



**IN THE COURT OF THE HONOURABLE ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

PRESENT: SMT. ASRINA.,B.A, LLB.
ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.

DATED THIS 1ST DAY OF AUGUST, 2024
O.S.No.332/2024

BETWEEN

PLAINTIFF	Shri.Manjunath Nagaraj, S/o Nagaraj, Aged:31 years, R/at: Sagarakatte Ramenahalli village, Yelawala Hobli, Mysore Taluk and District. (By Sri. L.V.R Advocate)
DEFENDANTS	1. Shri.Mohammed Shakeel, S/o Mohammed Iqbal, Aged:40 years, A.M.Traders and Hardware R/at: Ward No.18, Muslim Block, K.R.Nagar Town, Mysore District. 2. Smt.M.Rathanavathi, W/o Late.K.Shanthappa, Aged: 60 years. 3. Shri.Pavan K.S. S/o late K.Shanthappa, Aged: 33 years,

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	Defendants No.2 and 3 are R/at: No.1-105/1, Sri Venkateshwara Nilaya, Muddodi House, Chikkamudnoor Village & Post, Putturu Taluk, Dakshina Kannada District. 4. Smt.Ashwini K.S. W/o Amithkumar, D/o Late K.Shanthappa, Aged about 36 years, R/at: No.3/63, Koyagunde Permadu, Dakshina Kannada District. (By Sri.B.M.M Advocate)
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IA NO.1**BETWEEN**

APPLICANT	Shri.Manjunath Nagaraj, S/o Nagaraj, Aged:31 years, R/at: Sagarakatte Ramenahalli village, Yelawala Hobli, Mysore Taluk and District.
OPPONENT	Shri.Mohammed Shakeel, S/o Mohammed Iqbal, Aged:40 years, A.M.Traders and Hardware R/at: Ward No.18, Muslim Block, K.R.Nagar Town, Mysore District.

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Provision of law	Order 39 rule 1 and 2 R/w Section 151 of CPC.
Relief sought in the application	For a temporary injunction order to restrain the defendant No.1 from encroaching an extent of 5 feet of land in the suit property at its southern side till the disposal of the above suit.
Date of filing the application	29/06/2024.
Date of filing the objection to the application	23/07/2024.
Date of order	01/08/2024.

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

ORDERS ON IA.NO.1 FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC

Plaintiff has filed the present suit as against the defendant for the relief of perpetual injunction. Along with the suit the plaintiff has also filed IA.No.1 under order 39 rule 1 and 2 R/w Sec.151 of CPC praying to restrain the defendant No.1 from encroaching an extent of 5 feet of land in the suit property at its southern side till the disposal of the above suit.

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2. In the affidavit accompanying the IA.No.1 the plaintiff has inter-alia reiterated the plaint averments. It is averred that the plaintiff is a owner and possessor of the suit property and the same was purchased by the plaintiff from its previous owners namely the defendants No.2 to 4 herein under the registered sale deed dated 23.04.2024, registered on 02.05.2024 bearing document No.KRN-1-00396/2024-25. It is averred that after purchasing the suit property the same was mutated to the name of the plaintiff. It is averred that the plaintiff has also obtained the loan to the tune of Rs.22,96,000/- from SBI, K.R.Nagar Branch. It is averred that ever since from the date of purchase, the plaintiff is in peaceful possession and enjoyment of the suit property. It is averred that the plaintiff has purchased the suit property for his self occupation. It is the grievance of the plaintiff that the defendant No.1 being the adjacent land owner, whose property is situated towards southern side of the suit property, he is trying to encroach an extent of 5 feets of land in the suit property at its southern side by taking up the construction. It is the grievance of the plaintiff that by taking advantage of the fact that the plaintiff is a Government servant and therefore the plaintiff will not pick quarrel with him, from the 1st week of June 2024 the defendant No.1 is trying to put up the illegal construction by encroaching an extent of 5 feets of land at the southern side of the suit property. It is the grievance of the plaintiff that without having any manner of

