

IN THE COURT OF THE PRL.CIVIL JUDGE, AT K.G.F.

**PRESENT:- JAYAPRAKASH D.R. B.A., LL.B.
Prl. Civil Judge & JMFC: KGF**

Dated this the 1st Day of April 2016

O.S.95/2016

Plaintiff :-

**Srii.Jayaram Reddy,
S/o Late Gangammanavara
Rami Reddy, 60 years,
R/at Parandahalli Village & Post,
Via Robertsonpet, K.G.F.**

(Sri.S.A.Harinath-Advocate)

V/s.

Defendants:-

**1. B.C. Manjunath, 31yrs,
S/o M.B.Chandraiah,
R/at 4th Cross Road,
Robertsonpet, K.G.F.**

**2. Sri.S. Deepak,
S/o Sampath, 28yrs,
R/at Deepak Medicals
Pritchard Road,
Robertsonpet, K.G.F.**

(Sri. N.Sreenath -Advocate)

**ORDERS ON I.A.NO.I FILED BY THE PLAINTIFF U/O
39 RULE 1 AND 2 R/W SEC. 151 OF CPC.**

The plaintiff has filed the present application seeking an order of temporary injunction restraining the defendants from illegally interfering with the plaintiff's peaceful possession and enjoyment of the

suit schedule property and not to interfere in further construction work in the suit schedule property in any manner pending disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff has contended that, the suit schedule property originally belongs to one Rathnamma and he has purchased the said property from Rathnamma vide registered sale deed dated 3.11.2004 and he has become the absolute owner in possession and enjoyment of the suit schedule property. The khatha of the suit schedule property is also standing in the name of plaintiff. He had applied for building licence for putting up of construction over the suit schedule property and panchayath authorities have issued building licence on 2.12.2004 for putting up construction in the suit schedule property. Subsequently said building licence has been extended to the year 2015 i.e. on 15.2.2016 by the Panchayath Development Officer. He had put up construction of shop premises in the suit schedule property and the construction has reached molding level. The defendants have got no right, possession and enjoyment over the suit schedule property and they do not have any right to interfere with the plaintiff's

peaceful possession and enjoyment over the suit schedule property. The defendants have made valiant efforts to interfere with the construction work in the suit schedule property and in this regard he had lodged complaint to the jurisdictional police. However the police have failed to take action on the ground that the matter is purely civil in nature. The defendants and their family members on 1.3.2016 made attempts to interfere with the peaceful possession and enjoyment over the suit schedule property and made attempts to stop further construction work. He has resisted the illegal act with great difficulty. The defendants are still making hectic attempts to interfere and stop the further construction work in the suit schedule property. Hence he is constrained to file the present application and prayed for grant the relief claimed by him.

3. The defendants have filed objection to I.A.1 and denied the entire averments of the affidavit annexed to the application. On the other hand, the defendants have contended that, the plaintiff has not come to the court with clean hands and suppressed the material facts with respect to defendants filing suit in O.S.No.86/2016 and obtaining injunction order on

the file of Addl.Civil Judge, K.G.F. The defendants have filed a suit in O.S.,86/2016 and obtained an order of injunction not to put up construction in the pipe line area adjacent to their property on 29.2.2016. The defendants have sent compliance of order by R.P.A.D. to the plaintiff and his sons and the same is served on 2.3.2016. Hence, the plaintiff had knowledge of said suit. However, the plaintiff without disclosing the said suit has stealthily filed the present suit to grab an exparte order of injunction. Further contended that the defendants are the absolute owner in possession of the A B schedule written statement property having purchased the same under registered sale deed dated 25.2.2013 from Sri. M.Ananda Reddy and registered sale deed dated 25.2.2013 from Sri.M.Munivenkata Reddy. As per the sale deed the khatha is effected in the name of the defendants. The A schedule written statement property are sites formed out of alienated S.No.7/2 of Y.Jayarama Reddy. Further contended that there is Pipe Line Road on the Eastern side of the A schedule written statement properties and after the said Pipe Line Road there is Kyasamballi- KGF main road. The defendants have to go through the said Pipe Line road and reach the eastern Kyasamballi main road. The said Pipe Line

road is measuring about 12 feet in width and is more fully described as B schedule to the written statement. The defendants and other persons using the said Road and in particular the B schedule written statement property which is required by the defendants for his egress and ingress for the A schedule written statement property. There is underground water Pipe line in the said B written statement schedule Road. Hence, the said area is to be kept open without any blockage. The space in between the A schedule properties and the Kyasamballi Road is to be kept open for the defendants usage for egress and ingress from their respective A written statement schedule properties to go to Kyasamballi Road. Further contended that the plaintiff and his sons attempted to put up construction in the said B schedule road and blocking the defendants way to use the B schedule area and obstruct the enjoyment of the defendants over the B schedule Road and also use of his way to reach the eastern main road, hence they have filed a suit for permanent injunction in O.S.No.86/2016 and obtained an exparte order of injunction. Further contended that after coming to know of the said suit and injunction order, the plaintiff has filed the above suit and wanted to obtain

