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**IN THE COURT OF
CIVIL JUDGE AND JMFC AT T.N.PURA,MYSORE**

**PRESENT : Sri. PRASHANTHA G.C.,BAL., LL.M.,
Civil Judge and JMFC.,
T.Narasipura.**

DATED THIS THE 3rd DAY OF JANUARY 2022

O.S./231/2020

PLAINTIFF : Sri. B.L.Boregowda
(By **Sri HNBN,Advocate**)

V/s

DEFENDANTS : The Chief Officer and another
(By **Sri. MBS and TMS and ..**
Advocates)

PARTIES IN I.A. No.II

APPLICANT : Sri. B.L.Boregowdaplaintiff

V/s

OPPONENT : The Chief Officer and another
.....defendants

ORDERS ON I.A. No.II

The plaintiff has filed IA No.2 under order 39 Rule 1 and 2 of the CPC seeking an order of T.I. restraining the defendants, their agents, servants, workers or anybody acting on behalf of them from interfering with peaceful possession and enjoyment of the plaintiff's suit schedule property till pending disposal of the suit.

2. The plaintiff has filed an affidavit in support of the I.A.

3. Defendants No.1 and 2 have filed separate objections praying to dismiss the I.A.

4. Heard the Counsel for the plaintiffs and the defendants. Perused the materials available on record.

5. The following points have arisen for consideration of this Court.

1. *Whether the plaintiff has made out prima facie case ?*
2. *Whether the plaintiff proves balance of convenience lies in his favor ?*
3. *Whether the plaintiff proves irreparable loss and injury caused him, if order of temporary injunction is not granted ?*
4. *What order ?*

6. This Court answers the above points as follows;

| | | |
|------------|---|---|
| Point No.1 | : | In the Negative |
| Point No.2 | : | In the Negative |
| Point No.3 | : | In the Negative |
| Point No.4 | : | As per final order for the following : |

REASONS

7. **Points No.1 to 3:** These points are taken together for common discussion in order to avoid repetition of facts and circumstances.

The plaintiff has filed this suit against the defendants for the relief of permanent injunction. The plaintiff in the affidavit supporting the IA has stated that the suit property is the absolute property of him which got from his ancestors. His family members resides in the suit property and house is constructed therein during 1969. Water sump is also constructed during 1969. The plaintiff is in possession of the suit property. The 2nd defendant is jealousy of the repair work being carried to his house trying to stop the same. The 2nd defendant with malafide intention made a complaint before the 1st defendant to remove the sump built during 1969. The sump is used by the plaintiff and his family members since 1969. The 2nd defendant with the collusion of the 1st defendant issued a notice on 27.02.2020 and 28.08.2020. Defendants No.1 and 2 are trying to interfere with suit property and trying to damage the sump.

8. Per contra, the 2nd defendant in the objections denied the contents of the affidavit filed by the plaintiff. It is specifically stated that he has acquired property bearing Municipal katha No.1063/892 and old tiled house thereon by his grand father late Puttegowda. The plaintiff has acquired a the plaint schedule property recently through Sale Deed. The real dispute between the plaintiff and defendant No.2 is that the 2nd defendant has to pass through the house of the plaintiff to reach his house. The road is very narrow. The plaintiff in front of the house has dug and constructed a sump in the middle of the public road obstructing the movements of the vehicles like Bullock cart, Car and load bearing vehicles. The plaintiff is obstructing the use of road by all the residents of the said road. The 2nd defendant in this connection have given a representation to D.C. Mysuru, Chief Officer of Zilla panchayatha and Urban Development, Mysuru. The brother of the plaintiff Sri.Ramalingegowda is the Vice President of Municipality. He is very influential person.

9. The 1st defendant in the objections denied all the contents of the affidavit and specifically stated that the plaintiff has not stated that the water sump is existing within the suit schedule boundaries.

10. The Counsel for the plaintiff argued that the sump

constructed during 1969 when the house was built, but defendants No.1 and 2 are trying to remove the water sump. The Counsel for the 2nd defendant argued that the sump is constructed in the middle of the road. It is also argued that towards the northern side of the house of the plaintiff the house of the 2nd defendant is situated and he has demolished his old house and wants to build new house. It is also argued that the plaintiff is not allowing any vehicles to reach the house of the 2nd defendant in order to take materials for the construction of the house.

11. There is no dispute at this stage about the existence of houses of the plaintiff and the 2nd defendant. There is no dispute that towards northern side of the house of the plaintiff, house of the 1st defendant is situated. It is also not in dispute that in front of the house of plaintiff and the 1st defendant from north to south Road or Gally is existing. Therefore, it is not necessary to venture into the documents relating to the houses of the plaintiff and the 2nd defendant. On hearing both parties it is noticed that the only dispute between the parties is that the plaintiff has constructed water sump in the middle of the road. Now, the 2nd defendant has to construct new house in the place of old house situated towards the northern side of the suit house. But, it is the contention of the 1st defendant that the plaintiff is not allowing to reach his house in any kind

of vehicles to take materials to construct the house on the ground that Water Sump would get damaged.

12. In the light of the arguments placed on record, it can be seen that the plaintiff and the 2nd defendant have produced number of photos to show the water sump constructed by the plaintiff and to show the width of the road. The 1st defendant also produced sketch to show the road.

13. On perusal of the sketch produced by the 1st defendant, it appears that road in front of the houses of the plaintiff and the 2nd defendant runs from north to south. At the entrance of the road at south direction the width of the road is 11 feet. Then it seen from south to north road narrows and when the road ends towards northern side, the width of the road is only 4 feet. It is the argument of the Counsel for the plaintiff that no vehicle can be passed from south to north as there is a narrow road except two wheelers and very small vehicles. But on the other hand the Counsel for the 2nd defendant has produced photo to show that tractor can reach till his property to take the materials. In the photo produced by the plaintiff it can be seen Maruthi Swift Car is parked in front of the house of the 2nd defendant.

14. Though at this stage, argument of the Counsel for the plaintiff is correct to the extent that big vehicles cannot be

passed till the end of the road, but the photo produced by the the plaintiff and 2nd defendant at this stage throws a light that tractor can be reached till the property of the 2nd defendant. On perusal of the entire pleadings it is not stated that water sump is existing within the suit schedule properties. At this stage to support the argument of the 2nd defendant, the sketch produced by the 1st defendant throws a light to the effect that water sump is constructed on the road. It is the duty of a citizen, public road cannot be used for any private construction which would other wise effects movements of vehicles. Therefore, the plaintiff has not made out prima facie case to grant temporary injunction in respect of the water sump built on the public road. Therefore, balance of convenience does not lie in favour of the plaintiff. If the temporary injunction is granted much hardship would be caused to the 2nd defendant and other public than to the plaintiff. Accordingly this Court answers point No.1 to 3 in the **Negative.**

15. **Point No.4:-** For the reasons stated in Point No.1 to 3, IA No.II requires to be dismissed. In the result, this Court proceeds to pass the following;

ORDERS

I.A.No.II filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure is hereby **dismissed**.

No order as to costs.

(Typed by the Stenographer directly in the computer on my dictation, printout taken, corrected and then pronounced by me in the open court on this the 03.01.2022).

(PRASHANTHA G.C.)
Civil Judge and JMFC.,
T.Narasipura.