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**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT
BHADRAVATHI**

DATED THIS THE 19th DAY OF JULY, 2024

**Present: Sri. Lokesha C.N. M.A., LL.B.,
Prl. Civil Judge & J.M.F.C.
Bhadravathi.**

O.S.No.309/2022

Plaintiff: Murali B.K. S/oKrishnamurthy B.R,
Aged about 44 years, Advocate,
R/o Near R.S.Post Office,
(Railway Station Road), Bhadravathi

(By Sri.S.K, Advocate)

-V/s-

- Defendants:**1) Union of India represented by
The Secretary, Ministry of Communication,
(Dept. Of Posts) Sanchar Bhavan,
No.20, Ashoka Road, New Delhi-110 001.
- 2) The Chief Post Master General,
Karnataka Circle, Palace Road,
Ambedkar Veedi, Sampangi,
Ramanagara, Bengaluru.
- 3) The Post Master General,
South Karnataka Region,
Palace Road, Ambedkar Veedi,
Sampangi Ramanagara,
Bengaluru.

- 4) Superintendent of Post Office,
Shivamogga Division, Shivamogga.
- 5) The Post Master, R.S.Post Office,
Railway Station Road, Bhadravathi.

(Additional Government Pleader)

PARTIES TO I.A. NO.II

Applicant: Murali B.K.
V/s

Opponents: Union of India represented by
The Secretary and others

ORDERS ON I.A. NO.II

Plaintiff has filed I.A.No.II U/O.39 Rule 1 and 2 R/w Sec.151 of CPC with a prayer to restrain the defendants from putting up illegal construction over the suit schedule 'B' property pending disposal of suit.

2. The plaintiff sworn to an affidavit in support of application, wherein he has stated that, the plaintiff is the absolute owner of the suit schedule 'A' property. In the southern side of the suit schedule 'A' property the property of his sister is situated. Thereafter a conservancy road approaching the railway station road is existing. Said conservancy is measuring 6 feet width and 100 feet length from

the suit schedule 'A' property up to railway station road. Said conservancy is shown as the suit schedule 'B' property. It is stated that the plaintiff is using the suit schedule 'B' property to reach his suit schedule 'A' property from past 70 years. It is stated that recently the defendants have started construction without obtaining any permission and license and made an attempt to close the suit schedule 'B' property. In respect of said act of the defendants the plaintiff had filed a suit in O.S.376/2016 against the defendants. During the pendency of suit the defendants have stopped their illegal activity for time being. Later said suit was dismissed for technical reason of non issuance of notice under Section 80 of CPC. Now by misusing the dismissal of suit, the defendants have made an attempt to put up construction over the suit schedule 'B' property. Therefore, the plaintiff has filed the present suit for the relief of permanent injunction. The plaintiff has got prima-facie case, if the present application is not allowed, the plaintiff will be put to great hardship and injury. With these averments, the plaintiff has sought for allowing I.A. No.II.

3. The defendants have appeared before the court and filed written statement, by denying entire affidavit averments. The defendants have filed memo to treat written statement as objection to IA No.2. It is stated that the suit of the plaintiff is not maintainable. The suit is hit by doctrine of res-judicata under Section 11 of CPC. The plaintiff had filed a suit against the defendants in O.S.376/2016 for the same relief. Said suit came to be dismissed on 12.07.2022. Again the plaintiff has filed the same suit. The plaintiff has not produced any document to show the right over the suit schedule 'B' property. The defendant Post office building was constructed in the year of 1926 and in the year of 1965 additional land was purchased from the Deputy Commissioner, Shivamogga and constructed further post office building. The conservancy is not at all existing at any time. It is stated that before filing of this suit a maintenance work has been ordered by the competent authority. As per the order work is carried out and the work is in progress. The plaintiff without any right filed false suit. The defendants have not made any attempt to construct a building and as per the approval of competent authority carried out

maintenance work only. The plaintiff is claiming right over the Government property. Therefore, the suit of the plaintiff is not maintainable. The plaintiff is not entitled for any relief. If the present application is allowed the defendants will be put to great hardship and injury. Accordingly, the defendants prayed to reject I.A.No.II.

4. Heard the arguments of learned counsel appearing for the parties and perused the materials on record.

5. The points that would arise for the consideration of this court are as follows :-

- 1) Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?
- 2) Whether balance of convenience lies in favour of plaintiff?
- 3) Whether the plaintiff will be put to irreparable loss and hardship if interim application is not allowed?
- 4) What Order?

6. Findings of this court on the above said points are as under:-

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

7. **Point No.1** : The learned counsel appearing for plaintiff argued before the court that, the plaintiff is using the suit schedule 'B' property as road to reach his suit schedule 'A' property. The suit schedule 'B' property is a conservancy road. The defendants have made an attempt to encroach said conservancy and made an attempt to put up construction over the said conservancy. If the defendants have closed the suit schedule 'B' property the plaintiff will be put to great hardship and injury. Hence, sought for allowing the IA No.2.

8. The learned counsel for the defendants argued before the court that the suit of the plaintiff is not maintainable. Earlier the plaintiff had filed same suit against the defendants in O.S.376/2016 for the same relief. Said suit came to be dismissed in the year of 2022. After dismissal of suit again the plaintiff has filed the present suit. The suit is hit by doctrine of res-judicata, there is no any existence of

conservancy road as stated in the plaint. Therefore sought for dismissal of application.

9. In the light of the arguments canvassed by the learned counsel for the plaintiff, this court has carefully perused the materials on record. The list of documents of the plaintiff consist of khata extract, copy of gift deed dated 18.11.2013, Gazette notification, phonographs, copy of sketch, certified copy of Judgment and decree in O.S.376/2016. The defendants have not produced any documents.

