

KAKB220054882022



Presented on : 16-06-2022
Registered on : 17-06-2022
Decided on : --
Duration :

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

PRESENT

Sri. Yallappa Kallapur, B.A., LL.B, LL.M.,
PRL.CIVIL JUDGE & JMFC
ALAND

DATED THIS THE 22ND DAY OF JULY - 2024

O.S. NO.105/2022

PLAINTIFF/S : Shivasharanappa S/o. Dhundappa Kadaganchi.

-Vs.-

DEFENDANT/S : The Divisional Controller, NEKRTC.

I.A.I AND II

PLAINTIFF/S/APPLICANT/S:

Shivasharanappa S/o. Dhundappa Kadaganchi,
Aged: 60 years, Occ: Agriculture,
R/o. Kadaganchi, Taluka Aland,
District Kalaburagi.

(By Sri. B.A. Deshpande, Advocate)



-Vs.-

DEFENDANT/S/OPPONENT/S:

The Divisional Controller,
NEKRTC, Now at Kalyan Karnataka
Road Transport Corporation,
Division No.2, Kalaburagi.

(By Sri. R.S.Kulkarni, Advocate)

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**ORDER ON I.A.I AND II FILED U/O. XXXIX RULE 1 AND 2
OF CPC BY THE PLAINTIFF/APPLICANT**

I.A.No.I filed by the plaintiff U/o: XXXIX Rule 1 and 2 of CPC prayed to restrain the defendant, his agents, servants and all other persons claiming through him from illegally interfering in peaceful possession and enjoyment of the suit schedule property.

IA – II filed by plaintiff U/o: XXXIX Rule 1 and 2 of CPC prayed to restrain defendant, its agent, servant and all the persons claiming through it from making any construction of compound wall or any kind of construction by encroaching in any portion of the suit property.



2. In support of IA-I, plaintiff swear to an affidavit and pleaded that, he is an absolute owner, in possession of the land bearing Sy.No.198 hissa 1/1a measuring 0-08 guntas situated at village Kadaganchi. Further pleaded that, the defendant has purchased the part of the land through the registered document bearing No.623/1969-70 dated 23.12.1969, to an extent of 200' X 160' feet which measures 0 – 29 guntas for the purpose of construction of bus stand at Kadaganchi. Further swear that, the defendant has already constructed a room and bus stand by occupying some portion of the purchased land and the remaining portion is an open space which is used for alighting buses and also used for in-grace and out-grace of the public. Further swear that, in the year 2017, he approached the Deputy Commissioner Office at Kalburagi by filing an application dated 10.05.2017 to demarcate the area sold out by him to the defendants authority and also to point out the exact location of the suit property. In view of application filed by him, the Deputy Commissioner referred the matter to the Assistant Director of



Land Record Aland, directing him to demarcate the suit property and property sold to the defendant separately. After conducting the spot survey by the revenue authority sent the letter to the Deputy Commissioner on 17.11.2017. Further swear that, The taluka surveyor Aland has visited to the spot on 09.10.2017 and conducted the spot measurement of the land Sy.No.198 of Kadaganchi with the help of survey records and same has reported to the Deputy Commissioner Kalaburagi by specifically mentioning the exact location of the sold land and suit property. Further swear that, he has made revision petition U/Sec.136(3) of Karnataka Land Revenue Act, in the office of the Deputy Commissioner against the defendant and other revenue officials that revision was numbered as REV/08/2017. In the said revision petition the Deputy Commissioner has passed the order that he is at liberty to invoke his civil rights over the suit property by approaching competent civil court. Hence, he has prayed this court by invoke civil rights. Further pleaded that, the defendant absolutely no concerned to the suit property which



is behind the limits of open space purchased by the defendant from him or his father. Therefore, he has requested the defendant not to interfere in peaceful possession and enjoyment over the suit property, but the defendant is bent upon to cause illegal interference in possession over the suit property. Hence, prayed to restrain the defendant from illegally interfering with his peaceful possession and enjoyment of the suit schedule property.

