

**IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C.,
AT TIPTUR.**

Dated: This the 15th day of April 2017.

Present:

**Smt. Reshma H.K., B.A.,LL.B.,
Prl. Civil Judge & JMFC,
Tiptur.**

O.S.No.53/2010

Plaintiff : Gurushanthaiah S/o Shivanandaiah
Aged about 46 years, Lecturer, 5th
Cross, behind Power Station,
Govinapura, Tiptur.

(By Sri. S. Somasundar, Adv.)

V/s

Defendants 1 Prathibha W/o G.S. Lokesh
Aged about 32 years,
2 G.S. Lokesh S/o Shivananjappa
Aged about 38 years,
Both are R/o 2nd Cross, Pump House
Road, Govinapura, Tiptur.
3 G.S. Chidanand S/o Shivananjappa
Aged about 36 years, R/o
Goragondanahalli, Tiptur Taluk.

(By Sri. B. Sathish, Adv. for D1 to D3)

Date of Institution of the Suit	:	17.03.2010		
Nature of Suit	:	Permanent Injunction		
Date of the Commencement of Recording of evidence	:	02.07.2010		
Date of which the Judgment was pronounced	:	15.04.2017		
Total	:	Year/s	Month/s	Day/s
		07	00	28

(Reshma H.K.)

Prl. Civil Judge & JMFC,
Tiptur.

J U D G M E N T

This is the suit filed for the relief of mandatory injunction against the defendants to direct them to remove encroached space of conservancy and extended construction of staircase and RCC and sajja of the first floor including ground floor and prayed to grant permanent injunction to restrain the defendants from interfering peaceful possession and enjoyment of plaintiff over the suit schedule property.

2. The brief facts of the plaint is that, the plaintiff is the absolute owner in possession of the suit schedule property. The plaintiff states that the suit property was purchased from one K.Rajashekaraiah through registered sale deed dated 18.12.1992. Since then plaintiff is in possession of the suit property. After the purchase of the suit plaintiff by availing the loan amount from the Vijaya Bank constructed the house property in the site property purchased by the plaintiff. Further towards eastern side of the suit property there is a vacant site property belongs to one Smt. Nagarathnamma. The husband of Nagarathnamma and herself colluding with the Chief Officer of the Town Municipality attempted to demolish the construction of the plaintiff and thereon plaintiff filed the suit against them bearing O.S.No.26/2014 and ultimately said suit was decreed. The plaintiff states that, the defendant No.1 purchased the site property from the above said Smt.

Nagarathnamma and constructed the house property without leaving space towards western side of her property, whereas the plaintiff while constructing his house left 3 feet space towards eastern side. Hence the plaintiff complained to the Town Municipality regarding encroachment of conservancy by the defendant which situated between the houses of the plaintiff and defendant No.1. Thereafter the town municipality issued notice to the defendant No.1 but the defendant No.1 without caring the same constructed staircase in the encroached portion of conservancy and raised the first floor by extending the RCC up to the house of the plaintiff. Further the plaintiff alleges that, defendants also attempting to construct second floor. Further states that, in spite of petitioned to municipality but the authority is not taken any steps as the defendants are influential persons. Hence this suit.

3. Upon issuance of suit summons and the defendants appeared through their counsel and filed their written statement. It is admitted that, the plaintiff purchased the suit property from one Rajashekaraiah and constructed the house property but it is contended that plaintiff constructed the house property by encroaching the conservancy as well as property of defendant No.1. Further denied that, the plaintiff by leaving 3 feet space towards eastern side of the suit property constructed the house property as false. It is contended that, the defendant No.1 purchased the site property as stated in the plaint through registered sale deed from one Smt. Nagarathnamma. Thereafter constructed the house property after obtaining the due licence from the authority and construction was finished as per the License issued by the municipality. Further contended that, defendant No.2 and 3 are not the necessary parties to the suit and no cause of action

accrued to the plaintiff to file suit. On other grounds the defendants prays to dismiss the suit with cost.

4. To prove the case of the plaintiff, the plaintiff examined himself as PW-1 and got marked the documents as Ex.P.1 to P.66 and closed his side.

