

KAMD610025122021



Presented on : 23-12-2021

Registered on : 23-12-2021

Decided on : --

Duration :

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

**DATED ON THIS THE 1<sup>st</sup> day of April 2022**

**:PRESENT:**

**Smt. YASHASHWINI AMEEN B, M.A., L.L.M.,  
C/c ADDL. Civil Judge & JMFC.,  
PANDAVAPURA**

**ORIGINAL SUIT NO.367/2021**

Plaintiffs : Chikkavenkatamma w/o late  
Narayana, aged 53 years, r/o  
Haralahalli village, Kasaba  
hobli, Pandavapura taluk,

(by Sri. TJP, Adv.)  
v/s

Defendants :  
1. Sannathayamma w/o late  
Nanjappa, aged 50 years,  
  
2. H.G.Rajagopala s/o late  
H.Javaraiah, aged 48 years,  
Both are r/at Haralahalli  
village, Kasaba hobli,  
Pandavapura taluk,  
  
3. Panchayath Development  
officer, Kennalu village  
Panchayath, Pandavapura  
taluk,

(Placed exparte)

**I.A.No.I**

Applicants : Chikkavenkatappa  
----- plaintiff  
v/s  
Opponents : Sannathayamma and others  
----- defendants

**:ORDERS**

**1.** The plaintiff has filed the application under Order 39 Rules 1 and 2 seeking for an order of temporary injunction restraining the defendants, their men, agent or anyone acting on behalf of them from interfering, constructing building in the suit schedule property till the disposal of the suit.

**2. Brief facts of the plaintiff case is that :** In the affidavit annexed to the application, it is stated that as per the order

No.6/87-88 dated 3.11.1987 Kennalu Mandal Panchayath, Pandavapura taluk had granted the suit schedule property to the husband of the plaintiff by name Narayana,. The husband of the plaintiff was died on 18.10.2012 leaving behind the plaintiff as the class-I legal heir. Accordingly, plaintiff became the absolute owner in possession of the suit schedule property.

- 3.** Further it is stated that, the defendant No.1 and 2 have constructed building by encroaching the suit schedule property. In this regard, plaintiff filed complaint before defendant No.2 panchayath on 16.3.2021. But defendant No.3 colluding with the defendant No.1 and 2, has not taken any acting against the defendant No.1 and 3.

Therefore plaintiff filed application before Taluk Panchayath on 14.7.2021. Accordingly, they have conducted spot mahazar and filed report. As per the report, the defendant No.1 had encroached east-west 8 feet in the suit schedule property. In spite of advice of the elderly people, the defendant No.1 and 2 have not stopped their illegal work. If the defendant No.1 and 2 are succeeded in their attempts, then plaintiff will be put to irreparable loss. Further plaintiff has stated that, she is having prima facie case against the defendants and balance of convenience lies in her favour. Hence, she filed this suit along with the application.

4. After registration of the suit, summons and emergent notice on I.A. no.1 is

issued to the defendants. Which is duly severed on the defendants, inspite of that they remained absent. Hence, defendant No.1 to 3 are placed exparte. Therefore, objection to I.A.No.1 by the defendants taken as nil.

**5.** Heard the argument canvassed by the learned counsels for the plaintiff on I.A No.1 and Perused entire materials on record.

**6.** On careful examination of contention of the plaintiff and materials on record, the following points arise for consideration of this court:

**Point No 1:** Whether the plaintiff has made out prima facie case in her favour?

**Point No 2:** Whether the balance of convenience lies in favour of plaintiff?

**Point No 3:** Whether the plaintiff will be put to irreparable loss and injury, if an order of temporary injunction is not granted?

**Point No 4:** What order?

**7.** The above points are answered 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**

**8. POINT NO.1 :-** Plaintiff is claiming to be the owner and in possession of the suit property. There by she is peaceful enjoying the same. But defendants No.1 and 2

without having right and title over the suit schedule property, they have constructed building by encroaching the east-west side of the suit schedule property. Hence she has filed this suit along with application. The record shows that, inspite of service of summons and notice, the defendants remained absent. Hence objection by the defendants taken as nil.

- 9.** In support of plaintiff case, she has produced hakku patra dated 1.10.1987 which stands in the name of Narayana who is non other then the husband of the plaintiff. Further she has produced Form No.9 & 11-A. As per the said document, plaintiff is in possession of the suit schedule property. Further she has produced tax paid receipts

and also she has produced the complaint given by the plaintiff before Village Panchayath and Taluk Panchayath.

**10.** The contention of the plaintiff is that, defendants No.1 and 2 have encroached the east-west side of the suit schedule property. In support of her plea she has produced xerox copy of the mahazar report. As per the said mahazar report, defendant No.1 has encroached east-west 6 feet of the plaintiff property. Further plaintiff has produced photos and CD. On perusal of the said photos, it is noticed that, defendants No.1 and 2 have constructed house upto the lintel level. Admittedly, the court cannot go into a mini trial at this stage. At this stage the court has to only look into the prima facie case and

whether there is no false or vexatious claim.

Keeping this view in mind now let me disuses

whether plaintiff is having prima facie case.

