

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.
AT RANEENNUR.**

PRESENT: **Smt. Anitha O.A., B.A., L.L.M.,**
Prl. Civil Judge & JMFC,
Ranebennur

Dated this the 5th day of September 2023

O.S. No.122/2023

- Plaintiffs:-
1. Smt. Shantavva W/o Channabasappa Hadapada,
Age: 54 years, Occ: Housewife,
R/o, Yattinahalli, Tq: Ranebennur,
Dist: Haveri.
 2. Channabasappa S/o Shivalingappa Hadapada,
Age: 64 years, Occ: Agriculture,
R/o, Yattinahalli, Tq: Ranebennur,
Dist: Haveri.

[By Sri. S.V.T., Advocate]

-V/s-

- Defendants:-
1. Basavarajappa S/o Mahadevappa Shivapuji,
Age: 68 years, Occ: Agriculture,
R/o, Yattinahalli, Tq: Ranebennur,
Dist: Haveri.
 2. Mahadevappa S/o Basavarajappa Shivapuji,
Age: 40 years, Occ: Agriculture,
R/o, Yattinahalli, Tq: Ranebennur,
Dist: Haveri.

(Defendants By Sri. M.S.R. Advocate)

I.A. No. I

Plaintiff/Applicants :- Smt. Shantavva W/o Channabasappa
Hadapada,

V/s

Opponents:- Basavarajappa S/o Mahadevappa Shivapuji,

ORDERS ON I.A. NO.I

The applicants/plaintiffs have filed I.A. No.I U/O.39 Rule 1 and 2 of CPC for the relief of temporary injunction to restrain defendants or any person claiming on their behalf from constructing wall or building over the suit schedule property, till pending disposal of the suit.

2. In the accompanying affidavit, it is submitted that, the suit schedule vacant space property bearing VPC No. 109/A measuring 21X35 ft. situated at Yattinahalli bounded by East: house of defendants, West-North and South: Panchayat road is belongs to plaintiff No.1. The said property inherited by the plaintiff No. 2 through his father. To get benefit of Ashraya Scheme, the plaintiff No. 2 transferred the said property in the name of plaintiff No. 1. The defendants who are residing in the house adjacent to the suit schedule property trying to construct house by encroaching eastern side of suit schedule property. Further, the defendants executed consent agreement before the elders of the village stating that they are not going to construct over the encroached portion. Such being the situation, by violating said consent agreement, the

defendants proceeding with construct wall by encroaching 9X35 ft. towards Eastern side of suit schedule property. Hence, this application.

3. On the other hand, the defendants filed objection, by way of written statement by denying applicaton averments submitted that, the suit schedule property is not exclusively belongs to plaintiffs, but it is joint family property pertaining to that FDP No. 13/2022 and O.S. No. 103/2023 are pending. The remaining family members of plaintiffs are not made as parties, the suit is bad for non joinder of necessary parties. Though there is no cause of action to file present suit, only harass these defendants filed false suit, which is not maintainable under law. Hence, prays for dismiss the same.

4. I have heard the arguments of both sides and perused the entire records. Based on the averments of the application and written statement, the points that arise for consideration of this court are:

POINTS

1. Whether the plaintiffs have made out prima-facie case in thier favour ?
2. Whether the balance of convenience lies in favour of the plaintiffs ?
3. Whether the plaintiff would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by them?
4. What order ?

5. My answer to the above points are as under:-

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 the following:

::REASONS::

6. **Points No.1 to 3**:- As these points are interlinked with each other, to avoid repetition of facts, they are taken together for discussion.

7. It is specific contention of the plaintiffs that the defendants are trying to construct over the suit schedule property by encroaching towards Eastern side to the extent of 9X35 ft. On the other hand the defendants contended that the suit of the plaintiffs is nonjoinder of necessary parties and no cause of action for present suit.

8. To substantiate their contention, the plaintiffs have furnished documents such as the property certificate issued by the Gramapanchayat, Honnatti, copy of sanction order under Ashraya scheme, consent letter and photo. On the other hand the defendants have not furnished any documents.

9. Admittedly, the plaintiffs have filed this suit against the defendants for the relief of permanent injunction against the defendants to restrain them from constructing building by encroaching the suit schedule property. The documents furnished by the plaintiffs i.e., property certificate dated 15.05.2023 issued by Honnatthi Grama

Panchayat stands in the name of plaintiff No. 1. They got house benefit under Ashraya Scheme as per the copy of order dated 31.10.2022. Accordingly, prima-facie it is found that the plaintiffs are in possession of the suit schedule property as absolute owners. Though the defendants denied the application averments, but nothing has been stated about the total measurement of their property and status of construction over the same. Further, the Notarized consent letter alleged to be signed by the defendants prima-facie supports the contention taken by the plaintiffs as agreed by the defendants before elders of the village. Though the defendants denied the extent and existence of suit schedule property, but the rights of the parties over the disputed property and extent of the same has to be decided only on full dressed trial, till then to avoid multiplicity of proceedings, the defendants ought to be restrained from constructing over Eastern side of alleged encroached portion i.e., suit schedule property.

10. Further, the learned counsel for defendants contended that, they have invested huge amount on constructing materials, but as per the photos furnished by the plaintiffs, the stage of construction is still in plinth level, if the defendants are succeeded in construction, it may not only cause irreparable loss and injury to the plaintiffs but also monetary loss to the defendants. Hence, it is just and necessary to restrain the defendants from further construction only towards Eastern side of

plaintiffs' property i.e., suit schedule property. Accordingly, I answer **Point No.1 to 3** in the **Affirmative**.

11. **Point No. 4:-** Based on the above reasons and discussions, I proceed to pass the following:-

::ORDER::

IA No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 is hereby allowed.

The defendants and their agents, servants, attorneys or anybody acting on behalf of them are hereby restrained by way of temporary injunction from constructing wall or building over the suit schedule property, till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, typed, printout taken by him and corrected and then pronounced by me in the open court on this the 5th day of September 2023.)

Sd/-
Prl. Civil Judge & JMFC.,
Ranebennur