Copy of Complaint to TMC, Tiptur marked as Ex.P.1, Copy of Requisition to TMC, Tiptur, marked as Ex.P.2, Copy of Complaint to CMC, Tiptur, marked as Ex.P.3, Copy of complaint to CMC, Tiptur, marked as Ex.P.4, Copy of Complaint to CMC, Tiptur, marked as Ex.P.5, Copy of Complaint to AC, Tiptur, marked as Ex.P.6, Copy of Complaint to Dy.S.P., Tiptur, marked as Ex.P.7, Copy of Complaint to Dy.S.P., Tiptur, marked as Ex.P.8, Copy of Complaint to Dy.S.P., Tiptur, marked as Ex.P.9, Copy of Complaint CMC, Tiptur, marked as Ex.P.10, Copy of Complaint to Dy.S.P., Tiptur, marked as Ex.P.11, Copy of Complaint to the AC, Tiptur, marked as Ex.P.12, Copy

of Complaint to CMC, Tiptur, marked as Ex.P.13, Receipt of Certificate of Posting marked as Ex.P.14, 19 Photos marked as Ex.P.15 to Ex.P.33, 19 Negatives marked as Ex.P.15(a) to Ex.P.33(a), One CD marked as Ex.P.34, Certified copy of Judgment & Decree in O.S.No.267/04 marked as Ex.P.35, Certified copy of Sale Deed dated 18.12.1992 marked as Ex.P.36, Self Tax Assessment Receipt marked as Ex.P.37, Self Tax Assessment Register Extract marked as Ex.P.38, Tax Assessment Register Extract marked as Ex.P.39, Property Tax Register marked as Ex.P.40, Copy of Complaint to AC, Tiptur, marked as Ex.P.41, Copy of Complaint to Tahasildar, Tiptur, marked as Ex.P.42, Police Notice marked as Ex.P.43, Copy of Tippani marked as Ex.P.44, 16 Photos marked as Ex.P.45 to Ex.P.60, One CD marked as Ex.P.61, Invitation of House Opening Ceremony marked as Ex.P.62, 3 Photos marked as Ex.P.63 to Ex.P.65, One CD marked as Ex.P.66.

In order to prove the contention of the defendants that, the defendant No.2 got examined himself as DW-1 and got marked the documents as Ex.D.1 to Ex.D.4 and closed his side.

Tax Paid Receipt marked as Ex.D.1, Self Assessment Tax Register Extract marked as Ex.D.2, Tax Demand Register Extract marked as Ex.D.3 and Letter from the Syndicate Bank marked as Ex.D.4.

In order to prove the contention of Court Witness, he examined himself as CW-1 and got marked the documents as Ex.C.1 to Ex.C.5 and closed his side.

Spot Inspection Sketch marked as Ex.C.1, Spot Mahazer marked as Ex.C.2, Notice marked as Ex.C.3, $\frac{1}{4}$ PÉ $\frac{1}{2}$ gÄÄ marked as Ex.C.4 and $\frac{1}{4}$ PÉ $\frac{1}{2}$ gÄÄ marked as Ex.C.5.

5. Heard arguments of both the parties and perused the materials placed before court.

6. On the basis of the pleadings of the parties this court has framed the following:

ISSUES

1. *Whether the plaintiff proves that the defendants have constructed their building by making an encroachment over the space of conservancy of plaintiff?*
2. *Whether the plaintiff proves that he is in possession of suit schedule property on the date of institution of suit?*
3. *Whether the plaintiff proves that the alleged interference of the defendants over the suit schedule property?*
4. *Whether the plaintiff is entitled for relief of mandatory injunction?*
5. *What Order or Decree?*

7. My findings to the above said Issues for my consideration as under:

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

Issue No.3: In the Affirmative

Issue No.4: In the Affirmative

Issue No.5: As per final order for the

following:

REASONS

8. Issue No.1 to 3: These Issues are interlinked to each other and hence taken up together for common discussion to avoid the repetition of facts.

On perusal of the pleadings of the parties, it is an undisputed fact, the plaintiff and the defendant No.1 site properties situated side by side and both were purchased the site properties from different vendors and constructed the house properties in the respective site properties. The main allegation of the plaintiff is that, defendant No.1 constructed the house property by encroaching the conservancy and extended the stair case up to the house property of plaintiff. Hence the plaintiff petitioned to the municipality but the municipality was not taken any action as the defendants are the influential persons in the locality. Per contra defendant No.1 contended

that, she constructed the house property as per the sanction plan and License, whereas the plaintiff himself encroached the space of conservancy and the property of defendant No.1 constructed the house property without obtaining the license from the authority.

9. In order to prove the case of the plaintiff and the plaintiff examined himself as pw1 and got marked the documents as exhibit i.e., Ex.P.1 to Ex.P.66. Further defendant No.2 also filed his affidavit evidence and got marked documents i.e., Ex.D.1 to Ex.D.4.

