



IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.

PRESENT

Sri. ANIL AMATE, B.A. L.LB(Hon's) ,
Civil Judge & JMFC.,
AFZALPUR.

Dated this the 10th day of September-2024

O. S. No.21/2024

Plaintiff: Sahebalal

(By Sri. D.B.Pujari Advocate)

V/s

Defendant: Saifansab

(By Sri. S.S.Patil Advocate)

PARTIES IN I.A.NO.I

Applicant: Sahebalal

V/s

Opponent: Saifansab

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**ORDERS ON APPLICATION UNDER ORDER XXXIX RULE 1 AND
2 R/w. SEC.151 OF C.P.C.**

The plaintiff has filed suit for declaration and perpetual injunction against the defendant and filed the above said



application seeking to grant ad-interim temporary injunction order in favour of him and as against the defendant by restraining him or his men or servants or any other person through and claiming under him from not to interfere and making any kind of construction towards Eastern side the open space of the plaintiff's suit property bearing plot No.2-75/2 measuring 60X32' situated at Karjagi village Tq:Afzalpur, Dist: Kalaburagi, till disposal of suit.

2. Briefly, the plaintiff's case is as follows:-

It is the case of the plaintiff's that, the plaintiff is absolute owner in possessor of suit property, the suit property was purchased by the father of plaintiff from one Shivappa S/o Vithoba Sulnapure on 24.06.1992 since the purchase of the property plaintiff is in peaceful possession without anybody interference, the defendants no where concerned to the suit property and plaintiff house towards eastern side suit property to the extent of 4 to 5 feet open space , defendant is trying to illegal construction building over the suit property with bad intention to the grab plaintiff's property. Therefore, the prayed for restrain the defendants carrying construction of building by granting ad interim injunction till the disposal of suit.

3. Per contra the defendant has filed objection by denying the all the averments of plaint and affidavit and the said that, the nowhere in the plaint shown that in which number of property the



defendant digging the foundation for construction, and the plaintiff has no evidence to the he is the owner of the suit property measuring 60X32 feet. The plaintiff without seeking the relief of recovery of possession the suit is not maintainable, the defendant has not taken construction as alleged by the plaintiff, not encroached the open space of plaintiff as 4 to 5 feet, the plaintiff never in the possession of suit property and plaintiff not shown the in which number the defendant taken construction work, the open space is not belong to the plaintiff, which self acquired property of one of the family member of the defendant, the filed the false suit with an intention to grab the property of the defendant and further he submitted that the family members of the defendant already constructed the building by purchasing the property and obtaining the construction permission, the plaintiff suit is false and baseless, hence prayed for the reject the application.

4. Heard arguments, peruse documents available on record.
5. In view of above the following points that would arise for my consideration on I.A.No.I are as follows:-

1. Whether, at this stage the plaintiff has made out a *prima facie* case lies in his favour?
2. Whether the plaintiff proves the balance of convenience lies in his favour?



3. Whether the plaintiff proves that in event of not allowing I.A.No.I, he will be put to irreparable loss and injury?

4. What Order?

6. My answers to the above points is as follows:-

Point No.1: In the **Negative**

Point No.2: In the **Negative**

Point No.3: In the **Negative**

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

:: REASONS ::

7. **Point No.1 to 3:-** Since these points are inter alia, they are taken together for common discussion. This is the suit of plaintiff for declaration and perpetual injunction against the defendant seeking not construct the building in the open space to the extent of 4 to 5 feet of the suit property. The plaintiff has produced sketch map, tax payment receipts, photos of construction work of defendant, in which property the name of the plaintiff is appearing in all these documents and in the sketch map the measurement is shown as east -west 32' and north -south60' but not shown the property number. The defendant not produced the any documents.



8. It is well settled principles of law that, in order to decide the application filed under order XXXIX Rules 1 & 2 of CPC, the basic principles that are to be considered are prima-facie case, balance of convenience and irreparable loss shall be taken into consideration.

9. So far as the prima-facie case it is observed that, in the above said tax paid receipt , name and property number appearing but there is measurement of the property,in the sketch map measurement is shown but not shown the property number. Therefore, the measurement of suit property it this not reliable balance of convenience and irreparable loss are concerned, the plaintiff has not established the prima-facie case there is no any violation of right title of the plaintiff. Under these circumstances, looking to the facts and circumstances of the case and the documents produced by the plaintiff, the balance of convenience not lies in favour of the plaintiff, as there need of the plaintiff in case a full fledged trial. Under the circumstances, this court is of opinion that, the balance of convenience not in favour of the plaintiff rather than the defendants.



10. So far as irreparable loss is concerned, it is the specific case of the plaintiff that, the suit schedule property is standing in the name of the plaintiff . In case, injunction is granted, the defendants would be put to heavy irrecoverable loss which cannot be compensated in terms of money. . In case an injunction is not granted, harm or prejudice may be going to cause to the plaintiff. Therefore, this court is of opinion that, it is the the plaintiff as well as defendant who will be put into heavy hardship and irreparable loss in case the injunction is granted which cannot be equated in terms money. Under the above said circumstances in order to avoid multiplicity of litigations and future complications this court thought it fit to not to grant the injunction order in favour of the plaintiff as prayed for but it is just and proper to maintain the both the parties of suit status quo in the suit property. Accordingly, this court answer points No.1 to 3 in the **Negative.**

11. **Point No.4**:- In view of the findings on points No.1 to 3,this court proceed to pass the following:-

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ORDER

The plaintiff and defendant are hereby directed to maintain the **status -quo** in the suit property until the further order.

No order as to cost.

(Dictated to the Stenographer, directly on computer, typed by him, corrected by me, signed and then pronounced in open court on this the 9th Day of September-2024)

**(Sri. Anil Amate)
Civil Judge & JMFC,
AFZALPUR.**