

**IN THE COURT OF II ADDL. CIVIL JUDGE & J.M.F.C.,**  
**KANAKAPURA.**

**PRESENT :**

**Sri. Krishnamurthy.N.** B.A., LL.B.  
II Additional Civil Judge & J.M.F.C.,  
Kanakapura.

**Dated this the 06<sup>th</sup> day of April, 2021**

**O.S. No.12/2021**

**Plaintiff/s** : Smt. Kumari

**-V/S-**

**Defendant/s:** : Smt. Saraswathi and Another

**I.A. No.I and II**

**Applicant/s** : Smt. Kumari  
**Plaintiff/s** W/o Revanna  
Aged about 62 years,  
R/a: No. 26, Basava Layout,  
Bayalu Basava Temple Road,  
Komaghatta BDA Complex Road,  
Bangalore-60.

**(By Smt. Lakshamma.H.P, Adv.)**

**//Vs.//**

**Opponent/s:** 1. Smt. Saraswathi  
**Defendant/s** W/o A.M. Raju  
Aged about 60 years,

2. Sri. Vinod Raj.R  
S/o A.M. Raju  
Aged about 33 years,

Both are R/a:  
Angadi Beedi,  
Harohalli Village,  
Harohalli Hobli,  
Kanakapura Taluk,  
Ramanagara District.

(By Sri. Sathish.M.V, Adv.)

**COMMON ORDER ON I.A. NO.I and II UNDER ORDER  
XXXIX RULE 1 & 2 R/W 151 OF CPC**

The plaintiff has filed these instant two applications one for temporary injunction restraining the defendants from digging up foundation in 'B' schedule property and another application XXXIX Rule 1 and 2 of CPC seeking temporary injunction restraining the defendants from being put up construction in the 'A' schedule property or induct any tenant or persons pending disposal of suits.

2. One Smt. Kumari W/o Revenna, the plaintiff swearing affidavit accompanying with the application on I.A. No.I to the effect that, she becomes absolute owner in possession of vacant 'A' schedule property having purchased it from vendor Smt. Lakshamma and her children under registered sale deed dated 05.04.2008 and after the purchase, katha got mutated in her name. In the recital of the sale deed it is mentioned that 4 feet

path way (Sampu) was left at Northern side of suit schedule property towards Sri. Muniyappa's land which leads East to West for beneficial rights of plaintiff, first defendant and Smt. H.P. Lakshmi which morefully described in the 'B' schedule property. The plaintiff along with first defendant and Smt. H.P.Lakshmi are using 'B' schedule property as path way. The defendants without there being any manner of right title, are trying to interfere with plaintiff's possession and enjoyment over 'A' and 'B' schedule property, by digging up over the 'B' schedule property for the purpose of construction of residential house. There is no path way or road for the plaintiff to reach main road towards Eastern side. Despite the act of the defendants were complained to the jurisdictional police, which went in vain.

3. It is further stated that the plaintiff will be put in justice hardship if the defendants are succeeded in their illegal acts of constructing residential house encroaching 'B' schedule property and therefore, plaintiff prays to order accordingly.

4. In the I.A. No. II plaintiff seeking temporary injunction against defendant restraining not to put up construction in 'A' schedule property, contending that she acquired 'A' schedule property and has been in possession by virtue of registered sale deed dated 05.04.2008 and it is a vacant site measuring 30 X 22.5 feet situated at Harohalli Village and Hobli, Kanakapura Taluk. The defendant is owner of property situated at Eastern side of 'B' schedule to an extent of 22 X 21 feet only and there is no 7 feet

with him as per sale deed. On the other hand, the said 7 feet is gone to the road and further stated that inspite of this, the defendant trying to construct by encroaching 3 feet in the 'A' schedule property putting up pillar and paya in the Western side. Taking advantage that no interim order has granted in the suit, during the proceeding the defendant has been constructed encroaching the 3 feet in 'A' schedule property on Western side. Accordingly as the defendant raised the construction, during the proceeding the plaintiff was constrained to force seeking relief of mandatory injunction against the defendant therefore, plaintiff sought for temporary injunction in respect of 'A' schedule property.