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right over the suit property, the defendant No.1 is illegally trying to put up the construction by encroaching an extent of 5 feet of land in the suit property towards its southern side. It is the grievance of the plaintiff that by using the money and muscle power, the defendant No.1 is trying to interfere with the peaceful possession of the plaintiff over the suit property by making an attempt to encroach the suit property at its southern side. It is averred that though the plaintiff has approached the police complaining about the illegal acts of the defendant No.1, but the police have refused to receive any complaints as against the defendant No.1. Therefore the plaintiff has averred that the acts of the defendant No.1 is highly illegal and high handed and the same is against the law. Therefore, the illegal acts of the defendant No.1 has to be checked by this court by granting the reliefs as sought for in the instant application. If not the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Therefore, having no other efficacious remedy, the plaintiff was constrained to file the above suit. Apprehending the possibilities of the defendant No.1 taking construction over the suit property, the plaintiff herein has filed the instant application praying to restrain the defendant No.1 from encroaching an extent of 5 feet of land in the suit property at its southern side until the disposal of this suit. The plaintiff has averred that he has made out a prima facie case and the balance of convenience also lies in his favour. If the

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order of temporary injunction is not granted to the plaintiff as sought for in the instant application, then the plaintiff will be put to irreparable loss and injury which cannot be compensated in terms of money. Hence, on the above grounds the plaintiff has prayed to allow the application.

3. In pursuance to the summons issued by this court, the defendant No.1 has appeared before this court through his counsel. The defendant No.1 has filed the written statement and by filing the memo the defendant No.1 has adopted his written statement as a counter to IA.No.1.

4. The defendant No.1 has seriously opposed the IA.No.1 by denying the claim of the plaintiff. The contention of the plaintiff that the defendant No.1 is trying to construct his house by encroaching the suit property was denied by the defendant No.1 and thereby the defendant No.1 has contended that he is a owner and possessor of the written statement schedule property. The defendant No.1 has contended that he has purchased the written statement schedule property from its previous owner under the registered sale deed dated 18.02.2021. The defendant No.1 has contended that ever since from the date of purchase, he is in peaceful possession and enjoyment of the written statement schedule property. The defendant No.1 has contended that ever since from the date of purchase he started the construction of his

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house in the written statement schedule property step by step. It is the contention of the defendant No.1 that the construction work of his house in the written statement schedule property is already concluded and only minor works are pending to be carried out. The defendant No.1 has contended that the written statement schedule property is situated at the southern side of the suit property. The defendant No.1 has further contended that the plaintiff has purchased the suit property very recently i.e., on 02.05.2024 and after purchasing the suit property the plaintiff has also laid fences to the suit property. Even before purchasing the suit property by the plaintiff, the defendant No.1 had started the construction of his house in the written statement schedule property. The defendant No.1 has further contended that he has already concluded the construction work. It is at this juncture, the plaintiff has filed the present false suit with a malafide intention of stopping the completion of construction work of the house of the defendant No.1 by using the order of injunction. The defendant No.1 has contended that by suppressing all the above true facts the plaintiff has filed the present false suit. The defendant No.1 has specifically contended that he is not constructing his house in the suit property and rather he is constructing the house in his written statement schedule property. But only with a malafiede intention to harass the defendant No.1 and to put him to the unnecessary litigations, the plaintiff has filed the present false

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suit. The defendant No.1 has contended that the plaintiff has filed the present suit by suppressing the true facts and obtained ex-parte temporary injunction order as against the defendant No.1. The defendant No.1 has contended that if at all the order of ex-parte temporary injunction granted earlier is not vacated, then the defendant No.1 will suffer irreparable loss which cannot be compensated in terms of money. Therefore, with the above contentions the defendant No.1 has sought for dismissal of the application.

5. Heard arguments from both the side. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

Point No.1: Whether the plaintiff has made out a prima facie case against the defendants?

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

Point No.3: If the order of temporary Injunction is not granted in favour of the plaintiff, whether the plaintiff will suffer irreparable injury or hardship which cannot be compensated?

Point No.4: What order?

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

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- Point No.1** : In the Affirmative.
Point No.2 : In the Affirmative.
Point No.3 : In the Affirmative.
Point No.4 : As per the final orders for the following:

REASONS

7. POINT NO.1: Plaintiff has filed the present suit as against the defendant for the relief of perpetual injunction. By filing the instant application the plaintiff has prayed to restrain the defendant No.1 from encroaching an extent of 5 feet of land in the suit property at its southern side untill the final adjudication of the above suit.

