

KAHV310003172019



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL**

**PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Civil Judge & J.M.F.C.,
Hangal.**

O.S.No.126 of 2019

DATED THIS THE 8th DAY OF DECEMBER 2022

Plaintiff : Smt. Rathnavva W/o Ningappa
Telakar @ Mole.

(By Sri.D.N.Kolkar – Adv.)

V/s.

Defendants : 1.Sri. Husensab S/o Babusab
Suruleshawar and 2 others.

(By Sri.M.M.Uppin – Adv.)

PARTIES TO I.A. No.I

Applicants/

Plaintiff : Smt. Rathnavva W/o Ningappa
Telakar @ Mole, Age: 60 years,
Occ: House hold work,
R/o: Adur village, Tq: Hangal.

- V/s -

Opponent/

Defendants :1.Sri. Husensab S/o Babusab
Suruleshawar, Age: 50 years,
Occ: Jod holder,
R/o: Adur village,

Tq: Hangal, Dist: Haveri.

(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.

ORDERS ON I.A No.I FILED UNDER ORDER XXXIX
RULE 1 AND 2 OF C.P.C

The applicant/plaintiff has filed this application U/o XXXIX Rule 1 & 2 of C.P.C., by seeking to restrain the defendants from put up construction in the suit schedule property by way of ad-interim temporary injunction.

2. In response to suit summons, the defendants had appeared through their counsel and among them defendant No.1 filed the written statement and same has been adopted by the rest of the defendants. A separate memo dated 07-02-2020 is also filed wherein, it is prayed to treat the contents of written statement as objection to this application.

3. Heard the arguments of counsel for the plaintiff and defendants' and perused materials made available on record by both the sides at this stage.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

- 1. Whether the applicant has made out prima faice case?***
- 2. Whether balance of convenience is lies in favour of the applicant?***
- 3. Whether irreparable loss will be caused to the applicant if injunction is refused?***
- 4. What order?***

5. The findings of this court on 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 following:-

REASONS

6. **Points No.1 to 3:-** All these points are taken together for common discussions to avoid repetitions of facts. The applicant/plaintiff in the affidavit annexed to the application by reiterating the similar facts pleaded in the plaint has categorically deposed that, suit schedule property bearing V.P.C.No.380 measuring east-west: 45.6 ft and north-south:111 ft consists of red tiled house situated

Adur village of Hangal Taluk originally ancestral property of her husband's father Sri. Vittappa S/o Gireppa Telakar and he was in possession and enjoyment of the suit schedule property during his lifetime and subsequently said propositus Sri. Vittappa relinquished his right over the suit schedule property in favour of his son or otherwise plaintiff's husband under the relinquishment deed. It is further contended that, from the date of said relinquishment, the plaintiff and her children have been in possession and enjoyment of the suit schedule property. Such being the situation, there exists property in V.P.C.No.381 situated towards southern direction of the suit schedule property and thereon also exist Muslim Mosque wherein public at large belongs to Muslim community are performing their respective namaj and other things in the said Mosque. The defendants by taking undue advantage of existence of their property abutting to the suit schedule property are trying to put up complex/shops for rent purpose by encroaching the suit schedule property and to that effect they already constructed plinth thereon. Moreover, the attempts of the plaintiff/applicant to approach jurisdictional police was went in vain as they never received complaint nor advised the defendants as assured. Despite request of the plaintiff not to put up construction in the suit schedule property

and encroachment of the same, the defendant not bothered to the words of the plaintiff and threaten to complete construct at any cost. By contending that, prima facie case and balance of convenience lies in her favour and irreparable loss or injury caused to her if temporary injunction is not granted, the applicant has prays to allow the application.

