

IN THE COURT OF PRINCIPAL CIVIL JUDGE AT
SINDHANUR.

PRESENT:SMT. B.S.RAYANNAWAR.B.A.LL.B.
Prl. Civil Judge & J.M.F.C., Sindhanur.

Dated 29th day of June 2015

O.S. No. 627/2014

- Plaintiffs : 1. Sri Adibasavaraj S/o Mari Swamy,
Age:39 years, Occ:agri & business.
2. Sri.Manjunatha S/o Laxaman rao,
Age:40 years, Occ:Agri &
business.
3. Sri.Shivakumar S/o
Veerabhadrayya Tadakal,
Age:45 years, Occ:Agri &
business.
4. Sri.Thippanagouda S/o
Muddanagouda, Age:64 years,
Occ:Agri & business.
5. Sri. Syed Jaheer S/o Syed Abdul
Gani Age:68 years, Occ:Agri &
business.
6. Sri.Venkanna Joshi S/o Rajachar,
Age:68 years, Occ:Agri & Deed
writer.
7. Sri.Mallappa S/o Manappa
Lamani, Age:68 years, Occ:Agri &
business.
8. Sri.G.Krishana Singh S/o Bala
Krishana Singh, Age:58 years,
Occ:Agri & business.
9. Sri. Siddayya swamy S/o
Amarayya swamy, Age:36 years,
Occ:Agri & business.

(Sri. K.A.G., Advocate)

Vs.

- Defendant:
1. The Managing Director
North-East KSRTC Central office
Gulburga. Gulburga town tq and
Dist:Gulburga.
 2. Divisional Controller
North-East KSRTC Raichur division
Raichur town tq, & dist:Raichur.
 3. Divisional Traffic officer
North-East KSRTC Raichur division
Raichur town tq, & dist:Raichur.
 4. Executive Engineer
Civil works division officer
North-East KSRTC Ballary town tq, &
Dist Bellary.
 5. Depot Manager.
NEKSRTC Bus Depot Sindhanur .

(D-1 to 5 by G.S.R.K.Reddy Adv.)

Date of Institution of the suit : 19/11/2014

Nature of the suit :Suit for mandatory
injunction.

Date of the evidence. : --

Date on which the judgment
is pronounced. : 02/06/2015

Year/ Month/s Day/

Total duration : 00 06 13

JUDGEMENT

This is a suit filed by the plaintiffs against the defendants
for mandatory injunction.

2. Brief facts of the plaint are as under:-

The plaintiffs in their plaint have alleged that directing the defendants to construct the eastern compound wall by replacing the existing eastern compound wall with in the land Sy.No.770/1-A of sindhanoor village by leaving the place an area of 8 meter width as per town planning approved plan passed in it's office file no tantrika/Vinnyasa/01/2006-07 dated 22-1-2007 in the Sindhanoor bus stand property in land sy no 770 of Sindhanur town. The plaintiffs are having their own residential properties in Sri.Venkatarao colony Sindhanur town. That know there is a Rasta of 4 meters in north south direction all along in the east of Sindhanur

3. That the plaintiffs are having their own residential properties in Sri Venkataroa colony sindhanur town. That know there is a Rasta of 4 meters in north south direction all along in the east of sindhanur land sy no 770 in which sindhanur bus stand was and is existing .That this Rasta is existing 4 meter width. That the sindhanur town is governing under the provisions of twon planning and the sindhanur town planning authority approved the Rastha which is situated towards east of sindhanur bus Stand property it was

increased from 4 meter to 12 meter width as per its order dated 23-1-2007 in its office file no Tantrika/Vinyasa/01/2006-07. The defendnat N.E KSRTC authority secured the approval of commercial shops in the southern partition of its premises the town planning authority while approving the plan of construction of shops 12 meter rastha was shown in the plan. The NEKSRTC proceeded to built new bus stand building in the premises since lost 4 years. The defendants are intended to put of new compound wall in the eastern boundary of the Bus stand premises. The plaintiffs and other residents of G.Venkatrao colony filed an application dated 22-10-2011 to CMC Sindhanur to issue direction to the defendants provide 8 meter width place all along the eastern side of the bus stand property and the existing compound shall removed and construct the new compound wall by leaving 8 meter for Rastha purpose as per Master plan of Sindhanur twon. That the CMC authority was issued a direction to defendants as per CMC office order dated 26-10-2011. The defendant No.3 issued an information under the right to information act about the leaving of 8 meter space for Rastha and the plan shows that the defendants are agreed