3. The plaintiff swear to an affidavit to IA - II and pleaded that, on 17.06.2022 he has filed this suit against the defendant and also filed IA - I to issue an ad-interim injunction order restraining the defendant by considering this court has issued emergent notice on IA - I. Further swear that, when this case is stood for appearance of defendants that on 02.09.2022, he has received a phone call from Narona Police Station asking him to visit the police station for inquiry on the complaint of defendant. Accordingly, he went to the police station on 03.09.2022 and shown his all documents on the inquiry the Narona police revealed that, the defendants



are going to construct a compound wall by occupying the suit property and should not intervene in their construction work. Further swear that, he has pointed out while inquiring by police there is a survey of the land purchased by the defendant is demarcated by the Government surveyor which is to be protected and he has no any objection for the defendant to make the construction of the compound wall within the limits of the land purchased by the defendant authority but, the defendants are threatening to construction a compound wall by encroaching the suit property which is in his possession. He has no objection to construct the compound wall within the limits, what they have purchased area by the defendants authority for encroaching their property trying to construct the compound wall beyond the purchased area by the defendants. Further swear that, it is principle of law that, the parties should not alter the spot possession on the suit property during the pendency of the suit but, the defendants are high handedly planning to construct the compound wall by encroaching in the suit



property belonging to him. Under these circumstances, it is just and proper to restrain the defendants from making any new construction of the compound wall by encroaching his property. Hence, the application.

4. The applications resisted by the written objection and contended that, the defendants corporation is the absolute owner and possessor of existing building of KKRTC bus stand Kadaganchi. The said land was purchased under the registered sale deed vide document No.623/1969-70 in Sy.No.198/1A-1 measuring 200 X 160 feet dated 26.07.1969 from the father of the plaintiff for the purpose of construction of the bus stand. Further contended that, after taking possession, the defendants corporation has constructed the bus stand with one lady room and general waiting hall measuring 11 X 1 feet and 36 X 20 feet which was completed in the year 1971-72. Since, from the purchase, the defendants corporation is the absolute owner and possessor of the said land. Further contended that, the plaintiff by taking undue advantage of name of his father shown in the



ROR to the extent of 37 guntas approached to the Revenue Authority by submitting the application for mutation in collusion with the Revenue Authorities and got mutated illegally in his name without issuing notice to them with a malafide intention to transfer the said land. Further contended that, the defendants came to know about illegal mutation, immediately preferred a appeal before the Assistant Commissioner Kalaburgi by challenging the mutation order dated 03.07.2014 and directing the Tahasildar Aland to incorporate the name of the defendants in revenue record. Further pleaded that, for better facilities to provide the travelling public and the demands made by the public, the defendants corporation has started construction for compound wall. Thereafter, the plaintiff approached the Deputy Commissioner, Kalaburagi in Revision Petition No.8/2017-18. The said revenue petition was dismissed while observing that right reserved to approach the civil court for get relief. After disposal of the said appeal the plaintiff has filed this suit for perpetual injunction for restraining them to



not to construct the compound wall. Further contended that, they are the absolute owner and possessor of the suit property which has been purchased by them to an extent of 200 X 160 feet which is measuring 29 guntas. Further contended that, the defendants corporation has constructed the said bus stand, since then no dispute was arise till the death of father of plaintiff. After the death of father of the plaintiff, the plaintiff has filed the present suit for illegal gain from them. There is no piece of land in Sy.No.198/1A-1 of village Kadaganchi left, as already been in possession of the other person. The plaintiff only with an intention to harass the defendants authority has filed this present suit. There is no prima-facie case in favour of the plaintiff. Hence, prayed to reject the IA No.1 and 2.

5. Now the point arise for consideration are:

1. Whether the plaintiff made out prima facie case?
2. Whether balance of convenience lies in favour of the plaintiff?



3. Whether plaintiff will suffer irreparable injury, if injunction is rejected?
4. What order?
6. Heard on both parties on I.A.No.I.
7. Answer to above points are as below:

Point No.1 – In the Affirmative,

Point No.2 – In the Affirmative,

Point No.3 – In the Affirmative,

Point No.4 - As per order for the following.

REASONS

8. **POINT NO.1 to 3:** - These points are inter linked with each other. Therefore, they are taken-up together for common discussion.

On going through the contention of the learned counsels and having regard to the material on record this Court find that, grant of interim injunction during the pendency of legal proceedings is a matter resting with the excise of description of the court.

9. The instant suit has been filed by the plaintiff for the relief of perpetual injunction in respect of the suit schedule



property as shown in the schedule property annexed to the plaint.