7. In the written statement the defendant No.1 has categorically contended that, suit of the plaintiff false and frivolous and same is not tenable under law and filed the suit for wrongful gain and to harass the defendants. It is contended that measurement and description of the suit schedule property is incorrect. By specific denying the case of the plaintiff, the defendant No.1 has independently asserted that the defendant No.1 along with the member of other Muslim community formed a committee same has been registered under Wakf on 26-06-2018 for the period of 3 years and there are existing 9 members in the said committee. Committee headed by defendant No.1 as Muttawalli and defendant No.3 is Secretary of the said committee. It is further asserted that, the defendant has applied for permission for construction of stall/complex in G.P.C.No.381 and 382 and after due enquiry, the concerned Gram Panchayat accorded construction

permission to construct stalls in property in G.P.C.No.381 and 382 which belongs to ownership of said Wakf committee. Since aforesaid properties belongs to the Wakf committee, the suit is claimed to be bad for non joinder of all the office bearers of the said committee. Among the other grounds, it is contended that, the jurisdiction of this court is barred U/s.85 of the Wakf Act as the plaintiff seeking the relief of injunction against the defendants properties in G.P.C.No.381 and 382 which are Wakf properties. By specifically contending that suit of the plaintiff is false, vexatious, it is prayed to dismiss the application with costs.

8. It is settled law is that the grant of temporary injunction is of discretionary and equatable relief and same shall be granted only when the applicant has establish prima faice case, balance of convenience as well as irreparable loss and injury caused to the applicant if the injunction is refused. It is equally settled principle of law is that, the applicant need not to establish that he has every chance of success in the suit. What is to be proved that, the applicant has arguable case to go on for trial.

9. Bearing in mind said settled principle of law regarding the temporary injunction, it is necessary to

analyse facts and circumstances involved in the suit. It is specific contention of the plaintiff/applicant is that suit schedule property bearing V.P.C.No.380 consists of red tiled house originally ancestral property of her husband's father Sri. Vittappa who relinquished his right over the suit schedule property in favour of plaintiff's husband and accordingly, from the date of said relinquishment the plaintiff and her children have been and continued in enjoyment of the suit schedule property. However, the defendants being possessor of property in G.P.C.No.381 situated southern direction of suit schedule property and by taking undue advantage of the same trying to encroach the suit schedule property and put up construction thereon and to that end the defendants already alleged as digged plinth for the purpose of construction. As the defendants not headed words of the plaintiff and threaten to complete construction at any cost which constrained her to file present suit along with instant application U/s.39 Rule 1 and 2 of CPC to grant ad interim temporary injunction. On the other hand, it is defense set up by the defendants that they have been intended to construct stall/complex over the G.P.C.No.381 and 382 which belongs to Wakf committee as per the construction license issued by the concerned Gram Panchayat and thereby asserted the fact that the plaintiff in order to harass the defendants has filed

false suit. In addition, it is further defense of the defendants that since property in G.P.C.No.381 and 382 are belongs to the Wakf committee headed by the defendants and plaintiff's sought for injunction against the Wakf properties, this court has no jurisdiction U/s.85 of Wakf Act 1995.

10. In the context of facts asserted in the plaint and denial in the written statement, I have perused the plaint, instant application, affidavit, written statement and documents relied by the both sides at this stage. At out set, the plaintiff has filed this suit against the defendants for the relief of bare injunction seeking to restrain the defendants or anybody acting under them from construction of shops illegally in the suit schedule property by way of permanent injunction. On categorical consideration of facts asserted by the plaintiff in the plaint as well as facts deposed in the affidavit and defense set up in the written statement, it is undisputed facts that, the suit schedule property bearing in V.P.C.No.380 belongs to the plaintiff and similarly property in G.P.C.No.381 and 382 are belongs to AUQAF committee comprise of defendants as its representatives. It is further undisputed that the defendants have been taking up construction in the property in G.P.C.No.381 to construct shops/complex

thereon. It is further undisputed that property of the defendants located abutting to suit schedule property V.P.C.No.380 admitted belongs to plaintiff. In this regard, on prima facie consideration of material facts asserted in the plaint as well as affidavit annexed to the instant application, applicant/plaintiff alleging act of encroachment of the suit schedule property and their attempt to put up construction thereon. On further perusal of relevant pleadings, it is apparent that, serious dispute exist regarding actual location of the suit schedule property including description and measurement. Such being serious dispute regarding actual location and measurement of the suit schedule properties and consequently asserting the factum of the encroachment, if the defendants have been continued raise the construction without asserting actual measurement and location, certainly very nature of suit would be defeated and right of the plaintiff over the suit schedule property put to jeopardy.

