

KASM310058302023



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

DATED THIS THE 25th DAY OF NOVEMBER, 2023

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

O.S.No.510/2023

Plaintiff: Smt.Lalithamma T
W/o Late G.Narasimhaiah,
Aged about 59 years, Coolie Work,
R/o # 140, 4th Cross,
Bhadra Colony Badavane,
Bhadra Colony Post, Bhadravathi.

(By SriRamesh M, Advocate)

-V/s-

Defendant: Sri.Ganesh R S/o Revanappa,
Aged about 34 years,
R/o Jedikatte, Hosur, Biliki,
Kavalagundhi Post,
Bhadravathi.

(By Sri.B.R.P, Advocate)

PARTIES TO I.A. NO.I

Applicant: Smt.Lalithamma T

V/s

Opponent: Sri.Ganesh**ORDERS ON I.A. NO.I**

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

2. The plaintiff sworn to an affidavit in support of application, wherein she has stated that, the plaintiff is the wife of the one Narasihmaiah S/o Guddaiah. During his lifetime the husband of the plaintiff has purchased the vacant site property measuring East-west 50 feet, North-south 30 feet in property No.422, Khata No.413, assessment No.389/1 situated at Bandarahalli Village, at Ward No.35 from one Smt.Vedavathi under registered sale deed dated 27.01.2010. From the date of purchase the husband of the plaintiff was in possession over the suit schedule property. The husband of the plaintiff died on 25.08.2011. After his death the plaintiff continued in possession of the suit schedule property. Relevant revenue

records were mutated in the name of the plaintiff. It is stated that on 20.08.2023 at about 10.00 a.m the plaintiff and her family members have visited the suit schedule property and came to know about the construction of foundation made by the defendant by removing the fencing. The plaintiff has questioned the illegal construction of the defendant. The defendant taking undue advantage of the absence of the plaintiff at the suit schedule property put up illegal construction. The plaintiff has approached the concerned CMC on 24.08.2023, but the CMC authorities have not taken any action. The defendant has no right, title and interest over the suit schedule property. Hence, the plaintiff has filed the present suit for the relief of mandatory 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.I.

3. The defendant has appeared before the court and filed objection, by denying entire affidavit averments. It is stated that the vendor of the defendant by name one

S.Rudragowda had purchased the open site property measuring 30 feet x 50 feet in site No.57 under registered sale deed dated 22.05.1974. He was in possession over the said property and relevant records were mutated in his name. Thereafter, the defendant has purchased said property from said S.Rudragowda under registered sale deed dated 22.08.2022 for valuable consideration. From the date of purchased the defendant is in possession over the suit schedule property. All relevant revenue records are standing in the name of the defendant. The defendant has obtained license and sketch from the Town Planning Authority for construction. The defendant has taken up the construction by leaving set back as per the license. The suit schedule property is not at all existing. The property of the plaintiff is not situated adjacent to the property of the defendant. The identification of the property of the plaintiff is in dispute. The suit is not maintainable. The defendant already invested more than 20 lakhs for construction work and availed loan. At this stage the plaintiff has come up with this suit. If the present application is allowed the

defendant will be put to great hardship and injury.

Accordingly, the defendant prayed to reject I.A.No.I.

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 Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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 absolute

owner and in possession over the suit schedule property. Originally, the husband of the plaintiff has purchased the suit schedule property under registered sale deed dated 27.01.2010. After the death of her husband the plaintiff is in possession over the suit schedule property. Taking undue advantage of the absence of the plaintiff near suit schedule property, the defendant without having any right and interest over the suit schedule property made an attempt to put up construction over the suit schedule property. If the defendant completed his construction, the plaintiff will be put to great hardship and injury. Hence, sought for allowing the IA No.1.

8. The learned counsel for the defendant argued before the court that the defendant is the owner of site No.57, measuring 30 x 50 feet. The defendant has purchased said property under registered sale deed dated 22.08.2022 from his vendor. The vendor of the defendant had purchased said property under registered sale deed dated 22.05.1974. Thereafter, the defendant obtained license from the concerned authority for construction of building. The defendant has obtained approved plan from the concerned authority. The

defendant already constructed the house upto lintel level. Now the plaintiff has come up with this application to stop the construction. If the present application is allowed, the defendant will be put to great hardship and injury. Hence, 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 copy of registered sale deed dated 27.01.2010, mutation order, self assessment register, From No.3, encumbrance certificate, copy of death certificate, copy of partition deed, demand register, copy of legal notice. The list of documents of the defendant consists of copy of registered sale deed dated 22.05.1974, copy of registered sale deed dated 22.08.2022, layout plan, demand register, tax paid receipt, From No.3, building plan, copy of license, photographs.

