

IN THE COURT OF THE ADDL. CIVIL JUDGE
CHANNAPATNA.

Present: Smt. Usharani B.N.,
B.A., L.L.B., L.L.M.,
Addl. Civil Judge and JMFC.,
Channapatna.

Dated this the 14th day of September, 2022

O.S.No.270/2022

Plaintiff/s: Smt. Parvathamma
(By Sri. H.H.S., Adv.)
V/s.

Defendant/s : Sri. Doddaiiah & others
(By Sri L.A, Adv.)

I.A.NO.I

Applicant: : Smt. Parvathamma
V/S

Respondents : Sri. Doddaiiah & others

ORDERS ON U/O 39 R 1 AND 2 OF CPC

The plaintiff has filed this application u/O.39 R.1 & 2 r/w.Sec.151 of CPC seeking ad interim order of temporary injunction restraining the defendants, their agents, servants, followers, henchmen, supporters or attorney or anybody claiming under them any right from in any way putting up

any construction in their property by damaging the bifurcation wall without leaving the set back as required under law, till disposal of this suit.

2. In support of the application, the plaintiff has filed affidavit stating that she has filed this suit seeking relief of permanent injunction. The averments made in the plaint may kindly be read as part and parcel of this affidavit, in order to avoid unnecessary repetition. The suit schedule property is the ancestral property and was succeeded the suit schedule property through her husband. The Katha and other panchayath records pertaining to the suit schedule property standing in the name of the plaintiff. The defendants possess their property towards the northern side of the suit schedule property, there is wall in the suit schedule property which bifurcates the suit schedule property and the property of the defendants and the said wall is mud wall and the same has been put up without foundation.
3. The plaintiff further submitted that the defendants started to put up construction in their property. The defendants without leaving the set back as required under law by violating the rules and regulations dug the foundation at the edge of the bifurcation wall and by damaging the bifurcation

wall without leaving the set back. If the defendants succeeded in their attempts, this will damage the wall and definitely it will fell down and further submitted that the ventilation will not available to the suit property and as well as to the property of the defendants. The acts of the defendants is illegal and unauthorized one. The plaintiff is poor and aged lady. On the other hand, the defendants are powerful person in the locality having both monied and political powers. The plaintiff cannot resist or restrain the illegal acts of the defendants and they can be restrained only by an order of this court. The plaintiff has made out prima facie case and the balance of convenience lies in her favour and no prejudice or loss would be caused to the other side, if the application is allowed. On the other hand, if the same is refused, she will be put to great loss and hardship, which cannot be compensated by any means and hence prayed for allowing this application.

4. The defendants have filed their written statement and have adopted the same as objections to the application and the defendants has denied the averments of the plaint as false and further submitted that the property of the defendants bearing property No.15200100800500498 (old No.23/138/1) measuring East to West 12.8016 mtrs North to South 7.31 mtrs totally 93.64 mtrs and bounded East by

Government C.C. Road, West by House of V.C. Nirmala, North by own property of 3 feet, South by House of Parvathamma this katha is standing in his name and he is the absolute owner in possession. Further contended that the plaintiff is in the southern side of the suit schedule property. The plaintiff's schedule property and the defendant property are the house property and both the property are connected north to south by two walls. Presently the defendant have vacated the house and started to build a new house for residential purpose and have removed southern side wall which is belong to them. Further contended the said wall measures 10 inches out of which 5 inch wall belongs to the defendant and the defendant have remove the 5 inch wall without any damage to the plaintiff's wall. Further contended that the defendant have left out more than 1½ feet from the wall and has started to put up foundation.

5. The defendant further contended that the defendant has obtained the license from the concerned authority on 22-04-2022 and also approval plan, estimate approval and put-up foundation, further contended that the as per the Gazatte Notification of Panchayath Raj Act up to 100 Sq.mtrs, 1 mtr in front and ½ mtrs in the sides of the building shall be left over for the setbacks and as per the law

the defendant left over the set back and has put up construction. The plaintiff given the representations to Gram Panchayath to stop construction. Event the concerned officers visited the spot and verified. These things are not disclosed the plaintiff in his plaint. Further contended that the suit is not maintainable and as filed false suit against the defendant only to harass and prays to dismiss the application.

