



IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
RANEBENNUR.

Dated on this the 02nd day of December 2025.

Present: Sri. ADITHYAKUMAR H.R, B.A.LL.B.

Prl. Civil Judge & JMFC.,Ranebennur.

ORIGINAL SUIT NO.324/2024

Plaintiff: Sri. Sadanadagouda S/o Ramanagouda
Mudigoudra, Age: 75 Years,
Occ: Retired employee, R/o: Ennehosalli,
Tq: Ranebennur, Dist: Haveri.

(Plitf. By Sri. M.B.G., Advocate)

V/s

Defendant: Premavva @ Mallavva W/o
Mallaraddi Kadligondi,
Age: 64 Years, Occ: House wife,
R/o: Ennehosalli, Tq: Ranebennur,
Dist: Haveri.

(By Sri. K.S., Advocate)

I.A. NO. I CAUSE TITLE.

Plaintiffs/
Applicants: Sri. Sadanadagouda S/o Ramanagouda
Mudigoudra

-Vs.-

Defendant/

Opponents: Premavva @ Mallavva W/o
Mallaraddi Kadligondi,

ORDER ON IA NO.1

This application is filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w. Sec. 151 of CPC, seeking the defendant or her henchmen, agents, servants or anybody claiming on her behalf be restrained from constructing any building without leaving set back towards Eastern side of suit schedule property till the disposal of the suit.

2). Brief case of the Plaintiff is as under:

The Plaintiff has filed this suit for permanent injunction and such other reliefs. It is averred in the plaint that, the plaintiff is the owner in possession of suit property. The defendant is the owner in possession of her property bearing VPC No.77 situating towards Eastern side of suit property. The defendant without obtaining necessary permission from the village Panchayath and without leaving any set back has started illegal construction and causing obstructions to the plaintiff's rights. Hence, the plaintiff constrained to approach this court by filling this suit.



2.1). In support of the application, the Plaintiff has sworn to the affidavit by reiterating the plaint averments and he has further contended that, if the defendant is permitted to construct the building without leaving any set back, he will be put to great hardship. Despite the plaintiff approached the concerned village panchayath, they have not taken any necessary action against the defendant and taking advantage of her political background, the defendant is trying to construct the building without leaving any set back towards eastern side of suit property. If the application is not allowed, he will put to great hardship and on the other hand, no harm or prejudice will be caused to the defendant if the interim order as sought for by the plaintiff is granted. Among these grounds, the applicants seeks that this Court be pleased to allow the application as prayed for.

3). Upon due service of the suit summons the defendant has appeared through her Counsel and filed written statement. The same is adopted as objection to the application by denying the case of Plaintiff.

It is contended in the written statement that, the Plaintiff has suppressed true facts before the Court and filed this false suit and application is liable to be dismissed as not maintainable. She also

denied the correctness of boundary and description of suit property. It is further contended that, she has been constructing the building as per the permission obtained from the village panchayath. She also denied the existence of suit property towards Western side of her property and also contended that, a road is situating between the both properties, in such circumstances, alleged illegal construction as claimed by the plaintiff would not arise. Among these grounds sought to dismiss the application with cost.

4). Heard the arguments on application by the Counsel for either side. Perused the materials available on record.

5). After carefully analyzing and upon the perusal of the plaint, affidavit sworn to the application and the objection put forth by the defendants and other materials available on record, the following points arise for my consideration.

POINTS

- I. Whether the plaintiff has made out a prima facie case to grant the relief as sought for in the IA-1.?**
- II. Whether the plaintiff proves that balance of convenience lies in his favour as regards the IA-1.?**
- III. Who will be put to irreparable loss and injury if the IA-1 is rejected or granted.?**



IV. What order.?

6). After giving its anxious consideration and after carefully perusing the documents produced at this stage of the matter, this court answers the afore raised points as under:

Point No.1 : In the Negative.

Point No.2 & 3 : In the Negative.

Point No.4 : As per final order for the following;

:: REASONS ::

7). POINT NO.1:

7.1). At the outset it is incumbent upon this Court to note here that, the provision that the Plaintiff seeks to invoke here is Order XXXIX Rule 1 and 2 of Civil Procedure Code. After perusal of the prayer sought in the IA-I it is needless to state that the case of the Plaintiff, as regards the IA-I falls within Clause (c) of Order XXXIX Rule 1 of Civil Procedure Code, which verbatim reads as follows:

“Where in any suit it is proved by affidavit or otherwise:- (inter alia).

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in

relation to any property in dispute in the suit.”

The reason why this court considers that the relief sought by way of this application falls within the ambit of clause (c) is because, the said clause seeks to protect the applicant from two apprehensions either dispossession or causing injury to the plaintiff's property; and because the relief sought by the plaintiff by way of this application is to restrain the defendant from interference, it becomes obvious that the apprehension of the plaintiff is that the activities of the defendant if not curtailed would cause injury to the plaintiff's possession over the suit schedule property. Needless to state in order to successfully maintain this application the plaintiffs should first demonstrate existence of *prima facie* case in their favor.

7.2). At the very outset it would be incumbent upon this court to clarify that, the rule that before the issue of a temporary injunction, the court must satisfy itself that the plaintiffs have a prima-facie case, it does not mean that, the court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which they are likely to succeed. All that, the court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent



defects.

