

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,  
AT T.NARASIPURA**

**Present:** **Dinesh B.G.**, B.Com. LL.B.,  
Civil Judge & JMFC, T.Narasipura.

Dated this the 2<sup>nd</sup> day of June 2015

**O.S. No.24/2015**

**PLAINTIFF/S:** **Sri.K.Putaswamy**, S/o Late  
Maraiah, aged about 62 years, R/at  
Attahalli village, Bannur hobli,  
T.Narasipura Taluk.

[By Sri.**P.S.**, Adv.]

.Vs.

**DEFENDANT/S:** **1. Smt.Kamalamma**, 55 years,  
W/o Late Javaraiah  
**2. Sri.Nandeesh**a, 28 years, S/o  
Late Javaraiah,  
**3. Sri.Hareesh**a, 26 years, S/o  
Late Javaraiah,  
**4. Sri.Suresh**a, 20 years, S/o Late  
Javaraiah,  
The defendant Nos.1 to 4 are r/at  
Attahalli village, Bannur hobli,  
T.Narasipura Taluk.

[By Sri.**V.K.**, Adv.]

**I.A.NO.II**

Applicant/s : **Sri.K.Puttaswamy** .... Plaintiff

Vs.

Opponent/s : **Smt.Kamalamma and others** .... Defendants

**ORDER ON I.A.II UNDER O.39 R.1 & 2 OF CPC**

The applicant / plaintiff has filed the application praying to grant ad-interim order of Temporary Injunction restraining the defendants from putting up lavatory or lavatory pit in the suit

schedule vacant site measuring east - west 5ft. north - south 50ft. situated adjacent to the house property totally measuring east - west 33.6ft. north – south 50ft. situated at Attahalli village T.Narasipura Taluk.

2. The plaintiff / applicant has sworn to an affidavit stating that suit schedule property belongs to his family members. He is in possession and enjoyment of the suit schedule properties along with his family members. He obtained licence from Attahalli grama panchayath dated 26/05/1986 and built a house in the portion of the suit schedule property. Further he put up compound wall by obtaining permission from the concerned panchayath on 12/10/1995. He has retained vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of the house property for the purpose of free flow of light and air. After the said vacant site the property of the defendants is situated. The defendants have illegally interfered with his possession and enjoyment of the suit schedule property in order to grab the suit property. They have tried to put up lavatory and lavatory pit in the said vacant space. He made a representation to the concerned panchayath and the concerned panchayath has only given notice to defendants and closed the matter. He has made out prima facie case and balance of convenience lies in his favour. Hence, he prays to allow the application.

3. The defendants have denied the material averments of the petition. They have denied that, the plaintiff has retained the vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of the house property. They have contended that the plaintiff has made an application before panchayath to

stop the construction of lavatory on 13/10/2014. The defendants are undertaking the construction of lavatory under Swaccha Bharath Abiyana in their property measuring east - west 28ft. and north – south 23ft. and site measuring east – west 37ft. and north – south 22ft. The plaintiff has not made out prima facie case and balance of convenience does not lie in his favour. Hence, they pray to dismiss the application.

4. Heard on both sides.
5. The following points arise for consideration,
  1. Whether plaintiff has made out prima-facie case?
  2. In whose favour balance of convenience lies?
  3. Who will be put to hardship and irreparable loss?
  4. What order?
6. My answer to the above points are:-
  - Point No.1:- In the negative
  - Point No.2:- The defendants
  - Point No.3:- The defendants
  - Point No.4:- The defendants
  - Point No.5:- As per final order for the following:

**REASONS**

7. **Point Nos.1 to 3:** Since these points are inter linked with each other, they are taken together for common consideration to avoid repetition of facts and reasons.

8. It is not in dispute that the plaintiff is owner of the house property bearing No.546 measuring east – west 33.6ft. and north – south 50ft. situated at Attahalli village. It is also not in dispute that defendants are adjacent owners of the vacant site and house property on the eastern side of the suit schedule property. According to plaintiff he has constructed house in the year 1986 itself by obtaining necessary licence and then in the year 1995 he constructed compound wall by retaining vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of house property. The said fact has been denied by the defendants. According to them no such vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of the house property is retained by the plaintiff. The plaintiff has produced demand register extract for the year 2014-15, copy of licences, photographs, copy of notices and mahazar conducted by the grama panchayath, Attahalli.