injunction order to put up illegal construction in pipe line road. A reading of the plaint schedule clearly shows that the plaintiff is illegally putting up construction in the pipe line road. If any construction is main the B schedule Pipe Line Road or if the said road is closed and if construction is made in the said eastern road, the defendants will have no other way to reach the Eastern side Kyasamballi main road and it will also be a public nuisance. That if any illegal construction has come up on the said road with the influence of the police after the passing of orders in O.S.No.86/2016., the plaintiff cannot be permitted to proceed with the said illegal construction and the plaintiff is not entitled to any orders at the hands of this Hon'ble court and the suit is liable to be dismissed. Further contended that the plaintiff has no prima facie case for grant of injunction and balance of convenience lies in favour of defendants. That if an order of injunction is granted, the defendants will be put to irreparable injury and loss. The plaintiff is not entitled to the discretionary relief of injunction and the application is liable to dismissed. Hence, prayed to dismiss the application.

4. From the consideration of rival contention, following points arise for consideration.

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that irreparable injury and hardship will be caused to him if temporary injunction is not granted?
4. What order?

5. Heard the arguments of both sides.

6. Upon appreciation of rival contention in the arguments advanced by the both parties, my findings to the above points as follows;-

Point No. 1 : In the negative

Point No.2 & 3: Does not survive for consideration

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

REASONS

7. **POINT NO.1 to 3:-** These points revolves around same set of facts and findings on one point

will have bearing on other points. Hence, I deem it proper to take up these points together for consideration.

8. It is the contention of the plaintiff that he has purchased the suit property from Rathnamma vide registered sale deed dated 3.11.2004 and he has become the absolute owner in possession and enjoyment of the suit schedule property. He had applied for building licence for putting up of construction over the suit schedule property and panchayath authorities have issued building licence on 2.12.2004 for putting up construction in the suit schedule property. Subsequently said building licence has been extended to the year 2015-2016 i.e. on 15.2.2016 by the Panchayath Development Officer. He had put up construction of shop premises in the suit schedule property and the construction has reached molding level. The defendants have got no right, possession and enjoyment over the suit schedule property and they do not have any right to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. The defendants have made valiant efforts to interfere with the construction work in the suit schedule property and in this regard

he had lodged complaint to the jurisdictional police. However the police have failed to take action on the ground that the matter is purely civil in nature. The defendants and their family members on 1.3.2016 made attempts to interfere with the peaceful possession and enjoyment over the suit schedule property and made attempts to stop further construction work. He has resisted the illegal act with great difficulty. The defendants are still making hectic attempts to interfere and stop the further construction work in the suit schedule property. Hence he is constrained to file the present application and prayed for grant the relief claimed by him.

9. It is the contention of the defendant that the plaintiff has not come to the court with clean hands and suppressed the material facts with respect to defendants filing suit in O.S.No.86/2016 and obtaining injunction order on the file of Addl.Civil Judge, K.G.F. The defendants have filed a suit in O.S.,86/2016 and obtained an order of injunction not to put up construction in the pipe line area adjacent to their property on 29.2.2016. The defendants have sent compliance of order by R.P.A.D. to the plaintiff

and his sons and the same is served on 2.3.2016. Hence, the plaintiff had knowledge of said suit. However, the plaintiff without disclosing the said suit has stealthily filed the present suit to grab an exparte order of injunction. Further contended that the defendants are the absolute owner in possession of the A schedule written statement property. Further contended that there is Pipe Line Road on the Eastern side of the A schedule written statement properties and after the said Pipe Line Road there is Kyasamballi-KGF main road. The defendants have to go through the said Pipe Line road and reach the eastern Kyasamballi main road. The said Pipe Line road is measuring about 12 feet in width and is more fully described as B schedule to the written statement. The defendants and other persons using the said Road and in particular the B schedule written statement property which is required by the defendants for his egress and ingress for the A schedule written statement property. There is underground water Pipe line in the said B written statement schedule Road. Hence, the said area is to be kept open without any blockage. The space in between the A schedule properties and the Kyasamballi Road is to be kept open for the defendants usage for egress and ingress

from their respective A written statement schedule properties to go to Kyasamballi Road. Further contended that the plaintiff and his sons attempted to put up construction in the said B schedule road and blocking the defendants way to use the B schedule area, hence they have filed a suit for permanent injunction in O.S.No.86/2016 and obtained an exparte order of injunction. If any construction is made in the B schedule Pipe Line Road or if the said road is closed and if construction is made in the said eastern road, the defendants will have no other way to reach the Eastern side Kyasamballi main road and it will also be a public nuisance. That if any illegal construction has come up on the said road with the influence of the police after the passing of orders in O.S.No.86/2016., the plaintiff cannot be permitted to proceed with the said illegal construction. Further contended that the plaintiff has no prima facie case for grant of injunction and balance of convenience lies in favour of defendants. That if an order of injunction is granted, the defendants will be put to irreparable injury and loss. The plaintiff is not entitled to the discretionary relief of injunction and prayed to dismiss the application.