5. In opposing said applications, defendant No.1 filed objection statement and written statement denying the claim made by the plaintiffs in the suit as not maintainable. In the objection statement it is contended that without producing reliable documents the plaintiff has filed false suit and further stated that defendant No.1 becomes the absolute owner in possession of property measuring 9.14 mtr X 6.86 mtr an old house having purchased it from its vendor through sale deed dated 05.04.2008 and after the purchase, the defendant No.1 intended to construct a house demolishing old house and accordingly, has been put up construction therein for which, a contractor was entrusted to carry out construction work. In spite of having knowledge entrust afore said fact, the plaintiff on one or the other reasons with an

intention to harass the defendant so that prevent her from being proceed with construction, the plaintiff has come up with this suit. The defendant has been constructing building as per approved plan issued by the Harohalli Gram Panchayath leaving 4 feet on North side of property in order to make use of the same for the plaintiff and other users. Defendant already has constructed ground floor East to West 55 feet North to South 14½ feet and in first floor East to West 25 feet and North to South 17 feet as per approved plan. Originally, the defendant acquired to an extent 30 X 22½ feet under sale deed dated 05.04.2008. The defendant per contra alleging other allegations prays to dismiss the application with cost.

6. Heard and perused the materials placed on record.

7. The following points that arise for my consideration on I.A. No.I and II;

*1) Whether the plaintiff has makes out a prima-facie case in her favour?*

*2) Whether the plaintiff proves that the balance of convenience lies in her favour?*

*3) Whether plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted as sought for?*

*4) What Order?*

8. My findings on 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**

9. **Point No.1 to 3:** In order to avoid repetition of facts and for convenience of the court these points taken up for discussion since they are interlinked with each other at one stretch.

10. Along with suit an application under order XXXIX Rule 1 and 2 of CPC filed for temporary injunction sought for restraining defendant from put up foundation in the 'B' schedule property and thereafter, during pendency of the suit another application under order XXXIX Rule 1 and 2 of CPC has been filed by the plaintiff against defendant from being not to put up construction in the 'A' schedule property. After being amend the plaint seek mandatory injunction to demolish alleged construction made in the 'A' schedule property. Therefore, in order to avoid repetition of facts and since these points are interlinked with each other have taken up together for discussion for the sake of convenience.

11. According to plaintiff, she became absolute owner in respect of 'A' schedule property measuring 30 X 22.5 feet having purchased it, through registered sale deed dated 05.04.2008 i.e. 'A' schedule property marked and shown as ABCD portion in the rough sketch annexed to the plaint. To that extent, she has produced certified copy of sale deed which demonstrated that property in question being vacant site i.e. 'A' schedule property was purchased by the plaintiff from Smt. Laskhmamma and her children. According to plaintiff, there was a four feet pathway (sampu) was left towards Western side of suit schedule 'A' property which meant to leave for beneficial purpose not only for the plaintiff but also defendant No.1 and one Smt. Kumari and the same fact could be found in the sale deed made in favour of plaintiff and the said four feet pathway is described as 'B' schedule in the plaint. It is stated that inspite of it, the defendants who do not concerned with the 'A' and 'B' schedule property, have been constructing residential house by encroaching 'B' schedule property. Except 'B' schedule property there is no other way for the plaintiff to reach main road towards Eastern Side. It also the case of the plaintiff that during proceeding, the defendant raised construction encroaching 3 feet in the 'A' schedule property by putting up pillar and pays towards Western side of 'A' schedule property and accordingly has filed another application restraining the defendant from being put up construction in the 'A' schedule property.

12. No doubt, plaintiff and first defendant are owners of respective properties which were purchased by them through same vendor under two different sale deeds, both appears to have been purchased on the same date and documents got registered in the office Sub-registrar. In both sale deeds which relied upon by the parties wherein it could be seen that there is a sampu road width of four feet situated towards Northern side of 'A' suit schedule property which running East to West towards Sri. Muniyappal's land for the purpose of using said portion by the plaintiff and defendant No.1 including one Smt. H.P.Lakshmi. This sampu road which according to plaintiff was left is shown as 'B' schedule property. The defendant also admits the fact about existence of four feet passage towards Northern side of 'A' schedule property. According to defendant, though defendant has been constructing building in her property after obtaining due license and approved plan issued by the Harohalli Gram Panchayath, the plaintiff with an intention to harass the defendant one or the other reasons has filed this false suit and further stated that the defendant has put up construction demolishing old house existed therein and at no point of time encroached the property of plaintiff as contended in the plaint by the plaintiff.

