



IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE OF FIRST CLASS, THIRTHAHALLI

DATED THIS THE 15TH DAY DECEMBER 2023

PRESENT

S.S.BHARATH, M.A., LL.M.,
SENIOR CIVIL JUDGE AND
JUDICIAL MAGISTRATE OF FIRST CLASS, THIRTHAHALLI

REGULAR APPEAL NUMBER 37 OF 2023

BETWEEN

1. THE BHARAT SANCHAR NIGAM LIMITED

Office of the General Manager,
B.S.N.L Bhavana,
Saagara road, Shivamogga City,
Shivamogga District.

Represented by the State of Karnataka,
by its Junior Telecommunication Officer,
Thirthahalli, Thirthahalli Taluk,
Shivamogga District

.....APPELLANT

(Represented by Sri T.R.Avanish, Advocate)

AND

1. MANJUNATHA

S/o Shivananda,
Aged about 44 years,
R/at near water tank,
Melina Thuduru,
Thuduru Post,
Thirthahalli Taluk,
Shivamogga District – 577 226

.....RESPONDENT

(Represented by Sri B.Veerendrakumar, Advocate/
Sri H.S.Devadas, Advocate)

INTERLOCUTORY APPLICATION NO.II**BETWEEN****1. THE B.S.N.L****.....Applicant/Appellant****AND****1. MANJUNATHA****.....Opponent/Respondent**

HEARD THE LEARNED ADVOCATES APPEARING FOR THE RESPECTIVE PARTIES AT LENGTH ON I.A.NO.II, WHICH CAME TO BE FILED UNDER ORDER 39, RULES 01 AND 02 OF C.P.C READ WITH SECTION 151 OF C.P.C, SEEKING TO RESTRAIN THE RESPONDENTS AND ANYBODY CLAIMING THROUGH THEM FROM INTERFERING INTO THE APPELLANT'S ALLEGED ENJOYMENT OVER THE APPLICATION SCHEDULE PROPERTY, TILL PENDING DISPOSAL OF THIS APPEAL.

THIS APPEAL IS DIRECTED/FILED AGAINST THE IMPUGNED JUDGMENT AND DECREE DATED 01-08-2023, AND 11-08-2023 RESPECTIVELY. THE APPELLANT IS THE PLAINTIFF BEFORE THE LEARNED TRIAL COURT AND RESPONDENT HEREIN IS THE DEFENDANT BEFORE THE LEARNED TRIAL COURT. THE SUIT WAS FOR THE RELIEFS OF DECLARATION, POSSESSION AND INJUNCTION. UPON COMPLETE ADJUDICATION, LEARNED TRIAL COURT HAS DISMISSED THE SUIT OF THE PLAINTIFF-THE B.S.N.L.

THE CASE COMING ON FOR ORDERS ON I.A.NO.II, TODAY, THE COURT DELIVERED THE FOLLOWING.....

ORDERS ON I.A.NO.II

- 1.** In the present case, the above application, is supported by an affidavit of the Authorized Officer of the appellant.
- 2.** For the purpose of conveniences, the parties are referred to by their ranks existed before the learned trial Court.

3. Case of the appellant-plaintiff:-

The respondent has encroached upon the property measuring 05 guntas, belongs to plaintiff-the B.S.N.L. In toto 25 guntas of property in Sy.no.158 of Thuduru Village was granted to the B.S.N.L by the Deputy commissioner, Shivamogga, dated 11-06-1998 vide order No: LND(1)SR 12/1998-99. The defendant-respondent is the neighbor. He resides at the Western side of the said granted property. Upon encroachment, he has planted Areca and Banana plants and damaged the fence erected to the granted property, etc.

4. Contentions of the respondent-defendant:-

Suit averments are false. His parents namely Sri Shivananda and Smt Lalitha reside in a house constructed at Melina Thuduru. Demand Register Extract also has been generated in no.334. His mother requested the concerned Authority to regularize their occupancy over the property. Thuduru Panchayath on 07-11-1994 permitted her to construct a house. But, the plaintiff, at the instigation of others, with ill-motives and vengeance has been alleging vexatious aspects, etc.

5. The trial Court vide impugned judgment and decree aforementioned dismissed the suit with costs. In the present

appeal, the legality of the judgment and decree impugned has been questioned. It is the apprehension of the appellant herein that, if the injunction order is not granted, the respondent herein-defendant would encroach further upon the remaining extent belongs to the appellant.

6. It is clear that, the litigation being lost so far by the appellant is with respect to 05 guntas of alleged encroached area upon which the said reliefs were sought before the learned trial Court.

7. It presupposes that, the appellant herein has got exclusive possession over the remaining 20 guntas of land asserted to have been granted. The suit includes the schedules namely suit 'A' schedule, which is the alleged encroached area and the another schedule is inclusive of the said alleged encroached area.

