

Form No.9 (Civil Title sheet for judgment in Suits K.P.91)	<u>IN THE COURT OF THE PRL. CIVIL JUDGE 1ST ADDL. JMFC., RANEENNUR.</u>
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Present : Sri. P. Shivaraj,

B.Com .LL.B.

Prl. Civil Judge & 1st Addl. JMFC.,
Ranebennur.

Dated this the 12th day of March - 2019

O S No.06/2019

Plaintiff : Mousinsab S/o Chamansab Nadaf @
Pinjar, Age: 45 yrs, occ:Busines, R/o:
Near Maruti Temple, Medleri, Tq:
Ranebennur, Dist:Haveri .

(Pleader by Sri.H.M.Kundur)

// Vs. //

Defendant: Hanumanthappa S/o Honnappa
Onkari, Age:65 Years, Occu:Cooli,
R/o: Near Maruti Temple, Medleri,
Tq: Ranebennur, Dist:Haveri .

(Pleader by Sri.Praveen V.Kulkarni)

ORDERS ON IA No.I

Plaintiff filed IA No.I U/o.39 Rule 1 & 2 of CPC, praying this court to restrain the defendant from storing the waste materials abutting eastern wall of his property bearing VPC No.94 for the reason in the affidavit that, property bearing VPC No.94 of Medleri village belongs to the plaintiff and he is in possession of the same. Property bearing VPC No.95/C situated on the western side of his property belongs to the defendant. There is a vacant space in between the property belongs to the plaintiff and defendant and it is commonly used by them. Defendant has illegally stored waste material abutting to the eastern wall of the plaintiff property and

he is obstructing the plaintiff right to have the window on the eastern side of his property and prays this court to allow the application.

2. Defendant filed the written statement adopted the same as objections to I.A.NO.I. Contention of the defendant is that, he is the absolute owner in possession of the property bearing VPC NO.93/1 of Medleri village. He purchased the same under the sale deed dated: 26.04.1930. Defendant is in peaceful possession and enjoyment of the said property. Defendant has left out some vacant space on the western side of his property and he has denied the entire case of the plaintiff in toto and prays this court to dismiss the application.

3. I have heard the arguments and perused the materials available on record.

4. Points arises for my consideration are.

1. Whether plaintiff has made out prima-facie case, so as to grant temporary injunction as sought for in IA No.I?

2.In whose favour balance of convenience lies?

3. Who will put to hardship if temporary injunction is granted?

4. What order?

5. After carefully gonging through the material available on record and taken into considerations of facts and circumstances of the case my finding to the above framed points are as follows.

Point No.1	: In the negative
Point No.2	: In favour of defendant
Point No.3	: In favour of defendant
Point No.4	: As per the final order, for the following.

REASONS

6. Point No.1:- According to the plaintiff there is a vacant space in between the property belongs to him and defendant. Plaintiff has not whispered the details, nature of the waste materials alleged to have stored by the defendant illegally abutting to his eastern wall of his property. On the other hand, defendant contended that, property bearing VPC No.95/C is not in existence. Plaintiff has not tendered the copy of the resolution passed by the Medleri Grama Panchayati to show on what basis and on what strength they have entered the details of VPC No.95/C which is alleged to have in between the properties belongs to plaintiff and defendant. The fact whether vacant space is there or not in between the plaintiff property and defendant property cannot be decided at this premature stage. Plaintiff has not tendered any material to believe his apprehension as alleged in the affidavit accompanied to I.A.NO.I. Plaintiff has failed to establish the damage to his property or to his right. Plaintiff has not tendered any material to believe that he is putting up the window on the western wall of his property and defendant has obstructed for the alleged act. There is no material on record to believe the apprehension of the plaintiff. There is no likelihood of danger to the property, plaintiff has failed to establish the substantial loss or injury at this juncture. Hence, with the aforesaid discussion based on the materials available on record, I am of the opinion that plaintiff has failed to establish the prima facie case. **Accordingly I am answering this point in the Negative.**

7. Point No.2:- The existence of vacant space in between the property of plaintiff and defendant and its usage as putforth

by the plaintiff cannot be believed without full fledged trial. Plaintiff has failed to establish apprehension of his right, danger to his property. Accordingly, no doubt, there is no balance of convenience in favour of the plaintiff. **Accordingly I am answering this point in favour of the defendant.**

8. Point No.3:- While answering point Nos.1 and 2, it is discussed in detail and I have come to conclusion that, plaintiff has failed to established the prima-facie case and balance of convenience in his favour. Such being the case, if the temporary injunction is not granted, no hardship will be caused to the plaintiff. On the other hand, if the temporary injunction is granted, it may cause hardship to the defendant. Accordingly, **I am answering this point in favour of the defendant.**

9. Point No.4:- In view of the reasons and discussion made above, I proceed to pass the following;

ORDER

**IA No. 1 filed by the plaintiff U/o.39 R 1 & 2
of CPC is hereby dismissed.**

No order as to cost.

(Dictated to the J/w transcribed and computerized by her, and then corrected, signed and pronounced by me in the open court, on this **12th day of March 2019**).

(P. Shivaraj)
Prl. C. J. & 1 Addl. JMFC.,
Ranebennur.

(Order pronounced in the open court vide separate)

ORDER

IA No.I filed by the plaintiff U/O 39 Rule 1 and 2 of CPC is dismissed.

No order as to cost.

**Prl. C. J. & 1 Addl. JMFC.,
Ranebennur.**