6. Hence, prayed for dismissal of the application.

7. Heard and perused.

8. The following points arise for my determination;

- 1) Whether the plaintiff has made out a prima-facie case in her favour?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether irreparable loss and hardship will be caused if T.I. is not granted?
- 4) What order or decree?

9. My answers to the above points are as follows:

Point No.1: In the Affirmative;

Point No.2: In the Affirmative;

Point No.3: In the Affirmative;

Point No.4: As per the final order
for the following:-

REASONS

10. **POINTS NO.1 to 3:-** As these points are interconnected, they are taken up together for common discussion in order to avoid repetition of facts.

11. The plaintiff has filed the suit against the defendant for the relief of permanent injunction, stating that the defendants without leaving the set backs and damaging the common wall between the plaintiff and defendants i.e., suit schedule property. The defendant denied the case of the plaintiff and contended that he has obtained license approved plan from concerned authorities. Further contended that he has followed all the rules and left out set back as per law. The plaintiff has produced Photos, E – Khatha, xerox copy of Notice issued by panchayath to defendant, copy of NCR and endorsement

12. The defendant has produced E – Khata extract, License issued by grama Panchayath, Plan approval, Estimation cost of construction house, Tax paid receipt, KDPR Act, reply notices, Police complaint, Photos and CD.

13. Perusal of the rival contentions reveals that both plaintiff defendants are in their respective portions and it is pertinent to note that both the parties have produced their respective documents. In order to establish their contentions with regard to alleged set back and the plaintiff produced photographs

to shows the damage to suit property. However on the basis of photographs, it shows that there might be a damage to the plaintiff's house. Under such circumstances the alleged set back is a disputed question which cannot be decided at this stage. The same can be adjudged finally only on merits after the evidence is led by both the parties. But taking into consideration the documents and the photographs which are furnished by the learned counsel appearing for the plaintiff and defendants, prima-facie shows the damage to the suit schedule property and the factum of damage to the suit property by the defendants cannot be ruled out at this stage.

14. When an interim injunction is sought, the court may have to examine whether the party seeking the assistance of the court was at any time in lawful possession of the property. The documents produced by the plaintiff prima-facie disclose that she is in the lawful possession of the suit schedule property. Hence, if the defendant is allowed to put up construction including the land in dispute, the situation may become irreversible by the time the dispute is decided and thereby would preclude the fair and just decision of the matter. Moreover, the relief sought in the application is only to restrain the defendant from putting up further construction on the plaint schedule property.

15. The object of interim injunction is to keep things in a status quo so that if at the conclusion of trial, the plaintiff obtains a judgment in her favour, the defendant will have been prevented in the meantime from dealing with the property in such a way as

to make the judgment ineffectual. For establishing a prima facie case, it is not necessary for the party to prove his case to the hilt. If a fair question is raised for determination, it should be taken as a prima facie case is established. Based on the averments made in the affidavit, pleadings and the documents furnished, plaintiff has made out a prima facie case to go in for trial. The balance of convenience lies in favour of the plaintiff and it is she who will suffer irreparable injury if the temporary injunction is not granted. **Accordingly, points No.1 to 3 are answered in the Affirmative.**

16. **Point No.4:-** In view of my findings on points No.1 to 3, I proceed to pass the following:-

ORDER

I.A. No. I filed by of the Plaintiff under Order XXXIX Rules 1 & 2 of the CPC is hereby allowed.

The defendants, their agents, servants, or anybody acting on their behalf are hereby restrained by way of temporary injunction from putting up any kind of further construction in the schedule property, till the disposal of the suit.

(Typed by Typist copyist on online computer corrected, signed and pronounced by me on this the **14th** day of **September, 2022.**)

Addl. Civil Judge & JMFC.,
Channapatna.

(Order pronounced vide separate
order in the open court)

ORDER

I.A. No. I filed by of the Plaintiff under Order
XXXIX Rules 1 & 2 of the CPC is hereby allowed.

The defendants, their agents, servants, or
anybody acting on their behalf are hereby restrained
by way of temporary injunction from putting up any
kind of further construction in the schedule property,
till the disposal of the suit.

Call on 10.10.2022.

Addl. Civil Judge & JMFC.,
Channapatna.