8. In an application filed under Order 39 Rule 1 and 2 of CPC the plaintiff must show that he has a prima facie case. "*Prima facie case*" means that the plaintiff must prove to the satisfaction of the court that there is a case to go for a trial and there is a arguable case and that the plaintiff also must prove to the satisfaction of the court the probability of the plaintiff obtaining the reliefs at the conclusion of the trial.

9. In the case on hand, it is the contention of the plaintiff that he is a owner and possessor of the suit property. Along with the plaint the plaintiff has produced the sale deed, khata and tax paid receipts in respect of the suit property and the same discloses that the suit property is standing in the name of the plaintiff. It depicts that the plaintiff has some semblance of right over the suit

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property. When the plaintiff has a semblance of right over the suit property, the plaintiff is very much entitled to protect the suit property by filing a suit. Therefore I conclude that the plaintiff has made out a prima facie case to go for a trial. Since the materials placed on record prima facie shows that the plaintiff has semblance of right over the suit property, after the trial, if at all the plaintiff succeeds in establishing his case, then the plaintiff will surely obtain the reliefs at the conclusion of the trial. Whether the defendant No.1 is constructing the house by encroaching the suit property at its southern side or not, the same has to be decided by holding a full fledged trial. Hence the present *lis* needs a complete trial. But the trial in this case is not yet commenced. There is a arguable case in the present *lis*. Therefore I conclude that the plaintiff has made out a prima facie case to go for trial and that there is a arguable case. Thereby I conclude that the plaintiff has made out a prima facie case as against the defendant. **Accordingly, Point No.1 is answered in the Affirmative.**

10. POINTS NO.2 & 3: Since the discussion on points No.2 and 3 are interconnected, in order to avoid repetition, the above points are taken up together for a common discussion.

11. In an application filed under Order 39 Rule 1 and 2 of CPC apart from *prima facie* case, the plaintiff also must invariably

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prove that the balance of convenience lies in his favour and so also it is incumbent on the part of the plaintiff to prove that if an order of temporary injunction is not granted then the plaintiff will suffer irreparable loss and injury.

12. In the case on hand, the pleadings put forth by the plaintiff discloses that the defendant No.1 is trying to construct his house by encroaching an extent of 5 feet of land in the suit property at its southern side. It is not the case of the plaintiff that the house of the defendant No.1 which is under construction, the same is constructed by the defendant No.1 in the suit property. It is not the case of the plaintiff that the house of the defendant No.1 which is under construction, the same was constructed by encroaching the suit property. There is no allegation of encroaching the suit property as against the defendant No.1 while constructing his house. It is not the case of the plaintiff that the defendant No.1 has constructed his house by encroaching the suit property at the southern side. Plaint as well as the affidavit accompanying the instant application discloses that the defendant No.1 has only made an attempt to take up the construction over the suit property. Only by apprehending that the defendant No.1 may take up construction over the suit property, the plaintiff has filed the present suit to restrain the defendant No.1 from encroaching the suit property. Even in the plaint as well as in the instant application the plaintiff has prayed to restrain the

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defendant No.1 from encroaching the suit property. On the other hand even the defendant No.1 has also categorically contended that he is not taking any construction over the suit property and rather he is constructing his house in his written statement schedule property.

13. The present suit is at the very initial stage and therefore, in the absence of evidence, the present application has to be decided based on the averments made by the parties to the suit in their respective pleadings and the material placed before the court. Close scrutiny of the pleadings made by the plaintiff and the defendant No.1 makes it clear that so far the defendant No.1 has not made any encroachment over the southern side of the suit property. So also it makes it clear that the defendant No.1 has not constructed his house by encroaching the suit property at the southern side. The plaintiff has filed the present suit and the instant application with the strong apprehension that the defendant No.1 may take up the construction by encroaching the suit property. Therefore it is necessary to prevent the defendant No.1 from taking up any sorts of construction over the suit property. Whether or not there is any attempt on the part of the defendant No.1 to encroach the suit property at its southern side, the same can be ascertained only by holding the trial. Materials placed on record by the parties discloses that so far the defendant

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No.1 has not made any encroachment over the southern side of the suit property while constructing his house. As apprehended by the plaintiff, in furtherance of his attempt, if at all the defendant No.1 takes up any further construction over the suit property, then the same will cause irreparable loss and hardship to the plaintiff. Admittedly the defendant No.1 has no manner of right over the suit property. Therefore, preventing the defendant No.1 from taking up any sorts of construction over the suit property will not cause any hardship to the defendant No.1. The balance of convenience lies more in favour of the plaintiff. Therefore, I am of the considered opinion that the defendant No.1 must be restrained from encroaching the 5 feet of land in the suit property at its southern side till the disposal of the above case.

