



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& JMFC-I., RAICHUR**

**Present: Sri. Shankarappa Malashetti
B.com, L.L.B.,(Spl)**

**Addl. Senior Civil Judge & JMFC-I.,
Raichur.**

Dated: this 29th of July-2026.

R.A.No.60/2022

1. Smt. G.Venkatapadma W/o G.Sheshigiri Rao.
Age: 47 years, Occ: Household,
R/o. H.No.1-4-1135/286, I.D.S.M.T. Layout,
Tq and Dist: Raichur.

...Appellant

[By Shri.SKP, Advocate]

-V/s-

1. B.Shivakumar S/o Amaranna,
Age: 41 years, Occ: Govt. Teacher,
R/o. H.No.1-11-1476/4/12,
Venkata Sai Nagar,
Beside Maruti Nagar,
Tq and Dist: Raichur.

...Respondents.

[By Shri. SGK, Advocate]

Date of institution of appeal	09.11.2022		
Nature of judgment/order appealed against which	Against the Judgment and decree passed by the I Additional Civil Judge and JMFC-III., Raichur in O.S.No.143/2018 on 05.08.2018.		
Date of pronouncement of judgment	29.07.2026		
Total duration	<u>Year/s</u> 03	<u>Month/s</u> 10	<u>Day/s</u> 18

This appeal is preferred by Appellant under Order-41 Rule-1 R/w Section-96 of CPC seeking to set aside the impugned Judgment and decree passed by the learned I Additional Civil Judge and JMFC-III, Raichur in O.S.No.143/2018 on 05.08.2018 and prayed to allow the appeal and decree the suit in its entirety.

2. The Appellant is the plaintiff and Respondent is the defendant before the Trial Court and for the sake of the convenience, the parties are referred as per the rank before the trial court.

3. The facts leading to the filing of this appeal are as under.

The plaintiff has filed suit for permanent and mandatory injunction.

4. It is the case of the plaintiff that, She is the owner and in possession of layout known as Venkata Sai Layout formed in Sy.No.1476/3, after Phodi it was renumbered as 1476/6. The plaintiff has purchased the NA land converted by its previous owners as per document No.2039/02-03 dated 16.08.2001. The plaintiff's vendors by name Dodda Narasareddy and another had converted the said land into NA for residential use by the order of Deputy Commissioner, Raichur on 06.01.2001. Later the plaintiff got entered this land in revenue records as per mutation No.266/04-05 dated 04.08.2005. The plaintiff also got approval of the layout from Raichur Development authority on 20.07.2007. As per the said approval 25 plots are approved out of which 17 plots are 9 X 12 meters and 8 plots are odd size. Later the RDA Raichur also passed the order on 20.12.2007 and released the 40% of the plots held them for development purpose

etc.,. The CMC Raichur has also given administrative approval on 02.01.2010. As per the CMC approval the name of plaintiff mutated to the layout plots on 11.01.2010. Therefore the Municipal numbers are allotted to the plots as 1-11-1476/6/1 to 1-11-1476/6/25.

5. It is further alleged that the defendant is no way concerned to the plaintiff's layout but he has purchased open plot No.14 measuring 9 X 12 meters and part of plot No.15 on 23.05.2008 in the layout formed at Sy.No.1476/4 which was known as Venkata Sai Nagar abutting towards Western side of plaintiff's layout. The defendant's plot No.14 abutting to the plot No.25 of plaintiff's layout towards Eastern side. The defendant started construction in his open plot by encroaching the plaintiff's plot No.25 to the extent of 2 feet. The said encroached portion is subject matter of the suit, which is described as schedule-B property. The plot No.25 is described as schedule-A property. The plaintiff's layout

was very well demarcated by the authorities and plot No.25 is part and parcel of the said layout. Towards Eastern side of schedule-A plot there is 9 meters wide road running from north to south. The defendant's plots also measures 9 X 12 meters. Recently the defendant completed the ground floor but still furnishing work is pending. Even then the defendant started the construction of first floor but while constructed the first floor he has constricted the staircase by encroaching nearly 2 feet in schedule-A plot. Recently about few days back he had started putting up the steps in schedule-A plot and he also constructed the roof over the ground floor. The said roof also encroached the schedule-A plot to the extent of 2.6 inches. The plaintiff was out of station along with her family member for few days and she had gone to Vijawada in order to look after her sick father, during that period i.e., in the last week of june-2018, the defendant made such encroachment as shown in schedule-B. The plaintiff and her family members after

