

IN THE COURT OF THE PRL. CIVIL JUDGE
CHANNAPATNA.

Present: Miss. B.T.Annapoorneshwari,
B.A.LL.B.,
Prl. Civil Judge and JMFC.,
Channapatna.

Dated this the 6th day of March, 2018.

O.S.No.7/18

Plaintiff/s:

Sri.Siddegowda
S/o Late Boregowda,
Aged about 60 years,
R/o Sogala village,
Channapatna Taluk,
Ramanagara District.

(By Sri.Lokesh A., Adv.)

V/s.

Defendant/s :

1. Jayamma
W/o Boregowda,
Aged about 55 years,
R/o Sogala village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.
2. PDO
Sogala Grama panchayathi,
Sogala village,
Channapatna Taluk,
Ramanagara District.

**(D-1 by Sri.M.K.Prabhu, Adv. &
suit against D-2 is dismissed)**

PARTIES TO I.A.NO.II

Applicant: : Sri.Siddegowda

V/S

Respondents : Sri.Jayamma

ORDERS ON I.A.NO.II

The plaintiff has filed this application seeking temporary injunction against the defendant restraining her or any persons claiming under him from putting up any construction over the suit schedule property till disposal of this suit.

2. In support of the application the plaintiff has filed affidavit stating that the suit schedule property was purchased by his father through registered sale deed dated 9.5.1948 and accordingly katha of the suit property sanding in his father's name and they have Hitlu behind their house and it has not got any separate number. The defendant is the adjacent owner of the suit property and he has got Hitlu and it has not got any separate number. The defendant has obtained

permission from the panchayath for his old house but constructing house in the vacant portion which has not got any number. The defendant has encroached an area of 34X15 feet i.e. 'B' schedule property and constructing house and when he questioned the said act then panchayath was convened wherein the defendant did not agree for the decision of the panchayath but hurriedly trying to complete the construction work by obtaining permission showing wrong schedule illegally.

3. The defendant has filed his objections, wherein he has denied the case of the plaintiff and submitted that he has constructed the house in his property No:140/70 by taking permission, his property is no way connected to the suit property. Hence he has prayed for dismissal of the application.
4. Heard and perused the materials on record.
5. The following points arise for my determination;
 1. Whether the plaintiff has made out a prima-facie case in his favour?

2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?
 4. What order?
6. My findings on the above points are as under;
- 1) In the negative,
 - 2) In the negative,
 - 3) In the negative,
 - 4) As per final order, for the following;

REASONS

7. **Points 1 to 3**:- These points taken together for the sake of convenience and avoid repetition.
8. The plaintiff's claim is that he is the owner of the suit 'A' schedule property and the defendant is being adjacent owner has encroached the suit 'B' schedule property and constructing the building and if the defendant succeeds he will be put to irreparable loss and hardship. The defendant contends that he has legally constructed the building in his property

and his building is in no way connected to the suit property but the plaintiff has come up with this false suit even though the construction is over.

9. The plaintiff has produced demand register extract, registered sale deed dated 9.6.1948, tax details extract, tax paid receipt, demand register extract pertaining to the property of the defendant, true copy of building construction permission, Photos and CD.
10. The defendant has produced photos, CD, copy of in spot inspection report, copy of licence issued by the panchayath and copies of katha extracts.
11. As per the documents there, the plaintiff and defendant both are adjacent property holders. The plaintiff submits that the defendant is carrying out the construction. As per the documents, the defendant has obtained license and has constructed the building. The plaintiff states that the defendant has encroached the suit 'B' schedule property and taken up construction. When the same was the

situation then why the plaintiff did not object the said licence at the preliminary stage before the panchayath. At this stage, whether there is an encroachment or not cannot be decided. As per the contention of the defendant he has already constructed the building and the photos are produced in this regard and hence there is no need to grant any relief restraining the construction work. By producing the documents both the parties have shown that they are the owners of their respective properties. The plaintiff claims that there is an encroachment but at this stage it is difficult to come to conclusion with regard to said aspect. Looking to the facts and circumstances of the case, at this stage it is not proper to grant injunction as the construction work is already complained. Further, as at this stage it is not possible to decide about the encroachment and the full fledged trial is needed and hence no hardship or loss is going to be caused to the plaintiff because if he succeeds in his case, definitely an order for demolition of the encroached property can be ordered at the cost of defendant himself and the encroached property can be handed over to the plaintiff.

Therefore, as the dispute between the parties needs full fledged trial and hence it is not proper to grant the injunction at this stage in favour of the plaintiff. Further, as per the defendant the construction is already over and hence there is need for granting any of the relief as claimed by the plaintiff when at this stage the issue of encroachment cannot be proved. Therefore, looking to the facts and circumstances of this case, at this stage the plaintiff has not made out the prima-facie case in his favour as the dispute needs to be adjudicated by taking full fledged trial.

12. As already discussed above when the case of both the parties is considered at this stage the balance of convenience lies in favour of the defendant as he will be put to hardship and loss when compared to the plaintiff. Therefore, if the T.I. is not granted to the plaintiff then no loss or hardship is going to the plaintiff when compared to that of the defendant. Accordingly, I answer point Nos.1 to 3 in the negative.

13. **Point No.4**:- As per discussion made above, I proceed to pass the following;

ORDER

I.A. No.II filed by the plaintiff
under Order 39 R.1 & 2 r/w.Sec.151
of CPC is dismissed.

No order as to cost.

(Typed by me directly on the laptop, later computerized by the
Stenographer, corrected, signed and pronounced by me on this the 6th
day of March, **2018**.)

Prl. Civil Judge & JMFC,
Channapatna.

(Order pronounced vide separate
order in the open court)

ORDER

I.A. No.II filed by the plaintiff
under Order 39 R.1 & 2 r/w.Sec.151
of CPC is dismissed.

No order as to cost.

Prl. Civil Judge & JMFC,
Channapatna.