10. On perusal of the affidavit evidence the plaintiff retreated all the facts stated in the plaint. It is specific allegation of the plaintiff, defendant constructed the residential building without leaving the required space as per the municipal rules and regulations and they have constructed the stair case

in the conservancy and have put up RCC extended upto the house of the plaintiff and sajja of the building also extended to the house of the plaintiff. Hence the defendant petition to the concerned municipalities to take suitable action but the municipal authorities did not taken the any action. Further plaintiff states that, he has filed the suit bearing O.S.No.267/2004 on the file of this Hon'ble Court against one Nagarathnamma W/o Shankarappa who is the vendor of the defendant and the suit came to be decreed.

11. Per-contra, defendant admitted that, he was the adjacent owner of the suit schedule property but he has constructed the house building in accordance with the municipal license and sanction plan and hence contended that he has not made any encroachment towards the western side of the site bearing No.31.

12. On perusing Ex.P.5 it discloses that the plaintiff given the petition to the president and the commissioner of Town Municipal Council regarding the illegal construction by the defendant towards eastern side of the property. Ex.P.6 also discloses that, the plaintiff petition to the Assistant Commissioner of Tiptur regarding the illegal construction of defendant by encroaching and contrary to the sanctioned plan and municipal norms. So also on perusal of Ex.P.7, Ex.P.8, Ex.P.9 and all these Exhibits clearly discloses regarding the encroachment made by the defendant contrary to the municipal sanction plan and license. However, the defendant did not rebut anything about the complaints made by to the authorities. Under such circumstances, the evidentiary value of the Ex.P.7 to Ex.P.9 regarding the encroachment cannot be simply thrown away. Further on perusing the photographs produced by the plaintiff in support of his evidence

i.e. Ex.P.15 to Ex.P.31. All these exhibits clearly depict that the defendant extended the sajja towards the house of the plaintiff and automatically the rain water flows from the sajja of the defendant to the sajja of the plaintiff's house and it is clearly shown in the Ex.P.18 and Ex.P.26(a). Furthermore, as per Ex.P.25 the defendant also closed the passage and the photographs clearly reveals that on account of closing of the passage and extension of the sajja towards the house of the plaintiff and it causes hardship to the plaintiff and continuing nuisance and it cannot be compensated in terms of money.

13. Further on perusal of Commissioner's Report who has given sketch i.e. Ex.C.4 it discloses that, in Para-3 commissioner stated that, there was no encroachment towards eastern side of the suit property. In Para-7 of the report the commissioner clearly deposed that the flow of rain water from the

first floor of the sajja of the defendant house is falling on the sajja of the defendants' house only. Whereas the photographs reveals contrary to its report.

14. On perusing the evidence of the court commissioner in his cross examination deposed that at the time of commission work he took one bill collector along with him to the spot and the neighbours and the parties present at the spot. Whereas on showing the photographs during the course of cross examination the commissioner admitted the presence of municipal commissioner at the spot and it goes to show that the allegation of the plaintiff that the defendant is influenced in the locality and it is pointing that the presence of municipal commissioner a kind of influence played by the defendant and it questions the authenticity of report of the commissioner. It is also admitted that the defendant extended the sajja on the first floor

towards the house of the plaintiff and admitted that the water will flow from the sajja of the defendant to the sajja of the plaintiff's house. It is also admitted towards the eastern side of the suit property it was closed with iron grills but stated that he do not know who has erected the iron grills. It is also admitted that on closing space towards eastern side of the suit property it is not possible to carryout the repair work. It clearly reveals that, it is difficult for the plaintiff to carryout any repair work and closing of the compound wall without leaving the space and plaintiff will suffer greater inconvenience it cannot be compensated in terms of money.

15. The plaintiff also filed certified copy of the judgment and decree of the Hon'ble Civil Judge passed in O.S.No.267/2004 which is marked as Ex.P.35, on perusal of the same it discloses that, plaintiff filed the against one Sri Shankarappa and

the Town Municipal council for the relief of permanent prohibitory injunction and ultimately the said suit was decreed in favour of the plaintiff. The said Shankarappa against whom the decree was sought is the husband of the vendor of the defendant. All these facts not denied by the defendant and reveals that, the plaintiff did not enjoy the suit schedule property peacefully. Hence I reached to conclusion that, the defendant interfering with the peaceful possession of the plaintiff over the suit property by closing the compound wall by erecting the iron grills and it obviously causes greater inconvenience to the plaintiff to carryout any repair work. So also the defendant by extending the sajja of his building towards the house of the plaintiff it also causes nuisance when rain water flows down from the sajja of the defendants house to the sajja of the plaintiff's house and the said fact is also admitted by the court Commissioner. In the light of discussion I reached to conclusion that

the plaintiffs proved that, the defendants closed the compound wall and also extended the sajja of his building towards the house of the plaintiff as encroachment. Further on the basis of the evidence on record the plaintiff is in possession of the suit property and the same is not denied by the defendants also. Accordingly I answered these Issues in the Affirmative.