8. Perused records.

9. **Following points arise for determination:-**

I. Whether the appellant has made out a prima-facie and strong ground to grant injunction as sought for in I.A.no.II?

- II.** Whether the balance of conveniences lie in favor of the plaintiff-appellant?
- III.** Whether the plaintiff-appellant has made out that, if the injunction order in this appeal proceedings, is declined, he will be put to irreparable loss and hardship?
- IV.** Whether the appellant is entitled for the relief sought in I.A.no.II?
- V.** What Order?

10. Aforementioned **points' nos'.01 to 04 have been answered in the negative** and **point no.05 has been answered as per final orders** for the reasons hereinafter stated.....

REASONS

11. POINT NO.01;-

The learned trial Court, as could be seen from the impugned judgment has held that, the plaintiff has failed to implead the agents and other men who have encroached upon the property allegedly and in spite of the report of the Court Commissioner, those persons had not been impleaded and except the report of the Court Commissioner there is no evidence in favor of the plaintiff to establish that, the 'B' schedule property has been encroached upon, etc., and there is no material to hold that, the

defendant only has encroached upon 05 guntas of property and as such no injunction could be granted, etc.

12. Though, the counsel appearing for the respondent herein has vehemently argued on the above application that, upon complete adjudication, the trial Court has dismissed the suit based upon the cross-examination admissions given by the plaintiff that, the appellant has no exclusive possession over the entire property shown in the plaint and as the Court Commissioner was appointed at the instance of the appellant only, despite his report, which has come against the appellant, the appellant did not workout any remedy against the same and as such no encroachment has been established against the defendant-respondent and therefore, in view of the injunction being sought by filing the I.A.no.I in respect of entire property measuring 25 guntas the application shall be rejected, etc.

13. In the application on hand, the appellant has requested the Court to restrain the respondent herein from causing disturbances to the appellant in using the suit property and so also to restrain anybody claiming through respondent from causing disturbances, etc. The matter is still in threshold. Hence, this Court is of the opinion to state that, still the matter

has to be heard from both sides and already the plaintiff herein has suffered the judgment before the trial Court.

14. But, the learned Advocate has argued that, there are every efforts being put in by the respondent herein to dug up the property etc., and if it happens in full, the appellant will be put to trouble, etc. But, as aforesaid in the application on hand, it is sought to restrain the respondent from causing obstructions from using the property measuring 25 guntas. It is admitted in the very suit proceedings and so also in this appeal that the defendant herein has already encroached upon 05 guntas of property. Such being the case, on what basis even after suffering the judgment before the trial Court the appellant would seek injunction in respect of complete extent of 25 guntas is the question, which went unanswered so far. Hence, it cannot be said that, there is a prima-facie case. Hence, the **point no.01 is answered in the negative.**

15. POINT NO.02:-

In view of the foregoing, as the plaintiff has failed before the learned trial Court to establish the encroachment against the respondent, in the appeal, at this juncture, it cannot be said

that, the balances of conveniences lie in favor of the appellant.

Hence, the **point no.02 is answered in the negative.**

16. POINT NO.03;-

In the foregoing circumstances, it cannot be said that, if the injunction order is declined the appellant would be put hardship, etc. Firstly, it is important for the appellant herein to establish the case against the respondent and if he succeeds to establish the case against the respondent and if he succeeds to establish that the impugned judgment and decree would warrant the interference of this Court, then only it could be said that, the plaintiff could be granted the relief sought for. Hence, in the foregoing, the **point no.03 is answered in the negative.**

17. POINT NO.04;-

Above aspects render a ground to state that, the appellant is not entitled for any relief sought for in I.A.no.II herein. Hence, the **point no.04 is answered in the negative.**

18. POINT NO.05;-

Although, the learned Advocate appearing for the appellant has submitted a memo together with the copy of the information issued by the Panchayath Development Officer (P.D.O) of

Thuduru Grama Panchayath, which details that, 25 guntas of property has been granted in favor of the B.S.N.L-appellant as per the grant, in Sy.no.39 being old survey number, and in the place where the B.S.N.L tower is established no house property or a site have been granted, etc., still as the matter is pending as to alleged encroachment, etc., the said document doesn't help the appellant at this juncture and appellant is duty bound to establish the case pleaded and therefore, the circumstances warrant the following.....

OPERATIVE PORTION

I.A.no.II filed by the appellant-plaintiff under Order 39, Rules 01 and 02 of C.P.C read with Section 151 of C.P.C, stands dismissed.

Office is directed to secure Trial Court Records (T.C.R).

Considering the nature of the litigation, office is directed to relist the matter to hear on merit of the appeal by 06-01-2024.

(Dictated to the Stenographer, transcribed and typed by him, corrected by me and then pronounced by me in the Open Court on 15th day of December 2023)

(S.S.BHARATH)

Senior Civil Judge and J.M.F.C, Thirthahalli.