coming to Raichur noticed about the encroachment and they approached the defendant and requested him to remove the encroachment, but the defendant flatly refused to the request of plaintiff and he also denied the encroachment. Then the plaintiff called the engineer and shown the encroachment to defendant. Even then defendant was not heeded to the request and continued the construction by violated the CMC permission rules. As per CMC permission the defendant has to leave set back on all the sides but he violated the condition. The plaintiff has also approached the CMC, Raichur and also conducted the Panchayat but the defendant has not responded properly. Further the defendant is having money and muscle power. Therefore the plaintiff is constrained to file the suit and sought for permanent injunction restraining the defendant and any body on his behalf interfering and making any illegal construction in schedule-A property and mandatory injunction for

removal of encroachment as shown in the schedule-B property.

6. On service of summons defendant appeared and filed written statement. He denied the plaint averments and right, title, interest and possession of the plaintiff over the suit property. He admitted that he purchased plot No.14 measuring 9 X 12 meter and part of plot No.15 in layout formed at Sy.No.1476/4 at Raichur on 23.05.2008 under registered sale deed. He denied that he has encroached towards western side of plot No.25 to the extent of 2 feet 6 inches belongs to the plaintiff. He further stated that the plaintiff created false story and filed the untenable suit. He admitted that he received notice from CMC, Raichur. Thereafter he submitted all the records before CMC, Raichur, then the said authorities verified the records and also inspected the construction and found that there is no encroachment and there is no violation of constriction permission, accordingly issued the memo 30.07.2008 to that effect.

The plaintiff has made false complaint against him and she has not come to the court with clean hands. There is no cause of action for filing the suit, the plaintiff has not paid proper court fee. He has already constructed ground floor, first floor including staircase by obtaining loan of Rs. 28,00,000/- from Canara Bank and invested huge amount. Therefore he prays to dismiss the suit with cost.

7. On the basis of the above pleading, the trial court has framed Issues which are follows:

ISSUES

1. Whether the plaintiff proves that she is the owner of suit schedule-A and schedule-B properties?
2. Whether the plaintiff proves that, defendant has encroached the B-schedule property as contended by her?
3. Whether the plaintiff is entitled for permanent injunction and mandatory injunction as sought for?
4. What order or decree?

8. Before Trial Court the plaintiff and another witness examined as PW-1 and 2 and got marked 21 documents.

On the other hand the defendant has not entered the witness box.

9. The trial court after hearing arguments on both sides and after considering the oral and documentary evidence on record, has passed the impugned judgment by decreeing the suit in part on 05.08.2022 and rejected the relief of mandatory injunction by answering Issue No.1 and 3 in partly Affirmative and Issue No.2 in Negative.

10. Aggrieved by the said judgment and decree, the plaintiff has preferred the present appeal on the ground that, the trial court has not considered properly the oral and documentary evidence and came to wrong conclusion and there is no encroachment. The judgment of the trial court amounts to the miscarriage of justice. Even though the trial court decreed the suit in respect of permanent injunction but denied to give finding on mandatory injunction. The plaintiff has very well shown about the encroachment by the defendant by examining the PW-2 who is an independent witness. The evidence of PW-1 and

2 is not properly appreciated. There is no discussion about the evidence of PW-2 and photos produced by the plaintiff. The defendant has not entered the witness box so the trial court has not drawn the adverse inference against the defendant. The defendant has not at all produced the documents and fail to rebutt the plaintiff's version. But the trial court has not looked into the said respect and wrongly partly decreed the suit. Therefore on these grounds prays to allow the appeal by setting aside the trial court judgment and decree the suit in its entirety.

11. In this appeal the appellant has also filed IA.No.2 and got appointed the court commissioner. The court commissioner by making spot inspection of the disputed property submitted report.

12. The Trial Court records have been secured.

13. Heard arguments and perused the materials on record.

14. The points which arise for my consideration are as under :

1. Whether the trial court has committed error in considering the evidence of plaintiff and wrongly partly decreed the suit?
2. Whether the trial court has committed error in understanding the case made out by the parties to the suit?
3. Whether the trial court has committed error in appreciating the pleadings, evidence on record and law applicable to the facts of the case ?
4. Whether the judgment and decree of the trial court requires interference of this court ?
5. What order or decree ?

15. My answer to the above points is as follows:

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|--------------|--|
| Point No.1 : | In the Negative |
| Point No.2 : | In the Negative |
| Point No.3 : | In the Negative |
| Point No.4 : | In the Negative |
| Point No.5 : | As per the final order
for the following: |

REASONS

16. Points No.1 to 3: All the points are connected to each other, therefore they were taken together for discussion, in order to avoid repetition of facts.