16. Issue No.4: It is worth to note that, as per the evidence placed on record, the plaintiff established that, the defendant by violating municipal laws and sanctioned plan closed the compound wall as alleged by the plaintiff and on account of closing the compound wall it causes continuous nuisance and greater inconvenience to the plaintiff. Hence without the relief mandatory injunction it cannot be compensated in terms money. Accordingly I answered this Issue in the Affirmative.

17. Issue No.5: On the basis of reasons assigned while answering the Issue No.1 to 4 and holding the issues in the Affirmative and in the attendant circumstances of the case, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed with cost of the proceedings.

The defendants are directed to remove the compound wall erected by Iron grills and to make way to the plaintiff to access and to carryout any repair work towards eastern side of the suit property.

Further defendants are directed to insert suitable outlet pipes on the sajja of his building in order to free flow of rain water and over head tank water without causing any kind of nuisance to the plaintiff's house building.

Draw decree accordingly.

(Directly dictated to the Stenographer on Laptop, printout taken by him, corrected, signed and then pronounced by me in the open court on this 15th day of April, 2017.)

(RESHMA H.K.)

Prl. Civil Judge & JMFC,
Tiptur.

ANNEXURE

1. List of witnesses examined on behalf of Plaintiff:

PW-1 : Gurushanthaiah
2. List of documents got marked on behalf of Plaintiff:

Ex.P.1 : Copy of Complaint to TMC, Tiptur
Ex.P.2 : Copy of Requisition to TMC, Tiptur
Ex.P.3 : Copy of Complaint to CMC, Tiptur
Ex.P.4 : Copy of complaint to CMC, Tiptur
Ex.P.5 : Copy of Complaint to CMC, Tiptur
Ex.P.6 : Copy of Complaint to AC, Tiptur
Ex.P.7 : Copy of Complaint to Dy.S.P., Tiptur,
Ex.P.8 : Copy of Complaint to

Ex.P.9	:	Dy.S.P., Tiptur Copy of Complaint to Dy.S.P., Tiptur
Ex.P.10	:	Copy of Complaint CMC, Tiptur
Ex.P.11	:	Copy of Complaint to Dy.S.P., Tiptur
Ex.P.12	:	Copy of Complaint to the AC, Tiptur
Ex.P.13	:	Copy of Complaint to CMC, Tiptur
Ex.P.14	:	Receipt of Certificate of Posting
Ex.P.15 to P.33	:	19 Photos
Ex.P.15(a) to P.33(a)	:	Negatives
Ex.P.34	:	One CD
Ex.P.35	:	Certified copy of Judgment & Decree in O.S.No.267/04
Ex.P.36	:	Certified copy of Sale Deed dated 18.12.1992
Ex.P.37	:	Self Tax Assessment Receipt
Ex.P.38	:	Self Tax Assessment Register Extract
Ex.P.39	:	Tax Assessment Register Extract
Ex.P.40	:	Property Tax Register
Ex.P.41	:	Copy of Complaint to AC, Tiptur
Ex.P.42	:	Copy of Complaint to Tahasildar, Tiptur
Ex.P.43	:	Police Notice
Ex.P.44	:	Copy of Tippani
Ex.P.45 to P.60	:	16 Photos
Ex.P.61	:	One CD
Ex.P.62	:	Invitation of House Opening Ceremony

Ex.P.63 to P.65 : 3 Photos
Ex.P.66 : One CD

3. List of witnesses examined on behalf of Defendants:

DW-1 : G.S. Lokesh

4. List of documents got marked on behalf of Defendants:

Ex.D.1 : Tax Paid Receipt
Ex.D.2 : Self Assessment Tax
Register Extract
Ex.D.3 : Tax Demand Register
Extract
Ex.D.4 : Letter from the Syndicate
Bank

5. List of witnesses examined as Court Witness:

CW-1 : N. Nagesha

6. List of documents got marked by the Court Witness:

Ex.C.1 : Spot Inspection Sketch
Ex.C.2 : Spot Mahazer
Ex.C.3 : Notice
Ex.C.4 : $\frac{1}{4}$ PÉÃ½gÀÄ
 $\frac{1}{4}$ ÀiÁ»wUÀ½ÀÄ
Ex.C.5 : ¥Àæw $\frac{1}{4}$ PÉÃ½gÀÄ
 $\frac{1}{4}$ ÀiÁ»wUÀ½ÀÄ

Prl. Civil Judge & JMFC,
Tiptur.