

IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC-II,

AT KARWAR

**Present: Sri.Dhanuraj.S.M
B.A.,LLB.
C/c.Addl.Civil Judge and J.M.F.C-II.,
Karwar.**

ORIGINAL SUIT No.26/2024

DATED ON THIS THE 31st DAY OF AUGUST-2024

**Plaintiff/s : 1. Shri. Santosh S/o. Raghu Dudalkar
[By Sri.N.M.M, Advocate]
V/S**

**Defendant/s: 1. Shri. Ulhas S/o. Bhagana Waigankar
*[By Sri.V.V.P.,Advocate]***

PARTIES TO I.A.No.I

**Applicant/s: 1. Shri. Santosh S/o. Raghu Dudalkar
(Ori.Pltf).**

V/s

**Opponent/s : 1. Shri. Ulhas S/o. Bhagana Waigankar
(Ori. Defds)**

ORDER ON I.A.NO.I

Plaintiff has filed the I.A.No.I U/O. XXXIX Rule 1 and 2 R/W Sec.151 of CPC seeking for an order of temporary injunction against the defendant, their men, agents, servants or anybody acting on their behalf from interfering and disturbing with the peaceful possession and enjoyment of the plaintiff over the suit schedule ABCD property till pending disposal of the suit.

2. The defendant has filed memo treating his written statement as objection to the IA No.I.

3. Heard the learned counsels appearing for the plaintiff and defendant, perused the pleadings and other materials placed on record.

4. The points arises for the determination of this court is as follows:

POINTS

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the plaintiff proves that, the balance of convenience lies in his favour?

3. Whether the plaintiff will be put into irreparable loss and injury, if temporary injunction is not granted?

4. What order?

5. Finding of this court to the above said points are as here under:-

Point Nos.1 to 3 : In the Negative

Point No.4 : As per final order for the following:-

REASONS

6. **Points Nos.1 to 3:-** Since these points are interlinked each other; for the sake of brevity and to avoid the repetition of facts and circumstances, these points are took up for common discussion.

Plaintiff has filed the present suit against the defendant seeking for the relief of permanent injunction. Along with the suit, he has filed the IA No.1 for the relief of granting ad-interim temporary injunction

till pending disposal of the suit. In the affidavit filed in support of IA No.I, it is contended that, the plaintiff is the owner of the land bearing Sy.No.88/1 measuring 00-09-10 area out of 00-14-00 situated at Kadwad Village of Karwar Taluk and that, the plaintiff and his elder brother's wife are in possession and enjoyment by effecting their names in the Record of Rights jointly. That the plaintiff is having residential house as well as work shop in the suit property and that, the same is situated on the side of the Karwar to Kadwad main road. That, the plaintiff's brother's wife is in possession and enjoyment of the portion property situated on the western side and the plaintiff is in possession and enjoyment on the eastern portion of the suit property, which is situated next to the main road. He further contended that, he has put up fencing surrounding his property and he has obtained license from Gram Panchayath, Kadwad in the year 2016-17 for running the carpentry work shop and accordingly, he got constructed the building for the work shop of carpentry work and the Gram Panchayath had issued license and permission to run the carpentry work shop in the above suit property and he is obtained with shop No.65 and that the Gram Panchayath, Kadwad renewed the license every year since 2016 and in the year 2021-22 due to the

lockdown the carpentry work is not continued and hence, he has not renewed the license and thereafter, on 08-11-2023 the plaintiff has moved an application before the Gram Panchayath, Kadwad for the renewal of the license and the said application is pending before the concerned Panchayath. It is further contended that, the defendant is the owner of the land comprised in Sy.No.88/11 area measuring 00-03-06 situated at Kadwad Village in Karwar Taluk and the same is situated adjacent to the suit property on the southern side of the suit property and the defendant has purchased the suit property from the brother of the plaintiff and the same was sub-divided in the survey records. When the things stood like this, the defendant unnecessarily interfering and disturbing with the peaceful possession and enjoyment of the plaintiff over the suit property and also making hectic attempts for damaging the fence of the suit property on the southern side and has unnecessarily filed an application before the Gram Panchayath, Kadwad stating that, the plaintiff running the work shop without any proper license. It is further contended that, since from the date of purchasing the suit property, the defendant is interfering with the peaceful possession and enjoyment of the plaintiff over the suit property and that, the plaintiff has made out a prima-facie case, balance of

convenience lies in his favour and if, no injunction is granted, plaintiff will be put into irreparable loss and hardship.

