

KAHV310015212022



Presented on : 04-11-2022
Registered on : 04-11-2022
Decided on : --
Duration :

The plaintiff has filed present suit against the defendants for the relief of permanent injunction to restrain the defendants from put up construction by encroaching 3 ft road as per “A1. B.C.D.E.F” lettered hand sketch portion alleged to exist to reach the plaintiff’s “B” suit schedule property.

Along with the main suit, the plaintiff has filed the I.A.No.I under order 39 Rule 1 and 2 R/w 151 of CPC., seeking to restrain the defendants from put up construction or building by encroaching 3 ft road as per “A1.B.C.D.E.F” lettered hand sketch portion being constructed without leaving set back area by way of ad-interim ex-parte temporary injunction till disposal of suit.

Perused the plaint averments, I.A.No.I, its accompanying affidavit and documents relied upon by the plaintiff. On perusal of the same, it is forthcoming that, originally plaintiff asserted to be the owners and in

possession of all suit schedule properties and subsequently sold 'A' suit schedule properties in favour of the defendants by virtue of sale deeds dated 03-02-2021 and thereby put them to possession of 'A' suit schedule properties and there assert to exist 3 ft road towards eastern and southern portion to reach his "B" suit schedule property over which the defendants alleged to had and trying to put up construction by encroaching existing said road as per "A1.B.C.D.E.F" lettered hand sketch portion annexed to the plaint.

In the context of aforesaid material pleadings in the plaint as well as facts deposed in the affidavit annexed to the application, on perusal of xerox copies of register sale deeds dated 02-02-2021, it is forthcoming that, the plaintiff has sold 'A' suit schedule properties in favour of the defendant No.1 and 2. On perusal of copy of notice dated 13-10-2022 directed by the Chief Officer of Town Municipality, Hangal, it is prima facie indicates that, said local authority has issued said notice calling the defendants to stop the construction which prima facie support the contention of the plaintiff that, the defendant carrying out construction activities. More importantly, on perusal of original sketch prepared and issued by the Land Surveyor of Town Panchayat Hangal, which reflects the facts regarding the existence of 3 ft road in corroboration of hand sketch produced by the plaintiffs along with the suit

and same is exist to approach the plaintiffs property in V.P.C.No.3207 which is 'B' suit schedule property. On consideration of aforesaid prima facie documents produced by the plaintiff inspires that, her case can not be doubted at this stage. In other words, at this stage, the plaintiff has made out prima facie case and balance of convenience lies in her favour and irreparable loss and injury would be caused to her if injunction is refused. Moreover, very purpose of filing the suit would be defeated if the injunction is not granted and same would results multiplicity of the proceedings. Accordingly, the considered opinion of this court is that, notice of I.A.No.I as contemplated U/o.39 Rule 3(1) of C.P.C., to the defendants shall be dispensed with. Therefore, this court proceed to pass the following:

ORDER

The defendants are hereby restrained from put up construction if any in the 3 ft road as per "A1.B.C.D.E.F" lettered hand sketch portion annexed to the plaint by way of exparte temporary injunction till the next date of hearing.

Issue suit summons and emergent notice on I.A.No.I to the defendants if sufficient PF is paid.

Issue order of exparte temporary injunction in favour of plaintiff, if she comply the order 39 Rule 3(a) of the CPC.

Call on: 12-12-2022.

Civil Judge & JMFC.,
Hangal.