

KAMS410035352022



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

PRESENT

Sri. Chandan S, B.Com., LL.B

Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 03RD DAY OF NOVEMBER 2025

O.S. No. 495/2022

Plaintiff : Nandini W/o Sunilkumar.S.
Aged about 32 years,
R/at Ward No.3,
Bannimantapa Extension,
K.R.Nagar Town & Taluk,
Mysuru District.

(Rep. By Sri. V.A.K., Advocate)

V/s

Defendants: 1. Smitha W/o Santhosh @ Santhu,
Aged about 30 yeas,

2. Savithramma W/o Prabha,
Aged about 55 years,

R/at Ward No.3,
Bannimantapa Extension,
K.R.Nagar Town & Taluk,
Mysuru District.

(Rep. By Sri. S.K.M., Advocate)

ORDERS ON PRELIMINARY ISSUE NO.3

This Court has framed issue No.3 on 28.08.2025 and treated the Issue No.3 as Preliminary Issue. Issue No.3 is as under;

1. Whether the suit is not maintainable for want of proper cause of action as contended in the para No.6 of the written statement?

2. The present suit has been instated, brought and enrolled before this court for the relief of injunction, the plaintiff 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 plaintiff 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 plaintiff, 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 and resources. 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 plaintiff, 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. Hence, prays for decreeing the suit.

5. Further, on the contrary, adverse, discrete, challenging, retaliating, impugning and disavowing the said pleadings of the plaintiff, they have filed their statement. Further the defendants in their statements they would plead, contemplate, canvas, stipulate and proposed that, the property of the defendants is originally belongs to one Shivashetty in whose favour the land was sanctioned and 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 inturn 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 defendant, the suit has been filed for unlawful gains. Hence, prays for dismissal of the suit.

7. Heard both sides, perused the documents available on record.

8. The points that would arise for consideration of the Court is:

1. Whether the suit is not maintainable for want of proper cause of action as contended in the para No.6 of the written statement?

9. Findings to the above point is as under:

Point No. 1 : Negative for the following:

REASONS

10. POINT NO.1:

Admittedly as per the stature, contention, stand and the vehement statement of the plaintiff that, she is the absolute owner and possessor of the suit schedule property, having constructed, erected, built, and maintained a residential house thereon. She has further availed the monetary benefits under industrial schemes and projects, installed electricity and water connections, and has been regularly remitting charges to the respective departments, thereby continuously residing in and occupying the property.

11. The plaintiff submits that, towards the southern side lies the property of the second defendant, and towards the northern side lies the property of the 1st defendant. The defendant No.1 is presently attempting to construct a residential house abutting the plaintiff's property on the northern side. The defendants, in collusion, are trying to encroach upon the plaintiff's property from both the northern and southern sides. They are also attempting to raise

constructions without leaving mandatory setbacks or spaces, thereby obstructing access to air, light, and other natural resources essential for the plaintiff's enjoyment of her property.

12. The plaintiff further contends that, if such construction is permitted to continue, it will curtail and restrict her lawful rights to air, light, and ventilation, besides causing grave hardship, inconvenience, and material injury to her peaceful possession and enjoyment of the property. It is specifically pleaded that, despite repeated requests made by the plaintiff calling upon the defendants to desist from raising constructions without setbacks or leaving space, the defendants did not heed the request and continued with their activities in utter disregard to the plaintiff's objections.

13. The cause of action for the present suit arose on 20.08.2022, when the defendants, ignoring the plaintiff's protest, commenced and continued their unlawful constructions. Accordingly, the plaintiff has instituted the present suit seeking a permanent injunction restraining the defendants from putting up or raising any construction abutting the plaintiff's property without leaving required setbacks or mandatory spaces as contemplated under law.

14. On the contrary, while denying, disputing, and disdaining the entire set of allegations put forth by the

plaintiff, the defendants have filed their written statement before this Court. According to Defendant No.1, she has purchased the property from Smt.Manjula, under a registered sale deed dated 30th May 2020. Subsequent to the said purchase, she has obtained a building license from the K.R.Nagara Municipality, and in pursuance thereof, she has lawfully constructed and erected a residential house in the said property. The khata of the property has been duly transferred in her name, and the electricity and water connections have also been sanctioned and installed. The defendants are regularly paying all statutory revenue, taxes, tariffs and charges to the concerned departments, thereby establishing their lawful possession and ownership.

15. The defendants further contend that, the plaintiff has no manner of right, title, or interest in or over the property belonging to the defendants. There has been no encroachment whatsoever upon any portion of the plaintiff's property. At Para 8 of the written statement, the defendants have specifically taken the contention that, no cause of action has ever arisen against them. The present suit has been falsely, frivolously, and vexatiously instituted with an intention to harass the defendants and stall their lawful construction. Therefore, the defendants submit that, the suit being baseless, untenable, and devoid of merit, is liable to be dismissed in limine and threshold. In view of these rival

contentions, Preliminary Issues were framed and recorded by this Court, and the matter is now placed for orders on Preliminary Issue No.3.

16. At the stage of considering a preliminary issue relating to cause of action, the Court is required to examine the averments in the plaint and not the defense set up in the written statement. If, upon a plain reading of the plaint, a cause of action is disclosed, the suit cannot be dismissed at the threshold.

17. In the present case, the plaintiff has specifically pleaded that the defendants are raising construction without leaving setbacks, which allegedly affects her lawful right to air, light, and peaceful enjoyment of her property. She has further pleaded a specific date of cause of action (20.08.2022). Whether or not such allegations are ultimately proved is a matter of evidence, but for the limited purpose of this issue, the plaint discloses a cause of action.

18. The contention of the defendants that the construction is based on a valid building license and that there is no encroachment, though material are matters of defense which can only be adjudicated after trial. Such contentions cannot negate the existence of a cause of action at the threshold. Whether such averments are true or whether the plaintiff can ultimately prove them is a matter for trial and evidence, and

not for decision at the preliminary stage. Hence, the additional issue framed by this court is answered in the **Negative** and court proceeds to pass the following:

ORDER

Issue No.3 is answered in the Negative.

Accordingly, the suit is maintainable. List the matter for recording of evidence on the remaining issues.

(Dictated to the Stenographer transcribed by her, revised, corrected, signed and then pronounced by me in the open Court on this the 03rd day of November 2025)

(Chandan.S)
Prl. Civil Judge and JMFC,
K.R.Nagara.