17. The Advocate for appellants has vehemently argued that even though plaintiff has produced sufficient documents to prove his case then also the trial court has not granted the relief of mandatory injunction. The trial court has failed to understand the pleading and documents. The Ex.P-3, 10 and Ex.P-18(a) are the sketches which disclose about the exact location of the suit property and Ex.P-11 to 15 photographs crystallise the encroachment then also the trial court has failed to grant the relief of mandatory injunction. The court commissioner has submitted the report by showing that there is encroachment. Therefore prays to allow the appeal.

18. The advocate for Respondent has supported the judgment of the Trial Court and said there is no illegality and irregularity in the said judgment. The trial court has properly appreciated the oral and documentary evidence and also the pleadings. The trial court judgment does not require interference by this court therefore, prays to dismiss the appeal.

19. This Court is final fact finding court. So it is appropriate to peruse the oral and documentary evidence of both parties and also the judgment of the Trial court. The learned Trial Court after considering the case and rival contentions of the parties it has held that, plaintiff has failed to prove the encroachment by the defendant. Further it has held that plaintiff has not produced documents to show that the plot No.14 of the defendant is abutting to the suit plot No.25 towards western side. Therefore the trial court has granted the only relief of permanent injunction and declined to grant the relief of mandatory injunction.

20. It is specific case of the plaintiff that, she is owner of layout formed in Sy.No.1476/3 (old) and New Sy.No.1476/6. In the said land there are 25 plots and the plot No.25 is measuring 9 X 12 meters which is described as A- schedule property. As per the schedule of A-schedule property the boundaries are towards East-9 meter wide layout road, West-plot No.14 belongs to defendant in Sy.No.1476/4, North-plot No.24 of the plaintiff and South-Sy.No.1476/3. She further alleged that towards western side of the plot No.25 the plot No.14 of the defendant is abutting. The defendant alleged to be encroached 2 feet and 6 inches in the plot No.25 of the plaintiff which is described as schedule-B-property. The plaintiff has produced the Ex.P1 certified copy sale deed of entire Sy.No.1476/3 measuring 1 acre. Ex.P-2 and 10 are the layout approval given by the CMC, Raichur on 02.01.2010. Ex.P-3, Ex.P-8(a), Ex.P-10(a) and Ex.P-19 are the approved plan issued by Urban Development Authority of Raichur on 27.02.2017. Ex.P-4

and Ex.P-5 are the certified copies of the sale deeds pertaining to defendant's plot. Ex.P-6 is the notice issued by the CMC, Raichur to defendant on 22.06.2018. Ex.P-7 and 8 are the certified copy of the order passed by Urban Development Authority of Raichur. Ex.P-9 is the receipt regarding payment of document fee, Ex.P-11 to 15 are the photographs, Ex.P-16 is the CD, Ex.P-17 and 18 are the orders of Urban Development Authority of Raichur, Ex.P-20 is the certified copy of the property register and Ex.P-21 is the certified copy of NA order.

21. The plaintiff has strongly relied on the Ex.P-3 and alleged about the encroachment. In Ex.P-3 it shows about the exact location of Sy.No.1476/2/3/4/5/6 and 7. In the said document towards southern side of 1476/6 the Sy.No.1476/7 is situated and towards western side of Sy.No.1476/7 the Sy.No.1476/4 is situated. But the plaintiff alleged that the plot No.14 of the defendant is situated in Sy.No.1476/4 and the said plot abutting to the western side of plot No.25 of the plaintiff, but the

said document is against to the version of the plaintiff. In the cross-examination PW-1 deposed the boundaries of Sy.No.1476/6 as to the East-road, West-property of Keshavarao, North-Compound wall of Nijalingappa colony and South- layout of D. Subba Rao. The said boundaries does not match with Ex.P-3. He also pleads ignorance to the suggestion that in Ex.P-18 towards West-Hissa No.5 is located. She also admitted that the CMC, Raichur has issued endorsement to defendant as there no encroachment. She further said the CMC authorities has not enquired her. She also not produced any document to show that she had challenged the order of CMC. Further PW-2 has deposed that he is absolute owner of Sy.No.1476/3, towards western side of his layout Hissa No.4 situated which belongs to Keshavarao. He also admitted that the defendant has purchased plot in Hissa No.4 and the Hissa No.4 is situated towards western side of Hissa No.3. He admitted that the Ex.P-3 layout map was issued by CMC, Raichur and Urban Development

Authority, Raichur. He also admitted that towards Eastern side of Hissa No.6, the Hissa No.8 and towards West Hissa No.5, towards South Hissa No.7 are situated. He also clearly admitted that the Hissa No.4 and 6 were not adjoining to each other. He pleads ignorance about endorsement issued by CMC., Raichur in favour of defendant.