to provide 8 meter space for widening the existing 4 meter Rastha in the east of bus stand property . The order passed by town planning authority is final one and the defendants are bound to follow the order. That the defendant construct the new compound wall as per Master plan of the Sindhanur town and there is no harm to Sindhanur bus stand premises and it will not causes an harm or injury to public at large. The new building of Bus stand was completed and the defendants were proceeded to dig the foundation in the month August 2014 to construct the public lavatory and septic tank in the bus stand property which is covered in the approved master plan Rastha of 12 meter. The plaintiffs requested to contrctor not to dig the foundation as the place is coming under master plan area and as per plan the 8 meter width rastha has to provide for widening the existing rastha of 4 meter. The said contractor stop the work and informed the plaintiffs to approached the concerned authority to give instruction to leave the place of 8 meter. These plaintiffs approached the defendants on 23/10/2014 and requested to form drain and built the compound wall by leaving 8 meter but they did not properly responded and on the other continued the work of digging

earth for formation of drain and prays for decree the suit with cost.

4. In response of the suit summons the defendant No.1 to 5 have appeared through their counsel. But the defendant No.2, 3 and 5 have filed their written statement and defendant No.1 & 4 have not filed their written statement. In which they have alleged that the suit appears has been file under order 1 rule 8 in representative capacity. But the plaintiffs have not complied the requirements of order 1 rule 8, which needs prior permission of this court, and also service of notice on all the persons interested either by individual service or by vide publicity in a news paper, for participation of all the persons interested in such proceedings. Such requirements having not been complied the suit has to be dismissed at the outset. The plaintiffs also misrepresented facts and are illegally claiming more extent than what is approved by town planning authority in their master plan. The plaintiffs also misrepresented facts and are illegally claiming more extent than what is approved by town planning authority in their master plan. The plaintiffs have not shown their individual interest in filing the suit and how they are affected about their properties and existence of

their properties adjacent to the road. These facts having missed from the plaint the suit cannot stand and has to be dismissed. The plaintiffs themselves have not left any set off from the road width for the constructions adjacent to the road, if at all they own any properties adjacent to the road. The plaintiffs also have not furnished the width of the existing road from their western walls to the east and compound wall of N.E.K.R.T.C. bus stand and prays for dismiss the suit with cost.

5. On the basis of the pleadings of the parties issues framed as follows. :-

ISSUES

1. Whether the plaintiffs proves that the defendant constructed the compound wall against the town planning approved plan file No. Tantrika/Vinyasa/01/2006-07?
2. Whether the plaintiffs entitled for the relief as claimed?
3. What order or decree?
6. After framing the issues the learned counsel for the defendants has filed I.A. No.III and pray to appointment of court commissioner, and the counsel the plaintiff submits

no objection hence, I.A. No.III is allowed and AEE of CMC has appointed as court commissioner. On 23/04/2015 the court commissioner has submitted his report and both parties submits no objection to the court commissioner report and prays to post the case for Judgment. Thereby their is no evidence by both parties.

7. Heard arguments on the plaintiff side.

8. My findings to the above issues are as under:

Issue. No.1 In the affirmative
 Issue No. 2. In the affirmative.
 Issue. No.3. As per final order for the
 following:-

-: REASONS :-

9. **Issue No. 1:-** The plaintiff filed the suit against the defendant to directing the defendants to construct the eastern compound wall by replacing the existing eastern compound wall with in the land Sy.No.770/1-A of sindhanoor village by leaving the place an area of 8 meter width as per town planning approved plan passed in it's office file no tantrika/Vinnyasa/01/2006-07 dated 22-1-2007 in the Sindhanoor bus stand property in land sy no 770 of Sindhanur town. The plaintiffs are having

