

KAHV310007202024



The plaintiff has filed the present suit against the defendant by seeking the relief of permanent injunction to restrain the defendant or anybody acting under him from encroachment of suit schedule property and put up any structure thereon.

Along with suit, the plaintiff has maintained I.A.No.I U/o.39 Rule 1 and 2 R/w 151 of C.P.C., by seeking to restrain the defendant from encroach upon the suit schedule property and put up construction therein by way of ad-interim ex-parte temporary injunction till disposal of suit.

Perused I.A.No.I, its accompanying affidavit, plaint and documents relied upon by plaintiff at this stage. On perusal of the same, it is forthcoming and pleaded that, initially husband of the plaintiff and their ancestors were in settled possession of the suit schedule property and later, suit schedule property fallen to the share of plaintiff. To the contrary, the defendant based on concocted documents and by claiming suit schedule vacant space as public property alleged to had removed shed therein and thereon trying to construct Anganavadi building illegally which constrained

her to file this suit for permanent injunction along with present application for exparte temporary injunction.

In the aforesaid context, on consideration of documents produced by the plaintiff along with the suit, same would prima facie indicate that suit schedule property bearing V.P.C.No.528/A which is part of original VPC.No.528 consist of vacant space exclusively standing in the name of plaintiff and in past, same is also standing in the name of her ancestors as depicts under true copy of tax assessment extract produced along with the suit as per document No.1 and 2. On the other hand, tax assessment extract produced by the plaintiff in respect to Anganavadi center and in other words, public Garadi house, apparently located in property in V.P.C.No.529/1. Aforesaid prima facie documents disclose serious and bonafide dispute regarding actual location or boundary of suit schedule property as well as public garadi house on which the defendant Government authority proposed to put up Anganavadi building. Such being the facts and circumstances of the case, unless defendant shows material documents to the effect that suit schedule property is part of public property and establish actual boundary and location of property in V.P.C.No.529/1, no authority to dispossess the plaintiff from the suit schedule property without due process of law. As tax assessment extracts in respect to suit schedule property produced by the plaintiff standing in her name, same is sufficient to infer prima facie

case of the plaintiff to go on for trail and her arguable case. Such being the case and materials on record, unless exparte TI is granted very purpose of filing the suit would be defeated by reason of delay and there is chance or likelihood of dispossession of plaintiff or cause injury to her by the defendant. And also results in multiplicity of the judicial proceedings.

Therefore, the considered opinion of this Court is that notice of interim application to the defendant as contemplated under order 39 Rule 3 of C.P.C. is hereby dispensed with. Accordingly, the following:-

ORDER

The defendant is hereby restrained from interfering in peaceful possession and enjoyment of the suit schedule property till next date of hearing by way of ad-interim exparte temporary injunction.

Issue order of exparte TI in favour of plaintiff if she complies the provision of 39 Rule 3(a) of CPC.

Issue suit summons and emergent notice on I.A.No.I to the defendant, if sufficient P.F is paid.

Returnable by : 29-07-2024.

Civil Judge & JMFC.,
Hangal.