7.3). Keeping the above principles in mind, let this court turn to the materials and pleadings available on record. With these aspects in mind when the records are perused, it becomes evident that the plaintiff claims *prima facie* case based upon the illegal construction without leaving set back by the defendant and causing obstruction to him. However, merely because the plaintiff is in possession of suit property and defendant constructing a building in her property, cannot maintain an application for interim injunction successfully, instead he has to demonstrate through some *prima facie* materials or documents in support of their case. In addition to this, he has to show what is the imminent threat from the defendant that prompted him to seek the relief of injunction.

7.4). On going through rival claim, it is not under dispute that, the plaintiff has been in possession and enjoyment of suit property and defendant is also in possession of her property bearing VPC No. 77 situating in the same village. It is also not under dispute that, the defendant has started to construct a building in her property. The only contention of the plaintiff is that, the alleged construction violates

construction plan and illegally constructing building without leaving any set back. Except the question of leaving set back, the plaintiff does not dispute the construction by the defendant.

7.5). During the course of arguments, the Counsel for defendant relied upon the sale deed of defendant and contended that, the defendant has been in possession and enjoyment of the property within the boundaries mentioned in the sale deed. He also contended that, towards Western side of said property, a road is situating and thereafter the suit property is situating. In such circumstances, leaving any set back or violation of building plan would not arise. Per contra, the Counsel for plaintiff contended that, the sale deed of defendant alone does not prove correctness of boundaries. In this aspect, he relied upon the panchayath records and order passed by the Executing officer, Ranebennur.

7.6). Admittedly, the Form No.9 produced by the plaintiff does not prove the boundaries of plaint schedule, wherein towards eastern side the property of one Saraswathavva is appearing and it nowhere prima-facie proves the property of defendant towards eastern side. Though the sale deed cannot be a final proof for boundaries, at this stage in the absence of any contrary proof it prima-facie proves



existence of road towards western side of defendant's property. The photographs produced by the plaintiff also show the existence of a road towards eastern side of suit property.

7.7). Further, the violation of building plan or the question of leaving set back comes within the purview of Panchayathraj Act and the Executive Officer, Ranebennur has already passed necessary order to that effect. The plaintiff also having the statutory rights under the Panchayathraj Act for violation of building construction plan or to question the illegal construction without leaving any set back. The plaintiff also produced a copy of interim order passed by the Hon'ble High Court in WP No.102994/2025, wherein the Hon'ble High Court was pleased to stay the building construction permission issued by the village panchayath in favour of defendant. In such circumstances, the apprehension of plaintiff as claimed in the present application would not arise.

7.8). Considering all these factual backgrounds, it is clear that, the plaintiff has failed to prove the correctness of boundaries of suit schedule property in order prove his prima-facie case. It is settled law that, the grant of injunction is a discretionary relief, the exercise

thereof is subject to the Court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff or defendant and the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue, before the legal right would be established at the trial and further that, the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Hence, at this stage, without going in to the merits of the case and holding mini trial, this court is of the considered that, the plaintiff failed to prove his prima facie case to grant the Temporary Injunction as claimed in the present application. As such this court proceed to answer the Point No.1 in the **Negative**.

8. Point No.2 and 3:

To avoid the repetition and ambiguity these two points are taken together for the consideration.

8.1). This Court has already gone on to hold on merits that, the plaintiff has failed to prove the existence of *prima-facie* case in their favor, under such circumstances this Court need not look into the other



aspects i.e., balance of convenience and also irreparable loss and this view of the Court is further supported by the decision passed by Hon'ble Apex Court in *Kashi Math Samsthan & Anr. Vs. Srimad Sudhindra Thirtha Swamy & Anr.*-**AIR 2010 SC 296** wherein it is held that :

“ In order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that, he has made out, prima-facie case to go for trial, the balance of convenience is also in his favor and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima-facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”

(emphasis supplied.)

8.2). The same view was also held by the Hon'ble High Court of Karnataka in *Sri Gowrishankara Swamigalu Vs Sri Siddhaganga Mutt* reported- **AIR 1989 KAR 1701**, wherein it is held that :

The existence of a prima-facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no

prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself."

But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leapfrogging by the plaintiff directly to an injunction without crossing the other hurdles in between."

(Emphasis supplied.)

So this Court, in view of its conclusion arrived at regarding *Point No.(i)*, this court is of the opinion that this Court need not proceed to consider the other aspects. Hence, in view of the above discussion and abiding by the legal principle laid down in the above decisions, this Court holds *Points No.(ii) and (iii) do not survive for consideration of this Court.*

9. POINT No.IV:

For the foregoing reasons and in view of the finding given by this court on *Point No. I to III*, this court proceeds to pass the following:



ORDER

**“IA No. I filed U/O. XXXIX Rule 1 and 2 R/w.
Sec. 151 of CPC by the plaintiff is hereby
dismissed.**

No order as to cost.”

(Dictated to the Stenographer directly on the computer, transcript is corrected and signed by me and then pronounced by me in the open court on this 02nd day of December 2025).

Sd/-

**(ADITHYAKUMAR H.R)
Pri. C.J.& JMFC Court
Ranebennur.**