**11.** The documents produced by the plaintiff it is noticed that. As per the xerox copy of the spot mahazer defendants No.1 and 2 have encroached the east-west side 8 feet of the suit schedule property. Even though it is a xerox copy this court is well aware that the court shall not conduct a mini trial at the time of disposal of application for temporary injunction in order to determine the genuineness of the documents produced by the parties. But at the same time photos produced by the plaintiff clearly establishes that, defendants No.1 and 2 have already constructed house till lintel level. Whether

defendants have constructed house by encroaching the suit schedule property or not is matter of trail. In this regard, **the Hon'ble Apex court held in 2008 (11) SCC page 1 in case of Mandali Ramanna and others v/s P.Ramachandra and others.** It is held that,

*“application filed by the applicants seeking an injunction restraining the respondents from raising the construction in the schedule property and transferring or alienating the right in respect of property during the pendency of suit is not correct.”*

**12.** In this case also, plaintiff claiming temporary injunction for restraining the defendants from raising the construction in

the suit schedule property. If at all at this stage, the Temporary injunction is granted in favour of the plaintiff, then defendant No.1 and 2 will suffer irreparable loss because it is well known facts that to construct house people will invested huge amount. It will cause hardship for the defedants if Injunction is granted. In this regard Hon'ble High court of Karnataka held in ILR 2002 Kar 5351, wherein it has been held that

*“under Order 39 Rules 1 and 2 of CPC, the jurisdiction of the Court to grant an order of temporary injunction which is purely an equitable relief, apart from other considerations will look to the conduct of the party invoking the*

*jurisdiction of the Court and may  
refuse to grant the equitable relief  
unless has/her conduct is free  
from blame”*

**13.** The principles governing the granting of discretionary and equitable relief of temporary injunction are well settled. It is incumbent on the part of the plaintiff to prove and establish the *prima facie* and arguable case to go for trial, to get the order of temporary injunction in her favour from this court. It is equally necessary to demonstrate before the Court that the balance of convenience lies in favour of the plaintiff and if the order is not granted she will be put to irreparable loss and injury. The primary intention of granting the temporary injunction

is to preserve the subject matter of dispute till the right, title and dispute between the parties is decided and adjudicated in this suit.

**14.** So after considering the above aspects and documents produced before the Court and also taking into consideration the argument canvassed by the counsel, at this stage, the plaintiff has not been able to adduce any cogent and reliable evidence to show *prima facie* that the defendant's have encroached the property. Because as I have stated above the photos produced by the defendant establishes that house is constructed till lintal level. Further spot Mahazer report was prepared on 31-07-2021 but plaintiff filed suit on 23.12.2021, if at all plaintiff is really suffers irreparable loss then

definitely she would have approached this court immediately for the relief. Therefore, at this stage, it is not enough to believe the contentions taken by the plaintiff in her pleadings. Therefore, I am of the opinion that the plaintiff has not made out a prima facie case seeking the relief of temporary injunction against the defendants. Hence, **this court answer point No.1 in the Negative.**

**15. Point No.2 and 3 :-** Since these 2 points are inter-connected with each other, hence they are taken up together for common discussion in order to avoid repetition of facts.

**16.** As already stated while discussing point No.1 if the temporary injunction is not granted, no loss will be caused to the plaintiff . On the other hand it can be seen

from the records that if the injunction is granted, some hardship would be caused to the defendant No. 1 and 2. In view of my above findings, the I.A. No.I does not deserves to be allowed. The plaintiff has not made out prima facie case for grant of temporary injunction and balance of convenience does not lies in her favour and no injury will be caused to the plaintiff if the application is rejected.

**17.** However, if at all at the later stage, if it is proved, defendants have constructed building by encroaching the suit schedule property, then plaintiff has every liberty to alter the relief claimed in the suit. Further it is made clear that whatever discussions made by me and opinion formed by this court are

only for the purpose of disposal of this application and they are on the basis of the materials on record. Therefore, the parties shall not take the benefit from the said observations during the final disposal of this suit.

**18.** Hence plaintiff has not made out ground to show that she will suffer great hardship and loss if temporary injunction is not granted. The plaintiff at this stage has not proved that the balance of convenience lies in her favour. Hence, **this court answer the point No. 2 & 3 in the Negative.**

**19. POINT NO.4:** In view of my findings and discussions to the above points, this court proceed to pass the following:

**:: O R D E R ::**

**The IA No.1 filed by the  
plaintiff under Order 39 Rule  
1 & 2 r/w/s.151 CPC is  
hereby dismissed.**

**No order as to cost.**

*(Dictated to the Stenographer, transcribed by him,  
corrected, then pronounced by me in the Open  
Court on this the 1<sup>st</sup> day of April 2022)*

**(YASHASHWINI AMEEN B)  
C/c Addl. Civil Judge & JMFC.,  
Pandavapura**

Order pronounced in the open  
court vide separate order

:: O R D E R ::

**The IA No.1 filed by the  
plaintiff under Order 39 Rule  
1 & 2 r/w/s.151 CPC is  
hereby dismissed.**

**No order as to cost.**

C/c Addl. Civil Judge & JMFC.,  
Pandavapura.