

1. Heard Sri.K.S.M advocate for plaintiffs on I.A No.1 praying this Court to pass ad-interim exparte order of temporary injunction to restrain the defendants from putting up any construction in the suit schedule 'C' property.

2. In the affidavit to the accompanying application it is submitted that the plaintiffs are the absolute owners of 'B' schedule property which includes schedule 'C' property. It is contended that the plaintiff No.1's husband's father Sri.B.Veeraiah's brother one B.Madappa had jointly purchased the schedule 'A' property that includes schedule 'B' property. There was oral partition among them and accordingly Veeraiah got to his share the 'B' schedule property that includes schedule 'C' property. It is further contended that towards the southern side of the 'C' schedule the defendants property is situated. In 2018 the plaintiffs noticed mistake with regard to measurement entry of 'B' schedule property in the assessment register extract. From noticing such mistake they also learnt that the defendants have encroached schedule 'C' property who was putting up construction. On 04.12.2018 requisition was made to the Office of Panchayath Development Officer, Hulimavu Grama Panchayath, Nanjangud for measuring the 'B' schedule property as per the registered Sale Deed dt: 06.09.1965 and one more requisition to direct the defendants to stop the

construction activity till the measurement is done.

3. Subsequently on 04.05.2019 mahazar was drawn by the Office of Grama Panchayath and was found that the defendants have encroached the portion of 'B' schedule property. Upon the instructions of the office of Grama Panchayath the construction activity was stopped by the defendants.

4. Now on 25.08.2020 the Office of Hulimavu Grama Panchayath deciding on the requisitions given by the plaintiffs dt: 04.12.2018 have passed an order citing that there has been encroachment by the defendants in the 'B' schedule property to some extent and this dispute being the civil in nature and that their office do not have jurisdiction to adjudicate the matter has closed the said applications telling the plaintiffs to approach the jurisdictional courts for appropriate reliefs.

5. It is the contention of the plaintiffs that upon the closure of the said applications of the plaintiffs by the Grama Panchayath, the defendants are once again trying to put up construction and hence without any alternative remedy has approached this court by filing suit for declaration and for possession of schedule 'C' property.

6. The plaintiffs to show the prima-facie case have produced the photocopy of the Sale Deed dt:

06.09.1965 to show that the plaintiff No.1's father-in-law had jointly purchased 'A' schedule property and 'B' schedule property fell to their share under oral partition. Prima-facie it is seen that there is no dispute among the family members of the plaintiffs over the suit properties. The defendant is said to be a neighbour who is not related to them having his property towards the southern side of 'C' schedule property which can be ascertained by perusal of the rough sketch. Further prima-facie document produced is the assessment register extract wherein there is a mistake over the measurement of the 'B' schedule property and therefore the plaintiffs seeking for its measurement from the office of the Grama Panchayath. It is seen that there is also requisition to direct the defendants to stop the construction activity unless there is measurement done. Further prima-facie documents are the mahazar drawn on 04.05.2019 and letter dt: 25.08.2020 showing that the 'A' schedule property consists of 90 feet x 90 feet and in that 'B' schedule property consists of east to west 45 feet and north to south 90 feet that belongs to the plaintiffs as per the sale deed. Further from perusal of the photographs, it is seen that there is a old foundation laid which is said to be as schedule 'C' property. The apprehension of the plaintiffs that upon the disposal of the applications given by the plaintiffs by Grama Panchayath dt: 25.08.2020, the defendants who had once stopped the construction

activity may once again try to put up construction and interfered in the schedule 'C' property.

7. From the perusal of above prima-facie documents, the plaintiffs have shown that they have a triable case against the defendants for relief of a declaration and for possession from the defendants. If no interim order is given this Court feels that the plaintiffs would be put to greater hardship than the defendants and would lead to multiplicity of proceedings and seeing that balance of convenience lies in favour of the plaintiffs, this Court proceeds to pass the following.

ORDER

Issue ad-interim exparte order of temporary injunction restraining the defendants from interfering by putting up construction in the schedule 'C' property, till the defendants appear and file the written statement.

Plaintiffs to comply under Order 39 Rule 3 of CPC.

Issue notice on I.A No.1 and suit summons to defendants by Court and RPAD, if PF is paid.

Returnable by 03.11.2020.

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O S No.246/2020

I Addl. Civil Judge & JMFC.,
Nanjangud