13. It is also pertinent to note that, the defendant No.1 has filed a memo dated 21.01.2021 wherein defendant agreed and undertake that defendant never obstruct the plaintiff and other adjacent owner from being use of four feet passage and will not

put up any construction therein. As could be seen from the records, the defendant has produced xerox copy of E-katha, sketch, building license and approved plan. The concerned Harohalli Gram Panchayath has issued building license to construct house and issued approved plan in favour of plaintiff prior to filing the present suit. When such being the fact, in the event of, any violation of building by-law, approved plan and license, from the side of defendant, the concerned authority has power to look into the matter and will take appropriate action and in such circumstances the neighbors also can approach the concerned authority complaining about violation of license issued by the authority.

14. Therefore, though plaintiff has efficacious remedy available to approach appropriate authority against defendant if the defendant has violated the building by-law or license issued by the Gram Panchayath has filed this present suit. In case the appropriate authority inspite of representation made by the plaintiff, did not act or take action or the plaintiff aggrieved by such action, it will be a different matter. Without approaching the concerned authority and non-impleading the authority concerned which issued approved plan and license in favour of defendant, the interim relief sought cannot be granted, since the authority concerned which authorized/permit the defendant No.1 to construct building, is competent to state about the question as to whether defendant No.1 has constructed the building in accordance with building by-law, license issued or not.

15. It is worthy to be noted that, in the affidavit annexed to the application I.A. No.2 under order XXXIX Rule 1 and 2 of CPC, the plaintiff has stated that during the proceeding 3 Sq feet, towards “Western side of 'A' schedule property” has been encroached and put up pillar and paya by the defendant. But property of Smt. H.P. Lakshmi, is situated towards Western side of 'A' schedule and property of defendant No.1 is appeared to be shown towards “Eastern side of 'A' schedule to the plaint”, which fact could be looked into. Further, no documents are produced by the plaintiff showing that defendant has property towards Western side of 'A' schedule to the plaint. In absence of such document, the contention that defendant has allegedly encroached 3 Sq feet towards Western as contended in the affidavit is improbable accept at this stage.

16. However, the defendant unequivocally agreed and undertake that she will not obstruct the plaintiff and other adjoining owner namely Smt. Lakshmi from being use of 4 feet passage and has left 4 feet passage towards North of 'A' schedule property, by billing a memo dated 21.01.2021 in this case. As already observed, after obtaining due license and approved plan, the defendant No.1 appears to have been raised construction and substantial construction work have been done in the property which reflected from the photos produced by both the parties. The xerox copy of deed of mortgage which produced by the defendant No.1 it reveals that the defendant No.1 has obtained loan from

Bank by executing deposit of title deeds in respect of property to which loan in advanced. So having considering the facts and circumstances at this juncture the court is of the opinion that the plaintiff has not make out balance of convenience lies on her favour. On the other hand, the defendant No.1 would be put irreparable loss in case order of temporary injunction is granted as she has constructed substantial construction work after obtaining loan from the Bank. In view of undertaking memo that has been filed by the defendant No.1 and for the aforesaid discussion at this stage the court held that the plaintiff in unable to establish that balance of convenience does lie in her favour and cause irreparable loss and thus, dis-entitled for the interim reliefs as sought for in these two applications and hence, I answer the **Point No.1 to 3 in the Negative.**

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

**:: ORDER ::**

I.A. No.I and II filed by the plaintiff U/o  
XXXIX Rule 1 and 2 r/w Sec.151 CPC is  
hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 06<sup>th</sup> day of April, 2021)

**II Addl. Civil Judge & JMFC.,  
Kanakapura.**