10. Both parties to the suit produced as many as documents. On perusal of the pleadings and documents produced by both parties to the suit, it is not disputed by the both parties to the suit that, the defendants have purchased the land bearing Sy.No.198/1A-1 measuring 200 X 160 feet dated 26.07.1969 and further it is not disputed by the both parties to the suit that, the defendants have constructed the Bus Stand with one lady room and general waiting hall. Further it is not disputed that, to an extent of 29 guntas, the defendants authority had purchased. Further it is not disputed that, the defendants are going to construct the compound wall for better facilities to provide the travelling public and the demand made by the public.

11. According to the plaintiff the defendants authority has trying to construct the compound wall by encroaching the suit schedule property. According to the defendants, they are constructing the compound wall within the limits of area,



what they have purchased in the year 1969 for better facilities to the travelling public at large and on the demand of the public at large. After careful perusal of the documents which has been produced by the plaintiff. The document No.1 is the land bearing Sy.No.198/1A measuring 3 acres 5 guntas wherein column No.9 it appears that one Dharmanna S/o. Shivaraya Jambagi is the owner in possession of the suit property to an extent of 1 acre 3 guntas. The Executive Engineer, GESCOM Gulbarga is the owner in possession to an extent of 1 acre 1 guntas and Shivasharanappa S/o. Dundappa is the owner in possession to an extent of 8 guntas and defendants authority is owner in possession of 29 guntas. From this document at this juncture it is prima-facia discloses that, the plaintiff is the owner in possession of the suit schedule property to an extent of 8-guntas, the defendants authority is owner in possession to an extent of 29 guntas. Document No.2 is the xerox copy of the survey report and sketch dated 09.10.2017, wherein it appears that, the surveyor has surveyed suit property and shown the



possession of 29 guntas and possession of the 8 guntas by the plaintiff and defendants. Document No.3 is the certified copy of the order of the Deputy Commissioner wherein it appears in para No.5 of the said order that the applicant is at liberty to file the suit before the jurisdictional court to establish his rights. Document No.4 is the legal notice. Document No.5 is the reply to the legal notice and document No.6 is the photograph and document No.7 is he C.D.

12. After careful perusal of the entire document which has been produced by the plaintiff prima-facia at this stage it disclose that, the plaintiff is the owner in possession of land bearing Sy.No.198/1A-1 of Kadaganchi village to an extent of 08 guntas. The defendants are the owner in possession of 29 guntas in the said survey number. As per the contention of the plaintiff, the defendants are interfering with his peaceful possession and enjoyment of the suit schedule property and trying to construct the compound wall by encroaching his property. Moreover it is not disputed that, the defendants are the purchaser to an extent of 29 guntas and even in his



contention he has stated that, the defendants are at liberty to construct the compound wall within the limits of the land purchased by them. But, they are going to encroach the property belonging to him. Prima-facie at this stage these are all documents discloses that, the plaintiff is in possession of the suit schedule property to an extent of 08 guntas in land bearing Sy.No.198/1A-1. If the defendants constructed the compound wall by encroaching the suit schedule property then, that will cause multiplicity of proceedings and that will cause harm/loss to the plaintiff. Even the injunction order passed to an extent to not to interfere with the peaceful possession and enjoyment of the suit schedule property of the plaintiff and to not to construct the compound wall by encroaching the property of the plaintiff will not cause harm to both side. It requires trial to decide the matter. At this stage, plaintiff has made out the prima-faice case, balance of convenience lies in his favour. Hence, I answer **Points No.1 to 3 in the Affirmative.**



13. **POINT NO. 4:-** On the above discussion on Point No.1 to 3, I proceed to pass the following;

ORDER

I.A.No.I and II filed by the plaintiff
U/o.XXXIX Rule 1 and 2 of CPC is hereby
allowed.

It is hereby directed to restrain the
defendant, his agents, servants and all
other persons claiming through them from
illegally interfering in peaceful possession
and enjoyment of the suit schedule
property by the plaintiff.

Further it is directed to defendants,
its agent, servant and all persons claiming
through them from making any
construction of compound wall or any
kind of construction by encroaching in
any portion of the suit property.

It is explicitly made clear that any
observation or opinion expressed herein
above is for the limited purpose of
considering the instant application alone



and the same does not have any impact
on the trial and merits of the case.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by him,
corrected, signed & pronounced by me in open court on this
22nd day of July, 2024)

Date :22.07.2024.

(YALLAPPA KALLAPUR)
PRL. CIVIL JUDGE JMFC,
ALAND

Dictated on :22.07.2024.
checked on :22.07.2024.
Signed on : 22.07.2024.

(YALLAPPA KALLAPUR)
PRL. CIVIL JUDGE JMFC,
ALAND

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