



IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.

AT SINDHANUR

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M
Senior Civil Judge & J.M.F.C.
Sindhanur.

Dated this the 02nd day June 2026

M.A. NO. 03/2025

APPELLANT:-

P. Nagireddy S/o P. Ramireddy
Age: 59 years, Occ: Agri.,
R/o Ward No.19 (Sy.No.758) CMC No. old
6-1-442, near 6-1-1583, Ramkishore colony
Sindhanur, Tq. Sindhanur, Dist. Raichur

(Represented by Sri.GSRK., Adv)

-V/s-

RESPONDENTS:-1)

Mallikarjuna S/o Basanagouda
Age: 46 years, Occ: Agri.,
R/o Valkamdinni village, Tq. Sindhanur
Dist. Raichur also at Manjunatha automobiles
Near Venkateshwara Hotel, Gangavathi road
Sindhanur.

(Represented by Sri. VBR, Adv)

Date of Institution of Appeal	:	02.06.2025
Nature of Appeal	:	Appeal against the Interim Order dated 10.03.2025 in OS No.419/2024 passed by the Addl. Civil Judge Sindhanur
Date of Judgment	:	02.06.2026
Total duration	:	year/s month/s Day/s 01 00 00



: J U D G M E N T :

The appellant/plaintiff has filed this miscellaneous appeal U/O 43 rule 1 of C.P.C, to set-aside the orders passed by Addl. Civil Judge and JMFC., Sindhanur, on I.A.No.I, in O.S.No.419/2024 dated 10.03.2025 reject the IA No.I under Order 39 Rule 1 & 2 of C.P.C., and dismiss the said application.

2. The appellant herein is the plaintiff and petitioner herein is the plaintiff in O.S. No.419/2024 before the trial court. For the sake of convenience, the parties are referred in this Judgment as per their ranks before the trial court.

3. The plaintiff has filed I.A.No.I U/ order 39 Rules 1 and 2 R/w section 151 of CPC in O.S. No.419/2024 for the relief of temporary injunction to restraining the defendant from further encroaching 30 feet width road to the south of defendants site bearing No.B-26 CMC No.6-1-1881/B-26.

4. **The case of the plaintiff is that:-**It is the case of plaintiff that he is the owner and possessor of layout measuring 2 acre 27 guntas in land bearing Sy. No.758/A of Sindhanur. It was purchased by the plaintiff under registered sale deed dated 09-11-1994. Said land was converted for non agricultural purposes under order of Tahasildar Sindhanur bearing No.ALN/39/85-86/274 dated 04-11-1985. On conversion of said land plaintiff had formed layout, approval from TMC/CMC



Sindhanur and formed plots bearing Nos.6-1-442/A-1 to A-32. In said layout there was 30 feet wide road to its North which is part and parcel of said extent of 2 acre 27 guntas. Said road is suit property. Such being the case the defendant being the purchaser of plot bearing No.B-26 bearing CMC old No.6-1-442/B-26 and New No.6-1-1881/B-26 measuring East to West 40 feet and North to South 50 feet 2000sq feet in land bearing Sy. No.758/A of Sindhanur. Same was purchased by defendant under registered sale deed dated 06-12-2021 from his vendor by name Venkatarao S/o Neelakantarao and who in turn purchased from one P. Ramireddy. It is contended that recently the plaintiff got shifted to Bengaluru for the purpose of education of his children. In the absence of plaintiff the defendant has undertaken construction in his purchased plot No.26. The said construction has come up to lintel level. That on 26-09-2024 when plaintiff was in Sindhanur and visited his layout through his 30 feet road on the Northern side and got measured the same and it was found there was less on measurement of 5 feet to 30 feet. He also measured the length of defendant's plot towards Northern-Southern side which measured an excess by 5 feet into plaintiff's 30 feet road. The length of the building towards North-Southern side measured 55 feet on the Eastern side and on the Western side there was an excess of 2 feet on to the space left for the road on southern side. It is contended that said illegal extension construction of building to the Southern side by excess of 5 feet into 2 feet on the East and West, by defendant has reduced the width of the road. It is submitted that defendant has no right to extent his construction on to the road to his South reducing the width of the road resulting in



congestion of road and by contravening the provision of law and conditions of layout. The defendant has to clear the excess construction either by himself or by the intervention of this court. That inspite of several requests defendant did not heed for the same. Hence having left with no alternatives plaintiff is constrained to institute the suit and has prayed for appropriate reliefs. Hence, prayed to allow the application.

5. On institution of suit, summons was issued to the defendant. In response to the summons defendant appeared before the court through his advocate and has filed written statement.

