

**IN THE COURT OF ADDL. CIVIL JUDGE, & JMFC.,AT**  
**SRINIVASPUR**

Dated this the 1<sup>st</sup> day of September 2017

: **PRESENT:**

**SRI. MOHAMMED ROSHAN SHA.,** MA. L L B.,  
ADDL. CIVIL JUDGE & JMFC.,  
SRINIVASPUR

**O.S.176/2016**

**PLAINTIFF/s** : **Srinivasulu,**  
S/o Jyothinagaram Subbaiah,  
Aged about 50 years,  
R/at Main Road, Gownipalli  
Village, Rayalpad Hobli,  
Srinivasapura Taluk.

V/s

**DEFENDANT/s** : **Syed Hussain Sab,**  
S/o Syed Haji Sab,  
Aged about 50 years,  
R/at Main Road, Gownipalli  
Village, Rayalpad Hobli,  
Srinivasapura Taluk.

**I.A.No.I**

**APPLICANT/s** : SRINIVASULU

(By K.S.P., Advocate)

**OPPONENTS/s** : SYED HUSSAIN SAB

(By K.P., Advocate)

**ORDER ON I.A.I**

The plaintiff has filed I.A. No.1 under Order 39 Rule 1 & 2  
R/w section 151 of CPC., restrain the defendant from putting up  
any wall construction over eastern portion foundation of suit  
schedule property, pending disposal of the suit.

2. The plaintiff in the accompanying affidavit to I.A.No.I contended that the plaintiff filed suit for the relief of Mandatory Injunction and Permanent Injunction against the defendant. It is further contended that, the absolute owner and in peaceful possession and enjoyment over the suit schedule property consisting Eastern 13 feet vacant space with two houses and western foundation and Lateren room totally measuring 2 guntas of land in Sy.No.176 out of 3 acres 7 guntas of Gownipalli Village. The plaintiff has acquired the suit schedule property under the registered sale deed dated 17-06-1993, document is written on 15-06-1993 for the valuable consideration of Rs.5000/- executed by the earlier owner brothers Kadriappa, Chinnapalla and Venkatravanappa all sons of Ajjappa of Gownipalli Village. He is in physical possession over the suit schedule property since from the date of registered sale deed till today. At the time of his sale deed the suit schedule property is revenue land of Gownipalli village which is situated a bit in to the eastern gramatana, accordingly his property has been joined in to the jurisdiction of Gownipalli grama panchayath by collecting the development charges from him accordingly the grama panchayath has incorporated his name in to all the panchayath records collecting

tax from him. The plaintiff has obtained the valid license from the grama panchayath and constructed residential house in the middle portion of the property leaving 13 feet vacant space in the eastern portion and laying foundation in the western portion with lateren room in the North-West corner. The defendant is subsequent purchaser of eastern boundary land from the same his vendors under registered sale deed. The defendant has also purchased southern boundary property but after 6 feet passage under the registered sale deed. Plaintiff has no objection to the eastern boundary land or southern boundary land after the passage. Such being the case the defendant who is purchased the eastern boundary property is entitled for the property only after his measurement which is East-West 66 feet, North-South 33 feet. But the defendant being the subsequent purchaser after effecting documents in to his name about 4 months back has illegally laid foundation in his eastern vacant portion encroaching his 13 feet vacant space without any right, title, interest and muchless possession. The defendant has no right to encroach his eastern portion inspite of it he has laid illegal foundation his encroached portion as well as in the property adjacently belong to him. He requested the defendant not to lay the foundation and

also lodged police complaint but the defendant has not responded to him and he has mercilessly encroached his eastern vacant space accordingly the defendants western portion foundation is laid illegally through the acts of trespass. He has no right to continue in the encroached portion of him. Now the defendant is making arrangement to put up house construction on the basis of present ready foundation of his property so also in his eastern vacant space and has collected building materials around the suit property. The defendant had also claimed his property in the southern boundary. But he is filed OS.No.70/2003 against the defendant with respect to the suit schedule property and the same is decreed in his favour on 06-04-2005. The defendant being the judgment sufferer has not challenged the judgment so far, hence the judgment in OS.No.70/2013 is binding on the defendant. After settlement of dispute the defendant has again disturbing him encroaching his eastern portion vacant space without right. On 09-07-2016 he requested defendant to vacate his encroached portion but he has denied the same. Hence this suit for mandatory injunction against the defendant because this court has already declared, he is absolute owner of the suit

schedule property against defendant in OS.No.70/2003. Hence plaintiff filed this suit along with I.A.No.I.

