaintiff has not produced any documents to show that what exactly is the extent of road that is being encroached or constructions made by these defendants. They further contended that these defendants are well within the boundaries of their sale deeds and not encroached an inch of suit schedule property. Further, they contended that there is accessible road to the suit schedule property and plaintiff has suppressed the said facts. They admitted that they are constructed small clinic over the converted property of 34 guntas which comes to around 5000 square feet. They have also applies sanction of plant and same is permissible under Section 240 (8) of BBMP Act, 2020.

9. Counsel for the plaintiff has relied upon the following judgments;

1. 2020 (2) KCCR 1354/MANU/KA/2086/20 between Lakshmi Srinivasaih Rice Mills V/s Sri Lakshmi Srinivasa Industries.
2. (2010) 1 SCC 379 between Julien Educational Trust V/s Sourendra Kumar Roy and others.

3. AIR 2015 KANT 13 between Shakuntalamma V/s Kanthamma.

In the above judgments Hon'ble High Court of Karnataka and Hon'ble Apex court discussed how to consider the prime facia case, balance of convenience and irreparable loss while dealing the temporary injunctions.

10. In order to prove the case of the plaintiff, plaintiff has produced copies of sale deed, katha endorsement, tax paid receipt, sketch, Akarbnad, order of conversion, endorsement, representations and photographs. On the other hand the defendants have not produced any documents to prove their contention.

11. I have carefully gone through the documents produced by the plaintiff. Document No.1 copy of the sale deed dated 31.10.2015 executed by on S. Kalappa in favour of plaintiff herein in respect of suit schedule property. Document no.2 katha extract standing in the name of plaintiff in respect of suit schedule property. Document no.3 tax paid receipt, it shows that tax has been paid in the name of plaintiff in respect of suit schedule property. Document no.4 sketch showing the location of the properties of the plaintiff and defendant No.1 to 3. Document no.5 certified copy of the of Akarbandh extract in respect of 134/1.

Document no.6 certified copy of the conversion order dated 30.12.2021 in respect of Sy.No.134/1, 134/8 and 134/9. Document no.7 certified copy of the endorsement dated 26.09.2022 issued under the Right to Information Act. Document No.8 to 10 are the certified copy of the representations given by the residential of Sy.No.134/2 to the various authority regarding encroachment of road. Document no.11 photographs.

12. Keeping in the mind of principles laid down in the above referred citation let me consider the case on hand. Admittedly, the plaintiff is the owner and in possession of the suit schedule property. It is also admitted fact that the defendants are the owners of land bearing Sy.No.134/1 totally measuring 34 guntas. It is also admitted fact that the defendants property has been converted for non agricultural residential purpose. It is also admitted fact that the defendants have been constructing the clinic in their property. But as per the conversion order the said property must be used for only residential purpose. But the defendants have not been using the said property for residential purpose and they have violated the said conditions prescribed in the conversion order. It is also admitted fact that the defendants have not obtained any license or construction permission from the BBMP. Even the

endorsement issued by the BBMP dated 26.09.2022 clearly shows the same. The claim of the plaintiff is that the defendants by encroaching the road lays between property of plaintiff and defendant constructing the compound wall. In this regard the public have made an representation to the BBMP and Tahasildar as per documents No.10 to 13. The defendants specifically contended that they are well within the boundaries of their sale deeds and they have not encroached any property. But they did not produce single documents including their sale deeds to show their boundaries. As discussed above they did not deny the construction going on their property. The photographs furnished by the plaintiff clearly show that there is a passage construction of compound wall is going on. Of course at this stage without full fledged trial encroachment cannot proved. Admittedly, construction work is going on and photographs show the same. If the defendants are not restrained from putting up construction, meanwhile if they complete construction by encroaching passage / road, definitely plaintiff will be put great hardship and irreparable loss. Therefore, the plaintiff has made out prima-facie case and balance of convenience lies in favour of plaintiff. Accordingly I answer Point no.1 to 3 in the “**Affirmative**”.

13. POINT No.4: In view of the above discussion, I

proceed to the pass the following :

ORDER

I.A.No.II filed by the plaintiffs under order XXXIX rule 1 and 2 of CPC is hereby allowed.

Consequently the defendant no.1 to 3 are hereby restrained from putting up further construction on the western side of the suit schedule property, on Sy.No.134/1, 134/8 and 134/9 Bidarahalli Hobli, Channasandra, Bengaluru East Taluk by way of temporary injunction till disposal of the suit.

In the facts and circumstances of the case no order as to costs.

(Dictated to the stenographer transcribed by her, corrected and then pronounced by me in the open court on this the 10th Day of June, 2024)

(D.RAMESH)
PRL. CIVIL JUDGE,
BENGALURU RURAL DISTRICT,
BENGALURU.