10. At this stage without going into the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, the court makes it very clear that, this court is looking towards the prima-facie case and not prima-facie title. It is settled principles of law that at the time of disposing of temporary injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff has made out prima-facie case for grant of interim relief.

11. In order to ascertain the prima-facie case as canvassed by the learned counsel for plaintiff this court has

carefully perused the materials on record. It is not in dispute that earlier the plaintiff had filed a suit in O.S. 376/2016 against the defendants in respect of suit schedule properties for the same relief which is sought in the present case. It is not in dispute that said suit came to be dismissed on 12.07.2022. It is the contention of the plaintiff that he is absolute owner and in possession of the suit schedule 'A' property. The defendants have not disputed said fact.

12. It is the contention of the plaintiff that the suit schedule 'B' property is a conservancy road, the plaintiff is using said conservancy road to reach his suit schedule 'A' property from railway station road. In the earlier suit also the plaintiff had taken same contention. Though the suit of the plaintiff in O.S.376/2016 came to be dismissed, but as per the judgment and decree passed in O.S.376/2016 the plaintiff had successfully proved that he is in possession of the suit schedule 'A' property and he is using the suit schedule 'B' property to reach his suit schedule 'A' property. Said finding of the court attained finality, the defendants have not questioned or challenged said finding in any appeal. As per the judgment and

decree passed in O.S.376/2016 said suit came to be dismissed for the reason that without issuing statutory notice as required under Section 80 of CPC the plaintiff had filed said suit against the Central Government. On that technical reason, though the plaintiff had successfully proved his possession over the suit schedule 'A' property and proved that he is using the suit schedule 'B' property to reach his property and obstruction made by the defendants, said suit came to be dismissed for the technical reason of non issuance of statutory notice required under Section 80 of CPC. Both parties have not questioned said finding till today. Therefore, on the perusal of the said judgment and documents produced by the both parties it clearly shows that the plaintiff is using the suit schedule 'B' property to reach his house property.

13. It is the contention of the plaintiff that after dismissal of suit in O.S.376/2016, again the defendants made an attempt to close the suit schedule 'B' property by putting up construction over the suit schedule 'B' property. In the present application the plaintiff has sought for temporary injunction to restrain the defendants from putting up any construction over

the conservancy. Though the defendants in their written statement have denied the existence of conservancy road, but in the earlier suit there is a finding of the court in respect of existence of conservancy. As per the Gazette notification produced by the plaintiff also on the southern side of the property of the post office a conservancy road and post office is existing. Moreover, in the written statement itself the defendants have clearly pleaded that they have not made any attempt to put up construction over the suit schedule 'B' property and they have carried out only maintenance work of the post office building. Therefore, on the perusal of the said fact it clearly shows that there is a dispute between the parties in respect of the suit schedule 'B' property. Whether the plaintiff has right over the suit schedule 'B' property to use said property to reach his suit schedule 'A' property or not it could be decided only after full fledged trial. Therefore, at this stage the plaintiff has established prima-facie case in his favour. If the present application is not allowed, the plaintiff will be put to great hardship and injury. In view of above discussion and based on pleadings and materials placed by both parties, I

am of the considered opinion that, the plaintiff has established the prima-facie case in his favour. After considering all these facts, this court has answered Point No.1 in the Affirmative.

14. **Points No.2 & 3:-** As these points are interconnected with each other, I have taken these points together for consideration in order to avoid repetition of facts. The second condition for granting temporary injunction is that, the balance of convenience must be in favour of applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that, which is likely to be caused to the opposite party by granting it.

15. The object of the interlocutory injunction is to protect the plaintiff against the injury by violation of his right for which, he could not be adequately compensated if issues were resolved in his favour at the trial. In the present case it could be seen that, earlier the plaintiff had filed a suit in O.S. 376/2016 against the defendants in respect of same properties in respect of same relief. Though the plaintiff had successfully

proved his possession over the suit schedule properties, but for the reason of non compliance of provisions under Section 80 of CPC, the suit came to be dismissed. The finding given by the court in O.S.376/2016 attained finality and no parties have questioned said finding till today. It is the contention of the plaintiff that the defendants after dismissal of said suit made an attempt to close the suit schedule 'B' property by putting up construction. But in the written statement the defendants have pleaded that they have not made any attempt to put up construction over the suit schedule 'B' property. Therefore, at this state, if the prayer of the plaintiff is not allowed, it may further difficult the matter and it also may results in multiplicity of proceedings and irreparable situation may arise to the plaintiff. Thus, in the present situation, if the prayer of plaintiff is allowed, no loss or hardship is going to be caused to the defendants. Therefore, there are sufficient grounds on record to hold that, the balance of convenience lies in favour of plaintiff. In view of above discussion, I answered Points No.2 & 3 in the Affirmative.

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

ORDER

**I.A.No.II filed by the plaintiff U/O
XXXIX Rule 1 and 2 R/w Sec.151 of CPC
is hereby allowed.**

**By way of temporary injunction the
defendants are restrained from putting up
any construction over the suit schedule 'B'
property till disposal of suit.**

No order as to cost.

(Dictated to the stenographer directly on the computer, typed by her, corrected and signed by me and then pronounced in the open Court on this the 19th day of July, 2024).

**(Lokesha C.N.)
Prl. Civil Judge & JMFC,
Bhadravathi.**

Order pronounced in open court
(vide separate order)

ORDER

**I.A.No.II filed by the
plaintiff U/O XXXIX Rule 1 and 2
R/w Sec.151 of CPC is hereby
allowed.**

**By way of temporary
injunction the defendants are**

restrained from putting up any construction over the suit schedule 'B' property till disposal of suit.

No order as to cost.

For issues. Call on

Pr1. Civil Judge & JMFC,
Bhadravathi.