11. In the context of admitted facts and documents produced by the plaintiff in the form of true copy of tax assessment extracts, resolution passed by PDO of Adur Gram Panchayth and tax paid receipts indicates that, the plaintiff is possessor and enjoyment of the suit schedule property bearing V.P.C.No.380. At this juncture, on

parallel consideration of documents produced by the defendants which are also in the form of tax assessment, tax paid receipts, notification issued by Karnataka Wakf Board and construction license issued by the committee of Adur Gram Panchayat clearly establish that, the defendants obtained construction permission license issued by the committee of Adur Gram Panchayat intending to construct building in the property in G.P.C.Nos.381 and 382 belongs to them. Moreover, on consideration of true copy of certificate dated 07-04-2015 regarding description of properties in V.P.C.No.381 in which defendants propose to take up construction clearly establish that, said property situated abutting to the suit schedule property towards northern direction. Such being clear facts and suit involves facts regarding allegation of encroachment and corroboratively documents produced by the plaintiff at this stage substantiate existence and her possession over the suit schedule property ad interim temporary injunction ought to granted as case of the plaintiff proves existence of prima facie case to go on for trial. Bonafide of contentions and denials of alleged encroachment shall be ascertained by holding full pledge trial and based on oral and documentary evidence adduced by the both sides during trial. At the cost of repetition, it is worth to note that though suit is for bare injunction however, prima facie

consideration of facts asserted in the plaint and denied in the written statement reveals the issue of alleged encroachment. Therefore, it is apparent that serious dispute involves as to actual possession and enjoyment of the suit schedule property by the plaintiff and defendants. Admittedly and material on record disclose proposed construction taken up by the defendants in their properties in G.P.C.Nos.381 and 382. Whether the defendants are rightly proposed to construct the shops/complex within limits of their property or trying to construct the same in the portion of the suit schedule property by encroachment of the same is to be determined. The documents produced by the both the sides in respect to their properties does not disclose actual measurement of the same. In the said context of facts, without ascertaining actual measurement of the suit schedule property and also defendants properties, it is unjust for the defendants to take up construction having plaintiff/applicant alleging the encroachment. Therefore, in order to preserve and protect property intact, it is fit case to exercise discretionary power to grant temporary injunction as sought for. Unless injunction is not granted, very purpose of the suit would be defeated and thereby drive to the parties to the lis to multiplicity of jurisdictional proceedings and also change the entire nature of the suit. The contention of defendants

that jurisdiction of civil court is clearly barred U/s. 85 of Wakf Act in view of seeking injunction in respect to property in G.P.C.Nos.381 and 382 belongs to AUQAF committee is not tenable for the clear reasons that the plaintiff has seeking temporary injunction in respect to property in V.P.C.No.380 and not in respect to defendants property in G.P.C.Nos.381 and 382. The plaintiff has not filed this suit seeking injunction in respect to property in G.P.C.Nos.381 and 382. Aforesaid materials on record establish prima facie of the plaintiff to go on for trial and balance of convenience more tilt in her favour and if the injunction is refused, serious injury cause to her. Accordingly point No.1 to 3 answered in the affirmative.

12. **Point No.4:-** In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

***I.A.No.I filed by the plaintiff
U/o XXXIX Rule 1 & 2 of C.P.C.,
is hereby allowed.***

***Consequently, the defendants
are hereby restrained from put
up construction in the suit
schedule property and further***

restrained form interfering in peaceful possession and enjoyment of the suit schedule property by the plaintiff by way of ad-interim temporary injunction till the disposal of the suit.

(Dictated to Stenographer, typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 8th day of December – 2022)

***(JANARDHANA S.K)
Civil Judge and JMFC.,
Hangal.***