6. The brief contention of written statement of defendant is as follows:

The defendant has contended that suit of the plaintiff is neither maintainable-in-law nor on facts hence same is liable to be dismissed. It is contended that to harass the Innocent defendant the plaintiff has filed this suit. That the brother of plaintiff by name Nageshwarareddy had also instituted suit against defendant herein as a attorney holder of his mother by creating false municipal documents. Said suit bearing O.S.No.326/24 on the file of Prl. Civil Judge Sindhanur. The contents of suit are the defendant has encroached the property standing in the name of his mother by name Ammaiamma. It is further contended that the defendant herein has not encroached any property as alleged by the plaintiff, hence the defendant has failed to dismissed the suit.

7. Plaintiff in support of his application has filed an affidavit and in course of his affidavit he has reiterated the material averments made by him in plaint. He has further contended that defendant having



encroached suit property is further trying to encroach the same. Hence he has filed this application seeking to restrain the defendant from further encroaching suit property. He has contended that plaintiff has made out a prima facie case and the balance of convenience lies in his favour and accordingly if an order of temporary injunction as sought is not granted, the plaintiff would suffer irreparable loss. Hence he has prayed to allow the application.

8. Defendant filed memo adopting the written statement as objections to I.A.No.1 and has prayed to reject the I.A.

9. After contesting, the trial court has allow the IA No.I. Being aggrieved by the said order the defendant challenged the said order on the following grounds.

- (1) The orders passed by the trial court are illegal and perverse and capricious without proper appreciation of principles for granting of T.I. order pending disposal of the case.
- (2) The Hon'ble trial court has not properly appreciated the facts and documents produced.
- (3) The reasons given by the Hon'ble trial court while rejecting the I.A. is without considering the injury that may be caused to the plaintiff.
- (4) The Hon'ble trial court failed to consider the order rejecting the L.A. will lead to more complications and multiplicity of proceedings.



- (5) At para No. 18 of the reasoning's the court stated " Except producing the 5 photographs (the plaintiff) has not produced any documents to show that, he got measured suit road and on his measurement he found there was 5 ft to 30 ft there was an excess measurement of 5 ft in to defendant's plot i.e. plaintiff's 30ft road.
- (6) When the plaintiff has come up with the grievance of encroachment by defendant by bringing his building on to the road by 5 ft the plaintiff himself measured defendant's plot and has clearly contended the encroachment was 5ft on south-East and 2ft on the South-West. Such specific measurement would not have been stated by the plaintiff unless the site was measured. No specific document at this preliminary stage was required to prevent defendant from encroaching plaintiff's 30ft road. If not prevented at this preliminary stage the defendant would continue his construction and subsequently if found there was encroachment, the defendant would require to demolish his additional constructions by encroaching into road. In such a case, the pecuniary loss the defendant would sustained will be more to him then if the defendant is prevented from proceeding with further construction at this preliminary stage.
- (7) Whether there is encroachment or not, or if there is encroachment by what extent would also be decided by appointing a court commissioner during subsequent



proceedings which can not only reduced loss to the defendant and prevent multiplicity of proceedings.

- (8) The Hon'ble trial court has wrongly held the plaintiff has not made out prima facie and balance of convenience do not lie in favor of plaintiff.
- (9) The Hon'ble trial court has also wrongly held it can enter into mini trial at this stage and expressed any doubt or opinion on the merits of the case and on documents produced by the parties to the suit.
- (10) By ordering mere suspension of further construction on to the road by encroachment by the defendant, the defendant is not prevented from proceedings with his remaining portion of the building. This does not amount to initiating mini trial.
- (11) Thus the order passed by the trial court is erroneous and illegal without appreciating the facts for granting of T.I. order against the defendant from proceeding with his illegal construction pending disposal of the suit.
- (12) That, additional grounds if any would be submitted at the time of argument by way of reply with the prior permission of this Hon'ble court and with notice to the other side.
- (13) The appeal is filed with a delay of 7 days. The separate application is filed for condonation of delay.



10. On these grounds the appellant has prayed to allow this Misc., appeal.

11. Before this court the respondent appeared through his counsel and argued that the present appeal is not maintainable and that the trial court has properly and correctly appreciated the facts and materials on record and delivered the impugned order in accordance with law. There are no grounds to interfere with the reasoning's of the trial court. Accordingly, they prayed to confirm the order of trial court and dismiss the appeal with costs.

12. From the above facts the following point arises for consideration.

(1) Whether the orders passed by the trial court on 10.03.2025 dismiss the IA No.I filed by the plaintiff under Order 39 Rule 1 & 2 of C.P.C., is to be affirmed or reversed?

(2) What order?

