

**IN THE COURT OF PRINCIPAL CIVIL JUDGE &
JMFC AT MADHUGIRI**

Dated this the 18th day of November 2019

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, L.L.B (Hons.)

**Prl. Civil Judge & JMFC,
Madhugiri.**

O.S. No.330/2018

PLAINTIFF : Narasaiah S/o late Mallaiah
aged about 48 year
R/o Bhaktharahalli Village,
Kasaba hobli, Madhugiri taluk.

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

Vs/-

DEFENDANTS : 1. Eramma W/o Ramakrishna
aged about 41 years
2. Ramakrishna S/o
Doddahanumaiah
aged about 45 years

Both are R/o Bhaktharahalli Village,
Kasaba hobli, Madhugiri taluk.

(By Sri. K.V.S.K., Advocate)

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I.A. No. I AND II

Applicant : Narasaiah Plaintiff

Vs/-

Opponents : Eramma and others Defendants

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**ORDERS ON I.A. No.I AND II FILED BY PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 OF C.P.C**

These two applications are filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C praying this court to pass an order of temporary injunction restraining defendants, their agents, servants or anybody claiming under them from putting up compound wall MFL towards south to north in front of GMOP house property in any mode or manner and restraining them from destroying the road IJHGFMAEB road running from west to east to reach suit schedule property in any mode or manner pending disposal of the suit.

2. As both these applications are interlinked with each other, they are taken together for discussion to avoid repetition of facts.

3. In the affidavit annexed to both the applications, plaintiff averred that suit schedule

property was granted by Government to construct house to houseless persons, accordingly panchayath authorities have made out katha in his name and he has constructed house in suit schedule property, he was utilizing the road situated towards northern side of his house running from west to east, but defendants have illegally constructed house and illegally destroying the road without obtaining any license from concerned panchayath. If defendants are allowed to destroy the road and construct compound wall, plaintiff cannot reach his house to ingress and egress and except said road, there is no alternative way to reach his house and amongst these grounds, prayed to allow the applications.

4. After issuance of suit summons to the defendants, they filed written statement contending that site property bearing katha No.277 property No.43 measuring east-west 30 feet north-south 40 feet belongs to Eranna, which he obtained under grant and panchayath authorities have made out katha in the name of said Eranna and he was in possession and enjoyment of the same. On 12-08-2012, Eranna and his wife have sold out above said

property in favour of defendant No.1 for Rs.80,000/- and as per registered sale deed, katha is transferred to her name. But in the registered sale deed, boundaries on north and south are wrongly typed and recently defendants found the mistakes and on 13-12-2018, vendors of defendant No.1 have executed registered amended deed in favour of defendant No.1. Further defendant No.1 has constructed cattle shed on southern side of property measuring 22 x 12 feet, leaving 28 feet space on northern side and 6 feet space on eastern side of their property to ingress and egress. The plaintiff is seeking relief of permanent injunction, without seeking declaration and amongst these grounds, prayed to dismiss the applications.

5. Heard, perused the records placed before the court.

6. The points that arise for my consideration is as under :

- 1) Whether prima-facie case and balance of convenience lies in favour of the plaintiff ?

2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?

3) What Order ?

7. My findings to the above points is as under :

Point No.1 In the Negative,

Point No.2.... To the defendants in case of granting temporary injunction.

Point No.3 As per final order for the following :

REASONS

8. **POINT No.1 AND 2** : For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

9. It is the specific case of plaintiff that suit schedule property was granted to him by Government for construction of house and he has obtained license and got constructed the house in suit schedule property. He is utilizing the road situated in northern side of his house, which is running from east to west, but defendants have illegally constructed house,

destroyed the road and putting up construction of compound wall and if same is done, he cannot reach his house to ingress and egress over suit schedule property. In support of his contention, plaintiff produced in all 7 documents i.e., demand register extracts pertaining to 2018-19, 2012-13, certified copy of license dated 20-09-2003, two tax paid receipts and two photographs.

10. On the contrary, defendants contended that site property bearing katha No.277 measuring east-west 30 feet, north-south 40 feet belongs to Eranna, who obtained the same under grant, on 12-08-2012, Eranna and his wife sold out the said property to defendant No.1 for consideration of Rs.80,000/- and now she is in possession and enjoyment of the same as absolute owner, having constructed cattle shed on southern side of site property and there is no existing road on northern side of suit schedule property. In support of their case, defendants produced 4 documents i.e., original and registered correction deed dated 13-12-2018, demand register extracts of property bearing katha No.277 and Form No.9.

11. On perusal of pleadings and documents produced by the parties, prima facie suit schedule property was granted to plaintiff, who obtained license in the year 2013 and got constructed house and road is running from east to west and defendant No.1 has got constructed house illegally and now trying to destroy the road and trying to put up compound wall. On the contrary, defendants contended that they have left 6 feet space on eastern side of the property and there is no existing road on northern side of suit schedule property.

12. On perusal of documents produced by plaintiff, he has produced demand register extracts, license, tax paid receipts and two photographs. These documents prima facie nowhere goes to show the existence of road as claimed by plaintiff. The plaintiff claiming that suit schedule property is granted to him under grant certificate. If it is so, nothing is prevented plaintiff to produce grant certificate to prove the existence of suit schedule property with its extent and boundaries. If at all, suit schedule property was granted to plaintiff under grant certificate, that certificate would have been

containing boundaries of property granted to plaintiff. If plaintiff would have produced the same, that would have been helpful to the court to ascertain boundaries and to ascertain existence of road as claimed by plaintiff. The plaintiff very intelligently has not produced grant certificate, which creates doubt in the mind of court about existence of road as claimed by plaintiff. Prima faice at this stage of the case, it appears that in the grant certificate, road might not have been shown as claimed by plaintiff. Prima facie it appears that plaintiff has intentionally not produced grant certificate. The documents produced by plaintiff does not show the boundaries of suit schedule property. Under these circumstances, the case put forth by plaintiff appears to be doubtful and it appears that plaintiff has not come to the court with clean hands. Under these facts and circumstances, if at all compound wall is constructed, no loss or injustice will be caused to plaintiff.

13. In order to grant an order of temporary injunction, plaintiff has failed to make out prima-facie case and balance of convenience does not lie in

his favour. If at all temporary injunction order as prayed by the plaintiff in both the applications is granted, irreparable loss and injury would be caused to defendants, rather than the plaintiff. Hence for the above said reasons, I answer Point No.1 in the 'Negative' and answer Point No.2 as 'injury will be caused to the defendants in case of granting temporary injunction'.

14. **POINT No.3** : For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

ORDER

I.A. No.I and II filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C are hereby rejected.

Parties to bear their own costs.

The interim Ex-parte status-quo order dated 23-07-2018 on I.A. No.I and II is hereby vacated.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **18th day of November 2019**)

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Madhugiri.