22. When the trial court has held that there is no encroachment by the defendant. The appellant has filed IA.No.2 before this court and got appointed the Assistant Executive Engineer as a court commissioner and he inspected the disputed property and submitted the report along with map as per Ex.C-1 and 2. In Ex.C-1 he has mentioned that towards western side of plot No.25, the plot No.14 is situated and there is encroachment to the extent of 3 feet 6 inches in plot No.25. As per the said map Sy.No/1476/4 is situated towards South-West corner but not abutting exactly to the Western side of Sy.No.1476/6 or to the Western side of plot No.25.

Because the plot No.14 pertaining to defendant is situated in Sy.No.1476/4, but in the said map it is the mentioned that plot No.14 situated in Sy.No.1476/5. Further in Ex.C-2 in the last para court commissioner has mentioned that there is encroachment of 3.6 feet in plot No.14. The said were produced as under :

“ ಅದರಂತೆ ಸದರಿ ಪ್ಲಾಟ್ ನಂ.14 ಸರ್ವೆ ನಂ. 1476/4 3'6” (3 ಫೀಟ್ 6 ಇಂಚು) ಒತ್ತುವರಿಯಾಗಿರುತ್ತದೆ ಹಾಗೂ ಪ್ಲಾಟ್ ನಂ.25 ಸರ್ವೆ ನಂ.1476/6 ಸರಿಯಾಗಿರುತ್ತದೆ ಎಂಬ ವರದಿಯನ್ನು ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಈ ಮೂಲಕ ಸಲ್ಲಿಸಲಾಗಿದೆ.”

23. As per the case of the plaintiff there is encroachment in plot No.25 but as per the said report there is no encroachment in plot No.25. Further in the cross-examination by defendant's counsel, CW-1 deposed that, he has not taken the documents along with him about the Hissa Phodi map of Sy.No.1476 at the time of commission work. He also admitted that in Ex.C-1 he has shown the Sy.No.1476/4 layout situated towards

Southern side of Sy.No.1476/6 and towards Western side of Sy.No.1476/6 the Sy.No.1476/5 is situated. When it was questioned about Ex.P-3 he said he has no clarity about said document and he has not considered Ex.P-3 at the time of commission work. The Commissioner report and evidence of commissioner were also not helpful to the plaintiff.

24. The plaintiff has utterly failed to prove that the plot No.14 of the defendant is abutting to plot No.25 towards western side. The document produced by the plaintiff such as the layout maps and the commissioner evidence were also against to the plaintiff. Therefore the trial court has properly appreciated the oral and documentary evidence and came to right conclusion. Therefore the point No.1 to 3 are held in Negative.

25. Point No.4:- Further, on careful reading of the judgment of the trial court, it is held that the trial court has properly appreciated the materials on record and

considered the pleadings and evidence on record and applied the provisions of law, in a right prospective manner and passed the judgment and partly decreed the suit by declining the relief of mandatory injunction. In view of the same, the judgment and decree of the trial court is in accordance with law, as the same has been supported by sound and valid reasons. As such the judgment and decree under the appeal does not call for any interference by this court. Accordingly, it is held that, the appeal filed by the appellant challenging the judgment and decree is devoid of merits and which is not sustainable under law, thus, I do not find any reasons whatsoever to interfere with the impugned judgment and decree passed by the trial court. Accordingly, point No.4 is held in Negative.

26. Point No.5 : For the aforesaid reasons, I pass the following:

:O R D E R:

The appeal filed by the appellant U/o.41
Rule 1 R/w. Sec. 96 of CPC is hereby dismissed.

It is ordered that judgment and decree passed by the learned I Additional Civil Judge and JMFC-III, Raichur in O.S.No.143/2018 on 05.08.2022 is hereby confirmed.

Draw decree accordingly.

Office is directed to send a copy of this judgment to the trial court forthwith along with trial court records.

(Dictated to the stenographer directly on computer, transcript computerized by him and corrected and then pronounced by me in open court on this the 29th Day of July- 2026)

Sd/-

(Shankarappa Malashetti)
Addl. Senior Civil Judge
& JMFC-I., Raichur.