14. Further, the defendant has produced the photographs of his house. The same discloses that the construction of the house of the defendant No.1 is already completed and only minor works are pending to be carried out. The copy of the sale deed produced by the plaintiff discloses that the suit property was purchased by him only on 02.05.2024. The plaintiff has pleaded that only after purchasing the suit property the defendant No.1 has started construction of his house in the written statement schedule property. The records reveals that the plaintiff has filed the present suit on 29.06.2024 wherein in the boundaries of plaint

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schedule the plaintiff has shown the written statement schedule property as a vacant site. On 23.07.2024 the defendant No.1 has appeared before this court through his counsel. The photographs of his house submitted by the defendant No.1 is not disputed by the plaintiff and the same discloses that as on 23.07.2024 the construction of the house of the defendant No.1 is almost concluded barring minor works. But the plaintiff has pleaded that as on 29.06.2024 the written statement schedule property is a vacant site. But the photographs submitted by the defendant No.1 discloses that the construction of the house of the defendant No.1 is almost concluded barring minor works. **This court takes judicial notice of the fact** that construction of the double storey building of the defendant No.1 can not be completed within a span of 24 days i.e., in between 29.06.2024 to 23.07.2024. Hence, the very claim of the plaintiff that as on the date of filing of this suit i.e., as on 29.06.2024 the written statement schedule property was a vacant site becomes doubtful. Adding further, during the course of arguments, the learned counsel for the plaintiff has argued that the defendant No.1 has constructed his house in the written statement schedule property without obtaining construction permission and therefore learned counsel for the plaintiff has argued that the house of the defendant No.1 is a illegal construction inviting legal consequences as provided under Section 181 and 187 of Karnataka Municipalities Act. This court is

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not inclined to consider the said line of arguments canvassed by learned counsel for the plaintiff at this juncture for the reasons that if at all the defendant No.1 has constructed his house without obtaining necessary license, the remedy of the plaintiff is to approach the concerned authorities established under the Karnataka Municipalities Act. Therefore, on the said aspect I hold that the remedy of the plaintiff lies somewhere else.

15. As sated above, there is no allegation of encroaching the suit property as against the defendant No.1 while constructing his house. It is not the case of the plaintiff that the defendant No.1 has constructed his house by encroaching the suit property at the southern side. Therefore, when the defendant No.1 has not constructed his house over the suit property, no purpose will be served by preventing the defendant No.1 from completing the construction work of his house. Rather, preventing the defendant No.1 from completing the construction work of his house will cause hardship to the defendant No.1. **By way of this order, the defendant No.1 is only prevented from encroaching and taking up any sorts of construction over the suit property. However it is made it very clear that this order will not come in the way of the defendant No.1 from completing the work of his existing house which is already constructed in the written statement schedule property.** Accordingly, for what has been discussed above, I answer **points No. 2 & 3 in the Affirmative.**

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16. POINT NO.4: In view of my foregoing discussions on points No.1 to 3, I proceed to pass the following:

ORDER

IA.No.1 filed by the plaintiff under order 39 rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

By an order of temporary injunction, the defendant No.1, his men, servants, agents, anybody claiming through or under him are hereby restrained from encroaching the suit property at its southern side until the disposal of this suit.

It is made it clear that this order will not come in the way of the defendant No.1 from completing the work of his existing house which is already constructed in the written statement schedule property.

It is further made it clear that the observations made in this order is only restricted to decide the IA.No.1 and the same will not come in the way during the final disposal of the above suit.

Considering the facts and circumstances of the case there is no order as to costs.

(Dictated to the Stenographer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **1st day of August 2024**)

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.