9. The demand register extract shows that the plaintiff is owning a residential house measuring east – west 33.5ft. and north – south 50ft. bounded by east house of Javaraiah, west road, north site of Basamma and south road. There is no any mention of existence of site measuring east – west 5ft. and north – south 50ft. on the eastern side of said house property in demand register extract. If plaintiff has retained the said vacant site on the eastern side of his house same would have been shown in the demand register extract. In demand register extract residential house for entire extent east – west 33.6ft. and north – south 50ft. is shown to be in existence, but there is no any reference about the existence of vacant site. Further on the east

of the house property the house of Javaraiah is shown, who is none other than the husband of 1<sup>st</sup> defendant and father of defendant Nos.2 to 4. If the demand register extract placed by the plaintiff is taken into consideration it can be said that the property of defendant lies on the eastern side of house property of the plaintiff and there is no any vacant site in between the house property of the plaintiff and property of the defendant. There is no any prima facie documents to show that plaintiff has retained vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of the house property.

10. According to plaintiff he has constructed house by obtaining licence in the year 1986 and compound in the year 1995. If such being the case, it is not coming forth as to why the plaintiff did not erect compound wall on the eastern side of the house property suppose vacant site measuring east – west 5ft. and north – south 50ft. is in existence. No doubt, the documents placed by the plaintiff prima-facie show that at the instance of plaintiff the PDO visited the suit property and found that the defendants have encroached the property of the plaintiff and accordingly caused notice on the defendant No.2 calling him to remove the standing trees in the encroached portion belonging to the plaintiff. It is significant to note here there is no observation made by the PDO that the defendants have constructed lavatory and lavatory pit by encroaching the property of the plaintiff.

11. On the other hand the demand register extract produced by the defendants shows that they are owning house property measuring east – west 28ft. and north – south 22 ft. and vacant site measuring 37ft. x 22ft. According to defendants they

are constructing lavatory and lavatory pit in their vacant site. At this juncture Court cannot go into the merits of the case closely whether the plaintiff has retained vacant site measuring east – west 5ft. and north – south 50ft. on the eastern side of the house property and the defendants are going to put up lavatory in the said vacant site; whether the defendants are going to put up lavatory in their own site. Said facts will have to be determined after conclusion of trial. However, there is no prima-facie materials to show that the plaintiff has retained vacant site measuring east – west 5ft. and north – south 50ft. on the east of his house property and defendants are constructing lavatory and lavatory pit in the said portion.

12. The photographs show that the defendants have already erected the lavatory pit. It is not in dispute that the defendants are going to construct lavatory under Swaccha Bhatath Abhiyana. The PDO of Attahalli grama panchayath has also been directed by Executive Officer, Taluk Panchayath, T Narasipura as per the direction of the Executive Officer, Zilla Panchayath, Mysuru to take necessary action for construction of lavatory in the site of defendants. If defendants are restrained from putting up construction of lavatory they will be put to much hardship and inconvenience and they will be deprived of using the lavatory till pending disposal of the suit. No harm of injustice would be caused to the plaintiff if lavatory is erected. Suppose the plaintiff succeeds in this suit and establishes that the lavatory and lavatory pit is situated in his property same could be removed and vacant possession of the same can be delivered to the plaintiff. Even the plaintiff can be indemnified by way of mesne profits and damages if circumstances warrant. No much hardship

or injustice would be caused to the plaintiff if injunction is not granted rather than the defendants if injunction is granted restraining them from proceeding with construction of lavatory. The hardship and injury would be more to the defendants rather than the plaintiff if lavatory is not constructed since the construction of lavatory is most essential for the family of the defendants. Moreover lavatory pit appears to have already been erected. Therefore, it is just and necessary to abstain from exercising discretionary power of Temporary Injunction restraining the defendants from putting up lavatory and lavatory pit in their property. Hence, I answer point No.1 in the **negative** and point Nos.2 and 3 in favour of **defendants**.

13. **Point No.4:** In view of discussions and reasons given on point Nos.1 to 3, I proceed to pass the following:

**ORDER**

I.A.No.II filed by the applicant/  
plaintiff under Order 39 Rule 1 and 2 of  
C.P.C., is hereby rejected.

[Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the Open court, on this 2<sup>nd</sup> day of June 2015].

**( DINESH B.G. )**  
Civil Judge & JMFC.,  
T.Narasipura.