10. The plaintiff has to establish that he has got prima facie case in his favour. It is settled principle of law that, the prima facie case does not mean that in all probabilities the plaintiff should succeed in the suit. However, a strong ground has to be made out by the plaintiff so as to grant temporary injunction .

11. In this application the plaintiff is seeking an interim relief of temporary injunction restraining the defendants from illegally interfering with the peaceful possession and enjoyment of the suit schedule property and from interfering with further construction of work in any manner during the pendency of the suit. It is important to note that even though the relief sought by the plaintiff seems to be plain and simple it has to be kept in mind that in case temporary injunction as prayed is granted it is nothing but permitting the plaintiff to go on with the construction as plaintiff, as sought not to interfere with further construction work. Hence, the case of the plaintiff has to be appreciated carefully. If the plaintiff prima facie makes out that he is constructing the structure in the property belonging to him, then there is no hurdle for grant of temporary injunction . However, if there is any reasonable doubt with respect

to place on which construction is carried out, then the plaintiff is not entitled for the interim relief.

12. In this background it is important to note that the plaintiff is claiming the relief with respect to property bearing khatha No.1226/27 measuring east to west 12 feet and north to south 43 feet. However it is the contention of the defendants that, the plaintiff is carrying out the construction in the pipe line road area which is vacant land between Kyasamballi main road to their house. Hence, specific contention of the defendants is that the plaintiff is carrying on construction in the pipe line area which is used by defendants for egress and ingress to the house of defendants.

13. At this juncture it is appropriate to rely upon the very documents produced by the plaintiff, as they are the documents of plaintiff himself and he cannot deny the documents produced by himself to the court. The plaintiff has produced sale deed dated 3.11.2004 under which he has purchased the suit schedule property from one Rathnamma. It is pertinent to note that eastern and southern boundaries are shown as pipe road. The plaintiff himself has produced a

sketch showing the location of dispute property. If the sketch is perused in the background of sale deed relied by the plaintiff, at any stretch of imagination there cannot be pipe line road on the two sides of the property of plaintiff. Further it is important to note that in the sale deed dated 3.11.2004 it is averred that a property measuring east to west 12 feet and north to south 43 feet is sold to the plaintiff and same measurement and description is given in the plaint schedule property. Hence it is clear that rectangle shaped property was purchased by the plaintiff. In this background it is important to note that the plaintiff has also produced copy of the sale deed of vendor Smt.Rathnamma dated 21.9.1999. The description of property in sale deed dated 21.9.1999 shows that the property measuring towards east 134 feet and west 107 feet, north 76 feet and south -0 feet. This description of property is shows that a triangle shaped property is sold. When that being so , the question of vendor of plaintiff Smt.Rathnamma selling square or rectangled shaped property giving eastern and southern boundaries as pipe road can not be accepted, until and unless it includes pipe line road.

14. The building licence said to be issued long back in the year 2004 which the plaintiff claims that the same is extended, also contains very same boundaries. The very boundaries furnished in the documents as well as plaint schedule probabalizes the contention of defendants that the plaintiff may be constructing the structure in the pipe line road area. When it is not very clear that the plaintiff is not constructing the structure in the pipe line road area, if the order of temporary injunction as prayed is granted then it will amounts to allowing the plaintiff to go on with the construction.

15. At this juncture, it is pertinent to note that in the normal circumstances the court will not restrain from further construction, if a substantial construction is already over. In this case also substantial construction is already over, however the defendants are contending that the said construction is carried out in violation of temporary injunction order granted in O.S.No.86/2016. Whatever may be the case, as the plaintiff has failed to make out prima facie by showing that he is not constructing in the pipe line

area, the order of temporary injunction as claimed by him cannot be granted.

16. The plaintiff has also filed letter of undertaking contending that in case property in which construction is carried out comes within the purview of defendants property then they will undertake to demolish the structure. It is also pertinent to note that the defendants are not claiming that the property where construction is carried out belongs to them. It is the case of defendants that the plaintiff is constructing in the pipe line area which is used as egress and ingress to their houses. Hence, the letter of undertaking filed by the plaintiff cannot be accepted.

17. As the plaintiff has got no prima face case for grant of temporary injunction, question of balance of convenience and irreparable loss and injury will not survive for consideration. Accordingly I hold point No.1 in the negative and point No.2 and 2 as does not survive for consideration.

18. **Point No. 4:-** In view of my findings on points 1 to 3, I proceed to pass the following:-

ORDER

I.A.No.1 filed by the plaintiff under order 39 Rule 1 and 2 r/w sec. 151 of CPC is hereby rejected.

Parties to bear their own cost.

(Dictated to the stenographer, typed by her on computer, corrected by me and then pronounced in the open court on this the **1st day of April 2016**).

**(JAYAPRAKASH D.R.)
Prl. Civil Judge & JMFC:
K.G.F.**

