

KAMS410035352022



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 01ST DAY OF MARCH 2025

O.S./495/2022

Plaintiff : Nandini

-V/s-

Defendants : Smitha and another

I.A. No.I

Applicant : Nandini

--- Plaintiff

-V/s-

Opponents : Smitha and another

--- Defendants

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 OF C.P.C

The applicant/plaintiff presented this application against the defendants to restrain them or anybody acting on their behalf from causing any interference in respect of the application schedule property in any manner till the disposal of the suit.

2. Further the applicant filed his affidavit to buttress and to support his application and submitted that, she is the owner

of the schedule property and she has been residing over the said property constructing the residential house. Further, the house has been erected and built in the property from the assistance of the Government and monitory benefits granted to the applicant herein through the Government Housing Schemes. Thereafter, by instilling the electric and water facility and connections, she has been using and occupying the said property.

3. Further, as per the applicant towards the southern side, the house property of the 2nd defendant has been in existence and towards north the defendant No.1 is constructing residential house. Further as per the applicant, the defendants are trying to encroach upon the property of the plaintiff from the north and southern side and they are trying to put up construction without leaving any setbacks or space for the purpose of accessing air, light and other natural calamities. If the defendants are allowed to build and construct the structures, the easement right of the plaintiff to use the air, light will be curtailed and the plaintiff will not be in a position to use the said natural resources which is available to the plaintiff.

4. Therefore, according to the applicant despite and also in spite of several requests and panchayaths were held between the parties, they did not heed or obeyed or honored the words of the plaintiff or the elders in the village, they went on

constructing without leaving any mandatory space or setbacks, if they are not restrained, the plaintiff will not be in a position to access the setbacks for her legal necessities and other activities to use the schedule property. Therefore, the application has been filed for the purpose of expecting an order of injunction from this court, wherein to restrain the defendants from causing any interference and their acts of illegal trespass into the schedule property and put up any constructions on and over the schedule property.

5. Thereafter against this application and resisting the averments of the applicant, the defendants filed their objections, wherein they completely, specifically and prominently declined and also disputed each and every recitals and paragraphs of the application. Further according to the very defendants, the property of the defendants is originally belongs to one Shivashetty in whose favour the land it was sanction certificate of rights (Hakku Pathra) has been issued under the housing scheme. Thereafter, one Manjula has purchased the said site property from the said Shivashetty by virtue of the sale deed.

6. Thereafter, the defendant No.1 intern purchased the property from the Manjula through the sale deed dated 30.05.2020. Thereafter, the defendant No.1 obtained the building license from the municipality, K.R.Nagar, and after obtaining the license, residential house and building has been

built and erected in the said property, the khata has been obtained and transferred to the name of the defendant No.1. Further, the electricity and water connections were also instilled and provided to the property of the defendant No.1 and they are paying all sort of revenue and relevant taxes to the Government. Further, it has been specifically contemplated and asserted by the defendants in their objections that, the plaintiff is not having any right over the property of the defendants and they have not encroached the property or the vacant space belongs to the plaintiff herein. Hence according to the opponent, the application has been filed for unlawful gains. Hence, prays for dismissal of the application.

7. Heard the rival litigants and also counsel representing the parties regarding the application.

8. The following points arise for this court's consideration.

1) Whether the applicant/plaintiff made out that, she has got a prima-facie case on hand?

2) Whether the applicant further made out that, the balance of convenience lies in her favour?

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to her, if the present application is not allowed?

4) What order?

9. This court findings on the above points for consideration are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

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

REASONS

10. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

11. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the application which is filed U/o 39 R-1 and 2 of C.P.C., the relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

12. Further, admittedly there is no evidence on record to consider the applications on the basis of the evidence.

Further, the parties to the suit are yet to lead their evidence. Accordingly, in the absence of any evidence to discuss the applications, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

13. Upon appreciating the pleadings along with the materials placed before this court, the plaintiff is the owner of the schedule property and the defendants are having their residential house adjacent and next to the house property of the plaintiff herein is not under conflicts and dispute. The defendant No.1 is located adjacent and also next to the house property of the plaintiff in the northern side and the 2nd defendant is also having house property towards the southern side of the plaintiff schedule property. The same is clearly disclosed and also evident from the documents and admission of the defendants in their statements pertaining to the allegations and propagation.

14. Wherein the plaintiff has been imputing and taken specific divergent contention that, the said property of the plaintiff herein has been illegally touched and encroached by the defendants. Where the defendant No.1 is trying to erect compound on and over the property of the plaintiff by utilizing the entire property of the plaintiff and without leaving and providing any space or setbacks for the purpose of accessing the air, light and other natural resource and calamities.

Therefore as per the contentions of the applicant, if the defendants are not restrained and if they are allowed to put up constructions, heavy hindrance or interruptions will be caused upon the plaintiff/applicant.

15. Wherein the said allegations portion have been clearly disputed and denied by the defendants, where according to the defendants as per their objections, the construction has been put up within the parameters and boundaries of the property belongs to the defendant No.1 obtaining license from the concerned Department. Accordingly the allegations of the plaintiff in respect of interference and encroachment are very fraudulently and manifesto and significantly denied.

16. Further construction of any building or structure, without any setbacks means and it will also implies building or structure directly on the property lines or without required space left between the buildings and the boundaries of the other land. Further, mere pleadings and counter pleadings regarding encroachment and the allegations of the illegal interference does not enough and sufficient to the court so to conclude and decide that, whether what has been the actual portion of encroachment has been caused on account of illegal possession of the property of another person. Further, the said prospect and also the material proposition may be dealt separately during final adjudication of the suit.

17. Further, the said factum and the issue can be decided only after the evidence sufficiently led before this court so to enable the court to have the correct glimpse and an idea to adjudicate the issue which is having direct concern and implication on and over the schedule property. Since, the suit is one bare injunction knowingly the property which is annexed to the plaint is standing in the name of the plaintiff herein, if the construction is carried out and it will certainly leads heavy implications and repercussion and may also leads and give rise for multiplicity of the proceedings. Therefore, in order to avoid such an uncertainty and to protect the property from being damaged or destroyed until the final adjudication of the suit, the defendants may be directed not to cause any interference on and over the schedule property till the final adjudication of the suit. Hence the **point No.1 to 3 are answered in the Affirmative.**

18. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A No.I filed under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendants are hereby restrained from causing any interference in respect of the application schedule

property in any manner till the disposal of the suit.

However it is made clear that, the view expressed by this court in adjudicating the application is only limited for the purpose of consideration of the application and it will not come in the way of adjudicating the suit on merit.

No orders as to cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of March 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.