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. The plaintiff is claiming the title and possession over the suit schedule property based on registered sale deed dated 27.01.2010. As per said sale deed, one G.Narasimhaiah who is the husband of the plaintiff had purchased the property No.422, khata No.430, assessment No.380/1, measuring 50 x 30 feet, out of 150 x 150 feet, situated at Ward No.35, Bandarahalli Extension. It is the case of the plaintiff that after the death of her husband the property has been mutated in the name of the plaintiff and relevant records are standing in the name of the plaintiff. The plaintiff has produced the mutation order and Form No.3 in respect of suit schedule property.

12. The defendant has denied the existence of the suit schedule property as shown in the plaint. It is the contention of the defendant that he has purchased the property in site No.57, measuring 30 x 50 feet, situated at Ward No.35, Bandarahalli Extension from his vendor by name one Rudregowda. It is stated that the vendor of the defendant had purchased said property under registered sale deed dated 22.05.1974. The defendant has produced said sale deeds. As per said sale deeds the defendant has purchased above said property under registered sale deed.

13. In the present case both parties have claimed the title and possession over the same property. But both parties have purchased their respective properties under two different registered sale deeds. The defendant has disputed the identification of the suit schedule property. Both parties have denied their respective title and possession over their respective properties. The plaintiff has filed the present suit for the relief of mandatory injunction seeking direction to remove the structure made by the defendant and delivery of vacant possession. As per the contention of the defendant by obtaining

license and approved plan from concerned authority, the defendant has started his construction and now the construction has been completed upto lintel level. The defendant has produced the license issued by the CMC. Bhadravathi for construction of house property. The defendant has produced the building plan and also layout plan. The defendant has produced the Form No.3 issued by the concerned authority. Therefore on perusal of the said documents at this stage it shows that by obtaining concerned license and approved plan from the concerned authorities the defendant has started construction over said property. The defendant has produced the photograph in respect of his construction. On the perusal of the said photograph also it shows that the construction has been completed upto lintel level.

14. It is the contention of the defendant that the plaintiff having slept over his right, after construction of building upto lintel level, now come up with this application to stop the further construction. The defendant by obtaining loan invested more than 20 lakhs for construction of building. Now

at this stage if the present application is allowed, the defendant will be put great hardship and injury. On other hand since the defendant has sought for the relief of mandatory injunction to remove the construction and delivery of possession, though the defendant has completed his construction work, no loss or hardship is going to be caused to the plaintiff. As argued by the learned counsel for the defendant, the plaintiff has filed the present suit for the relief of mandatory injunction for demolition of construction and handing over of vacant possession. As per the photographs and documents produced by the defendant the construction has been completed up to lintel level that too obtaining license and approved plan from the concerned authority. Therefore, at this stage if the present application is allowed, the defendant will be put to great hardship and injury. Whether the defendant has constructed said construction in the property of the plaintiff or not it could be decided only after full fledged trial. At this stage, the plaintiff has failed to establish prima-facie case in her favour. 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 failed to

establish the prima-facie case in her favour. After considering all these facts, this court has answered Point No.1 in the Negative

15. **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.

16. 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, the defendant has already completed his construction upto lintel level. The plaintiff has sought for relief of mandatory injunction to remove the construction and

handing over of vacant possession. Since the defendant also claiming right over his property based on registered sale deed and constructed the building upto lintel level by obtaining license from the concerned authorities, if the further construction is stopped, the defendant will be put to great hardship and injury. Therefore, at this state, if the prayer of the plaintiff is allowed, it may further difficult the matter and it also may results in multiplicity of proceedings and irreparable situation may arise to the defendant. Thus, in the present situation, if the prayer of plaintiff is not allowed, no loss or hardship is going to be caused to the plaintiff, since she sought for mandatory injunction for demolition of construction. Therefore, there are sufficient grounds on record to hold that, the balance of convenience lies in favour of defendant. In view of above discussion, I answered Points No.2 & 3 in the Negative.

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

ORDER

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

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 25th day of November, 2023).

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

Order pronounced in open court
(vide separate order)

ORDER

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

No order as to cost.

**For issues. Call on
18.12.2023.**

Prl. Civil Judge & JMFC,
Bhadravathi.