

KAMS510131272022



**IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC.,  
NANJANAGUDU**

**Present: Sri. Kishor Kumar M.,**  
*B.A. LL.B.,*  
I Addl. Civil Judge & JMFC., Nanjanagudu

**Dated this 08<sup>th</sup> day of June, 2023**

**O.S./546/2022**

**Between:**

**Sri. Nagashetty,**  
S/o. Late Nanjashetty,  
Aged about 55 years,  
R./at Hullahalli Village,  
Hullahalli Hobli,  
Nanjanagudu Taluk.

**....Plaintiff**

(By Sri **M.J.Sethu Rao**, Advocate)

**And:**

**Sri. Shivannashetty,**  
S/o. Late Madashetty,  
Aged about 56 years,  
R./at Varadaraja Badavane,  
Hullahalli Village,  
Hullahalli Hobli,  
Nanjanagudu Taluk & **Another**

**.....Defendants**

(By Sri **K.S. Mruthunjaya**, Advocate)

**Parties to I.A.No.I**

Smt. Nagashetty

**....Applicant/plaintiff****V/s.**

Sri. Shivannashetty &amp; Another

**.....Opponents/defendants****Orders on I.A.No.I**

The applicant/plaintiff has filed this application under Order XXXIX Rules 1 and 2 of C.P.C seeking an order of temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property, till disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of I.A.No.I and stated that, he has filed the present suit for the relief of perpetual injunction. The plaintiff in his affidavit stated that, he is the absolute owner in possession of the suit schedule property. The suit schedule property originally a dilapidated house and after grant from the Government, he has razed the entire old house and started construction of the house. It is further submitted that, the defendants being the neighbors of the property on its eastern side, are interfering and preventing him from construction. The defendants are not having any kind of claim over the suit schedule property.

3. The plaintiff in his affidavit further stated that, he has prima-facie case, the balance of convenience lies in his

favour and he will be put to untold hardship if the temporary injunction as prayed for IA No.I is not granted. Accordingly, the plaintiff prays for allow the IA No.I as prayed for.

4. In response to the suit summons, the defendants entered appearance before this court through their counsel. Defendant No.1 has filed written statement along with memo stating that, contents of written statement may be treated as objections to I.A.No.I. The defendant No.1 in his written statement denied the plaint averments in toto as false and incorrect. The defendant No.1 in his written statement contends that, the present suit is for bare injunction. Hence, same is not maintainable. The boundaries and measurement furnished in plaint schedule are not correct. Accordingly, defendant No.1 prays for dismissal of I.A. No.I.

5. I have heard the arguments of learned counsel for plaintiff and defendants. Perused the entire records. In the facts and circumstances of the case, the points that arise for my consideration are:

- 1. Whether there exists prima facie case in favour of the plaintiff?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff would suffer irreparable injury, if the prayer for interim injunction is disallowed?**
- 4. What order?**

6. My answer to the above points is 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:**

**:-: R E A S O N S :-:**

7. **Points No.1 to 3:-** Points No.1 to 3 are inter-related; hence, I have discussed them together for the sake of brevity and to avoid the repetition of the facts. The plaintiff has filed this suit for the relief of perpetual injunction restraining the defendants from causing interference with his possession and enjoyment over the suit schedule property. As I have already narrated in brief as to what the case of the plaintiff's is and as to what the defense of the defendants is. Hence, it is not required to reproduce the same again in detail.

8. The case of the plaintiff is that, in the year 2019, due to heavy rainfall, the house of plaintiff was collapsed. After due inspection, the government has sanctioned grant for rebuilding of the house under Rajiv Gandhi Housing Corporation Ltd., The plaintiff has started the construction of the house in his site. The defendants are neighbors of the property on its eastern side. They are causing interference with the construction of house of the plaintiff.

9. Per contra, Defendant No.1 in his written statement denied entire plaint averments as false and incorrect. The defendants have not claimed any right, title or interest over the

suit schedule property. The defendants in their written statement contended that, the boundaries and measurement furnished in plaint schedule are not correct. The defendants have not produced any documents.

10. The plaintiff has produced flood affected house less/site less families proposal list, wherein it can be seen that, the name of plaintiff found in Sl.No.11. The plaintiff has produced Form No.11-B of suit schedule property. In plaint schedule eastern side boundary shown as property of Shivanna Shetty, whereas in form No.11-B eastern boundary shown as house of Mada Shetty. The said Mada Shetty is father of defendant No.1. Likewise, in plaint schedule western side boundary shown as property of plaintiff, whereas in form No.11-B western boundary shown as gulli and property of Soma Shetty. Learned counsel for plaintiff in his arguments submitted that, the said Soma Shetty is none other than the brother of the plaintiff. Hence, western side boundary to the suit property shown as property of plaintiff. I have perused the said Form No.11-B and found that, the description, extent and boundaries as mentioned in the said document are in consonance with the plaint schedule. Hence, the contention of the defendants that, the measurement and boundaries as furnished in plaint schedule are not correct is not sustainable.

11. The plaintiff has produced the photograph, wherein it can be seen that, the plaintiff has razed the entire old house. As I said earlier, there is no dispute with regard to description, extent and boundaries of suit schedule property. Apart from

that, the defendants in their written statement nowhere assert their right, title or interest over the suit property. The beneficiary list produced by the plaintiff shows that, due to the flood in the year 2019, the house of the plaintiff is completely damaged. Learned counsel for plaintiff would submit that, the government has sanctioned grant to construct a new house.

12. The documents produced by the plaintiff disclose that, khata of suit property stands in the name of plaintiff. The list produced by the plaintiff shows that, in the year 2019, the plaintiff's house was completely damaged due to the flood. The house of the plaintiff shown in the said list in class-A i.e. a completely damaged house. Now, the plaintiff with the aid of government grant, intends to construct a new house. Further, the documents produced by the plaintiff establish prima-facie case. If the defendants interfere with the construction work of the plaintiff, then, the plaintiff will be put to untold hardship and injury.

13. In this suit the applicant/plaintiff made out a prima-facie case in support of the right claimed by him. The court is satisfied that, there is a bonafide dispute raised by the applicant, that there is an arguable case for trial. The documents produced by the plaintiff at this stage show that, he is in possession of suit property. The defendants in their written statement nowhere claim any right, title or interest over the suit property. The applicant further satisfied the court that, he will suffer irreparable injury if the prayer is not granted and that there is no other remedy open to him by which he can protect

himself from the consequences of apprehended injury. The plaintiff in his plaint pleaded that, the defendants interfering with the construction work of the plaintiff over the suit schedule property. If, defendants succeed in their attempt of interfering with the construction work, then the plaintiff will be put to untold hardship and injury.

14.

15. In the facts and circumstances of the case, this court is of the opinion that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite parties by granting it. By considering the facts and circumstances of the case, I answer Point No.1 to 3 in the '**Affirmative**'.

16. **Point No.4:-** For the foregoing reasons and discussions stated therein the application filed by the applicant/plaintiff is deserves to be allowed, in the result, I proceed to pass the following:-

**ORDER**

I.A.No.I filed by the plaintiff/Applicant u/Order XXXIX Rules 1 & 2 of CPC is hereby **allowed**.

The defendants are hereby restrained by way of temporary injunction from interfering with the possession and enjoyment of the plaintiff over the suit schedule property, till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on the computer, typed by her and corrected by me and then pronounced by me in the open court on this the **8<sup>th</sup> day of June, 2023**)

Sd/-

**(Sri.Kishor Kumar M.,)**  
I Addl. Civil Judge & JMFC,  
Nanjanagudu