13. I have heard arguments on both sides and peruse the materials available on record. My answered to the above points are as follows:-

POINT NO.1 :- In the Negative

POINT NO.2 :- As per final the final order
for the following

:: REASONS ::

14. **POINT No.1:-** It is the case of plaintiff that he is the owner and possessor of land bearing Sy. No.758/A of Sindhanur measuring 2 acre



27 guntas. He has submitted that, he has purchased said extent of land under registered sale deed dated 09-11-1994. He has submitted that on purchase of same he got converted said land for non agricultural purpose under order of Tahashildar Sindhanur bearing ALN/39/85-86/274 dated 04-11-1985. He has also formed layout. Further it is case that defendant being the owner of plot No.B-26 is trying to encroach suit road. That the fact of ownership of plaintiff over above said land has not been denied by the defendant. That the plaintiff has produced photostat copy of sale deed dated 21-09-1984. At this preliminary stage on perusal said sale deed it goes to show that one Nagireddy S/o Ramireddy had purchased land bearing Sy.No. 758/A measuring 2 acre 27 guntas from one Durugappa S/o Pavadeppa. Further to show that he got converted said land for non agricultural purposes he has produced a photostat copy of order of Tahashildar Sindhanur dated 04-11-1985. On perusal of said order, it goes to show that on the basis of application filed by the Nagireddy S/o Ramareddy Tahashildar Sindhanur by his order was pleased to permit for conversion of agricultural land for non agricultural purposes to an extent of 2 acre 27 guntas in Sy. No.758/A of Sindhanur. Further he has also produced layout plan to show that he has formed plots from A - 1 to A - 32 and he has produced form No.3.

15. Further it is the case of plaintiff that defendant is owner of plot bearing No.26 and he has purchased the same from one Venkatrao S/o Neelakantaraao under registered sale deed dated 06-12-2021. To prove the same plaintiff has produced a copy of sale deed dated 06-12-2021. On perusal said sale deed it goes to show that defendant herein purchased



plot bearing No.B-26 in land bearing Sy. No.758/A from its vendor by name Venkatrao S/o Neelakantaraao for valid consideration of Rs.7.81,000/-.One of the major dispute in this case is that, it is the case of plaintiff that defendant has illegally encroached road to the North of his layout and to the South of defendant's site bearing No.B-26 to an extent of 5 feet on South-East and to an extent of 2 feet on South-West reducing width of the road by an extent encroached. That on perusal of averments made by the plaintiff at para No.6 of plaint. He has specifically contended that on 26-09-2024 when he was in Sindhanur he had visited his layout through 30 feet road and got it measured and on his measurement he found 5 feet less to 30 feet and on his measurement he found length of defendant's plot and North-South measured an excess of 5 feet into plaintiff's 30 feet road. The plaintiff at this preliminary stage except producing the 5 photographs has not produced any documents to show that he got measured suit road and on his measurement he found there was 5 feet to 30 feet and there was an excess measurement of 5 feet in defendant's plot into plaintiff's 30 feet road. That when plaintiff alleges that he got measured suit property on his visit to Sindhanur on 26-09-2024, at this preliminary stage it is bounded duty of plaintiff to prove prima facie case and to prove prima facie case it was a burden upon plaintiff to prove the same and prove the same he has to produced a copy of said measurement which he alleged to have measured property on 26-09-2024 as contended by him in para No.6 of plaint. Under such circumstances the documents produced by the plaintiff herein do not prove a prima facie case and he has not made out



prima facie case and balance of convenience do not lie in favour of plaintiff.

16. Further it is settled position of law that the court at the time of adjudicating the LA under order 39 rule 1 and 2 of CPC, cannot enter into a mini trial and cannot express any doubt or opinion on merits of the case and cannot express any doubt on the documents produced by the parties to the suit. However the documents produced by the plaintiff at this stage do not establish a prima facie case and balance of convenience. Accordingly if an order of temporary injunction as sought for by the plaintiff is granted the defendant would suffer irreparable loss and accordingly. Hence Point No.1 is answered in Negative

17. **Point No.2:-** In view of my findings on the above points, the Misc., appeal filed by the appellant is liable to be dismissed. Accordingly, I proceed to pass the following:-

:: ORDER ::

The Misc., Appeal filed by the appellant/plaintiff under Order 43 Rule 1 of CPC is dismissed.

The order dated 10.03.2025 passed in OS NO.419/2024 on IA No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of the Code of Civil Procedure 1908, filed by the plaintiff/respondent passed by the learned Addl. Civil Judge and J M F C Sindhanur is confirmed.



Draw decree accordingly.

Sent back the entire file to the trial court along
with copy of this Judgment, forthwith.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me
in the open court on 02nd day of June 2026)

(Lakshmikanth J Miskin)
Senior Civil Judge & J.M.F.C.,
Sindhanur