

**IN THE COURT OF THE ADDL CIVIL JUDGE AND J.M.F.C AT
CHANNAPATNA**

**PRESENT: Smt. Namrata Rao.K.S
B.A.L, L.L.B., M.B.L
Addl., Civil Judge and J.M.F.C.
Channapatna.**

Dated: This the 11th day of September 2018

O.S.No.84/2018

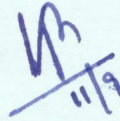
PLAINTIFF:

1. Smt. Marivenkatamma
W/o Late Kattayya @
Chikkachannaiah
Aged about 60 years,
2. Sri. Kattayya
S/o Late Kattayya @
Chikkachannaiah
Aged about 36 years,

Both are R/a:
Muniyappandoddi Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. S.S.N., Advocate)

V/s


11/9

DEFENDANTS:

1. Sri. Miniyaiah
S/o Late Yajaman Muttaiah
Aged about 58 years,
2. Sri. Murthy
S/o Muttaiah
Aged about 24 years,
3. Sri. Muttaraju
S/o Muttaiah
Aged about 19 years,
All Are R/a:
Muniyappandoddi Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. B.G., Advocate for D1 to D3)

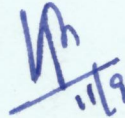
PARTIES TO I.A.No.I

Applicant : Smt. Marivenkatamma
and another Plaintiff
-V/s-

Respondent: Sri. Miniyaiah
and othersDefendant

ORDERS ON I.A. No. I under Order XXXIX Rule 1 & 2

of CPC

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The application due for consideration is filed by the plaintiff to restrain the defendant from constructing in the plaintiff's 11 X 22.08 feet space till the disposal of the suit. The defendants have resisted the application.

2. The epitome of the case of the plaintiff is as under:

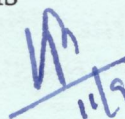
a) The Suit Schedule Property consists of 23.08 X 22.08 ft of plaintiff's house and 11 X 22.08 feet backyard.

b) The Suit Schedule Property was purchased by the father of the plaintiff i.e., Kattayya @ Chikka Channayya from one Chennayya @ Jogayya via a registered sale deed dated.04.02.1980.

c) After the death of Kattayya the plaintiff are in possession of Suit schedule property.

d) The defendants are trying to erect house building and trying to dispossess the plaintiff. Hence this suit.

3. Per contra, the defendants in their written Statement have taken the following contentions

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a) The plaintiffs have no property left towards their eastern side and have constructed house in their entire property.

b) one Jayamma W/o Muniya is in possession of the property towards plaintiff's eastern side and therefore the suit is against a wrong person.

c) 3 X 90 ft conservancy was left between the prop of the plaintiff and Jayamma.

d) The measurement claimed by plaintiff is wrong.

4. The affidavit accompanying the I A No.I is the reiteration of the plaint and the defendant have filed a memo adopting the written statement as their Statement of objections to I A No.I

5. On perusal of the rival contentions, the following points arise for my consideration:-

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?*

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3. Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?

4. What order?

6. I have heard the counsel for the plaintiff and the defendant No.1 at length.

7. My answer to the above points are as under;

Point No.1: In the Negative

Point No.2: In the Negative

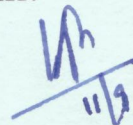
Point No.3: In the Negative

Point No.4: As per final order

for the following;

REASONS

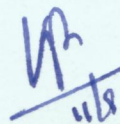
8. **Point No.1:** It is the case of the plaintiff that Kattayya, their father purchased the Suit schedule property via a registered sale deed dated 04.02.1980. The copy of the sale deed is produced. I have perused the sale deed. The sale deed does show 34 ½ feet and 22 ½ feet property as the property purchased by the father of the plaintiff.

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9. On the other hand, the defendant has contended that there is no property left to the plaintiffs as contended by them. Now let me see whether the plaintiff has produced any materials which probabalise that the plaintiff has left 11 X 22.08 feet of his property towards eastern side.

10. I have perused the documents produced by the plaintiff carefully. The plaintiff has produced the geneological tree, copy of sale deed dated 04.02.1980, Demand Register extracts of the year 2017-18, Tax paid Receipts and photographs.

11. The demand register extract per se unfolds that tax is collected on the house building only and does not speak of collecting the tax on vacant land seperately. Moreover, the plaintiff could have produced his earlier license, approved plan to show that he has erected the house building leaving 11 X 22.08 feet space. No such endeavour is made by him.

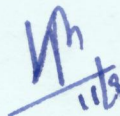

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12. I have perused the photographs produced by both sides. On perusal of these, it appears that already the construction is made upto the wall level. The prayer sought by the plaintiff to has already become infructuous.

13. Whether the plaintiff has left his property of 11 X 22.08 feet space or not can be decided only at the time of trial. Further whether the defendant has encroached upon the plaintiff's property or not also require trial. If at all encroachment is found to be made, the defendant may be directed to pull down the construction that too at the cost of the defendant.

14. Hence on perusal of the materials before me, I opine that the plaintiff has not shown a Prima facie case and answer **Point No.1** in the **Negative**.

15. Point No. 2 and 3:- In view of the discussion made above with regard to point No.1, these points are taken together. The Hon'ble Apex court in **Kashi Math Samsthan**

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And another V/s Shrimad Sudhindra Thirtha Swamy and another reported in AIR 2010 SC 296 has held as follows:-

“If a party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted.”


When the plaintiff has failed to show prima facie case in his favour, and ultimately fail on the application, the discussion on balance of convenience and irreparable loss and injury does not survive any purpose, hence I answer the **points No.2 and 3 in the Negatives.**

16. Point No.4: In the light of the above reasonings, I make the following;

ORDER

I.A. No.I under order XXXIX Rule 1 and 2 is dismissed.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open court this the 11th day September, 2018)


(Namrata Rao.K.S)
Addl., Civil Judge & J.M.F.C,
Channapatna.