3. On the other hand the defendant has filed the written statement as to I.A.I and contended that he is the owner of the property bearing demand register No.1522 and property No.1185 measuring East-West 63 feet North-South 36 feet. The said property acquired by this defendant under registered sale deed dated 06-02-2002 (written on 30-01-2002) from its previous owner Sriramareddy S/o late Papanna of Gownipalli Village for valuable sale consideration of Rs.68,000/- ever since the date of sale deed this defendant is in possession of the property and he has laid foundation by living 2½ feet space on Western side. The said foundation is nothing to do with the plaintiff and so also his property. The above said Saraswathamma is none other than wife of the plaintiff and this defendant never encroach the alleged property of the plaintiff as pleaded by him. Per contra the plaintiff is habit of filing unnecessary suits the present suit is one among them. Hence the defendant prays for dismissal of I.A.No.1 filed by the plaintiff.

4. Heard counsel for the plaintiff and defendant.

5. The following points arise for my consideration:

1. **Whether the plaintiff has got prima-facie case and balance of convenience lies in his favour?**
2. **Whether the plaintiff will be put to irreparable loss and injury, if the order of T.I. is not granted?**
3. **What order?**

6. My answers to the above points are as follows:

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

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

Point No.3 : As per the final order for the following: -

### **REASONS**

7. **Point No.1 & 2** :- As the facts involved in point No.1 & 2, they are taken up together for common discussion to avoid repetition.

I have carefully perused the records, the plaintiff contended through this application that the plaintiff is absolute owner and in peaceful possession and enjoyment over the suit schedule property and the plaintiff has acquired the suit schedule property under the registered sale deed dated 17-06-1993, document is written on 15-06-1993 for the valuable consideration of Rs.5000/- executed by the earlier owner. He is in physical possession over the suit schedule property since from the date of registered sale

deed till today. At the time of his sale deed the suit schedule property is revenue land and it joined in to the jurisdiction of Gownipalli grama panchayath by collecting the development charges from plaintiff and his name incorporated to all the panchayath records by collecting tax from him. It is specific contention by the applicant/plaintiff that the defendant who is purchased the eastern boundary property is entitled for the property only after his measurement which is East-West 66 feet, North-South 33 feet. But the defendant being the subsequent purchaser after effecting documents in to his name about 4 months back has illegally laid foundation in his eastern vacant portion encroaching the property of plaintiff 13 feet vacant space without any right, title, interest and muchless possession. The defendant has no right to encroached his eastern portion inspite of the defendant laid illegal foundation by encroached portion as well as in the property adjacently belong to plaintiff. The plaintiff further contended that he requested the defendant not to lay the foundation and also lodged police complaint but the defendant has not responded to him and he has mercilessly encroached his eastern vacant space accordingly the defendants western portion foundation laid illegally through the acts of trespass. For the

above contention by the plaintiff has placed the registered sale deed dated 17-06-1993 which is disclosed that the plaintiff was purchased the suit schedule property and further placed the acknowledgment issued by the Gownipalli Police station that shows there is a dispute in respect of suit schedule property between the plaintiff and defendant. Further the plaintiff has placed certified copy of the O.S.No.70/2003 which is decreed in favour of the plaintiff in respect of the same suit schedule property against the defendant and permanently restrain to the above defendant from interfering with the plaintiff peaceful possession and enjoyment of the present suit schedule property. Even though the defendant has made attempt to interfering the possession and enjoyment of the plaintiff suit schedule property. For that reason the present application filed by the plaintiff for seeking relief that temporary injunction for restraining to defendant putting up any wall construction over the eastern portion of the suit schedule property. In my view there is a no impediment considering the above application and if the above application is not consider it will be caused multiple of proceeding and irreparable injury to the plaintiff, and also the very purpose of filing of the suit will be defeated and contention and rival

contention of the plaintiff and defendant will be decided at the stage of trial, So for the aforesaid reasons, in my view the plaintiff has made out a prima-facie case and balance of convenience lies in favour of the plaintiff and if the temporary injunction is not granted, the plaintiff will be put to irreparable loss and injury. Hence, I hold point No.1 and 2 in the **AFFIRMATIVE**.

8. **Point No.3**:- For the aforesaid reason and discussion, I proceed to pass the following: -

### **ORDER**

**I.A.No.1 filed by the plaintiff under Order 39 Rule 1 & 2 R/w section 151 of CPC is hereby allowed.**

**The defendant is restrained from put up any wall construction over the Eastern portion foundation of the suit schedule property, till the disposal of the suit.**

**Parties to bear their own costs.**

(Dictated to the Stenographer on computer and computerized by her, corrected by me and then pronounced in the open court on this the **1<sup>st</sup> day of September, 2017.**)

**(MOHAMMED ROSHAN SHA)**  
ADDL. CIVIL JUDGE & JMFC.,  
SRINIVASPUR.