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lavatory and septic tank in the bus stand property which is covered in the approved master plan Rastha of 12 meter. The plaintiffs requested to contractor not to dig the foundation as the place is coming under master plan area and as per plan the 8 meter width rastha has to provide for widening the existing rastha of 4 meter. The said contractor stop the work and informed the plaintiffs to approached the concerned authority to give instruction to leave the place of 8 meter. These plaintiffs approached the defendants on 23/10/2014 and requested to form drain and built the compound wall by leaving 8 meter but they did not properly responded and on the other continued the work of digging earth for formation of drain and prays for decree the suit with cost.

10. Per contra, the defendant No.1 to 5 have appeared through their counsel. But the defendant No.2, 3 and 5 have filed their written statement and defendant No.1 & 4 have not filed their written statement. In which they have alleged that the suit appears has been file under order 1 rule 8 in representative capacity. But the plaintiffs have not complied the requirements of order 1 rule 8, which needs prior permission of this court, and also service of notice on all the

persons interested either by individual service or by wide publicity in a news paper, for participation of all the persons interested in such proceedings. Such requirements having not been complied the suit has to be dismissed at the outset. The plaintiffs also misrepresented facts and are illegally claiming more extent than what is approved by town planning authority in their master plan. The plaintiffs also misrepresented facts and are illegally claiming more extent than what is approved by town planning authority in their master plan. The plaintiffs have not shown their individual interest in filing the suit and how they are affected about their properties and existence of their properties adjacent to the road. These facts having missed from the plaint the suit cannot stand and has to be dismissed. The plaintiffs themselves have not left any set off from the road width for the constructions adjacent to the road, if at all they own any properties adjacent to the road. The plaintiffs also have not furnished the width of the existing road from their western walls to the east and compound wall of N.E.K.R.T.C. bus stand.

11. But in this case after framing issues the defendants filed interim application for appointment of commissioner ie.,

I.A No.III U/O 26 rule 10 of C.P.C. and the counsel the plaintiff submits no objection hence, I.A. No.III is allowed and AEE of CMC has appointed as court commissioner. On 23/04/2015 the court commissioner has submitted his report and both parties submits no objection to the court commissioner report and prays to pass Judgment in the present case.

12. In this case it is the contention of the plaintiff to restrain the defendant not to construct any form construction in the master plan of approved suit rasta in the east of Sindhanur bus stand premises which is situated in land bearing Sy.No.770/1/A of Sindhanur in the eastern boundary measuring 8 meter width East-west all along with existing compound wall.

13. The plaintiff No.4 on behalf of other plaintiff has filed I.A.No.IV in affidavit contended that in view of the court commissioner report they abandoned 4.5 meter road space towards the west of suit claim and the defendant ready to provide 9 meter road. Town planning authority also contended the total width of the road as per master plan as nine meter.

14. In commissioner report the disputed road is shown as remaining width of the road, and the defendants are agreed to left space for formation of road and the defendants further agreed to by leaving 9 meter width of the road from the western wall of building. Hence the plaitniff abondened the suit claim to the extent of 4.5. meter. Hence inview of the acceptance of court commissinoer report by the both parties. Hence, Issue No. 1 & 2 are answered in the '*Affirmative*'

15. **Issue No.3** : In view of my findings to the issue No. 1 & 2 as stated above, I proceed to pass the following:

ORDER

The suit of the plaintiff is decreed.

Draw decree accordingly.

(Dictated to stenographer on computer, typed by her, corrected, initialled and then pronounced by me in the open court on this 29th day of June, 2015)

(B.S.Rayannawar)
Prl. Civil Judge & J.M.F.C.,
Sindhanur.

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:

Nil.

LIST OF DOCUMENTS MARKED FOR PLAINTIFF;

Nil.

LIST OF WITNESSES EXAMINED FOR DEFENDANTS:

~Nil~

LIST OF DOCUMENTS MARKED ON THE FOR DEFENDANTS SIDE;

Nil.

Prl. Civil Judge & J.M.F.C.,
Sindhaur.

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