7. In the written statement filed by the defendant, he has denied the entire plaint averments and contended that, the suit of the plaintiff is not maintainable and the plaintiff has not approached this court with the clean hands and on the other hand, the plaintiff has suppressed the materials facts. It is specifically contended that, the defendant is the owner of property comprised in Sy.N.88/11 measuring 3 guntas 8 anas situated at Kadwad Village of Karwar Taluk and one Sri. Pandurang Raghu Dudalkar was the erstwhile owner who sold the property to the defendant by virtue of registered sale deed dated: 04-06-1999 and ever since then, the defendant is in peaceful possession and enjoyment of the said property by effecting his name in the public records such as RTC etc., and that the defendant is now residing at Goa due to his avocation. He further contended that, he had requested his well-wishers and close relatives to keep a watch on his property in his absence and on 20-09-2021, he had received a message that, the plaintiff illegally removed all the boundary stones laid in the property of the plaintiff and hence, he immediately came

to the site and he was shocked by noticing the removal of boundary stones by the plaintiff which was actually fixed by the survey officials and he has questioned the said act of the plaintiff, for which he was replied in a adamant nature and abused the defendant in filthy language and thereafter, the defendant noticed that, the plaintiff is trying to construct building by encroaching the property belongs to the plaintiff and hence, he had filed necessary application before the survey officials for the sub-division of his property in the survey records and accordingly, the surveyor of the Survey Department earmarked the boundary stones and laid the stones and that, the defendant has filed a complaint on 22-12-2022 before the Karwar town police station, and also filed an application before the Gram Panchayath, Kadwad, who had issued notice to the defendant for the removal of illegal constructions and hence, for the said reasons he sought for dismissal of the application as well as suit of the plaintiff.

8. In order to substantiate the claim of the plaintiff, he had produced the Record of Rights pertaining to the suit property standing in the name of the plaintiff; he also produced the Record of Rights pertaining to the property belongs to the defendant; other than that, he

has produced the license issued by Kadwad Grama Panchayath for running/doing the carpentry work, No Objection Certificate dated 22-11-2023, tax paid receipt, application submitted by the plaintiff before the panchayath for the renewal of license and also produced sketch and notice issued by the panchayath dated: 28-08-2023. On perusal of the plaint averments and the document produced by the plaintiff, it reveals that, an extent of 9 guntas and 10 anas of land in Sy.No. 88/1 standing in the name of the plaintiff. That the remaining documents also goes to show that, he is in lawful possession and enjoyment of the suit schedule property. On the other hand, the plaintiff contended that, the property belongs to the defendant is situated adjacent to the suit property on the southern side. The defendant had produced the document, which is registered sale deed dated; 04-06-1999 executed by one Sri. Pandurang Raghu Dudalkar in favour of the defendant herein. On perusal of the copy of the said sale deed, it reveals that, an extent of 3 guntas and 8 anas of land was sold in favour of the defendant. Hence, as far as possession and ownership of the respective properties of the plaintiff and defendant is concerned there is no dispute. It is the claim of the plaintiff that, the defendant unnecessarily interfering and disturbing with the peaceful possession

and enjoyment of the plaintiff over the suit property and that, the plaintiff has also made an allegation with regard to damage of fencing put up by the plaintiff on the southern side of the suit property.

9. However, prima-facie the plaintiff has not produced any document to show that, the defendant got damaged the fencing of the suit property on the southern side. If, the fencing was damaged as claimed by the plaintiff, then he ought to have produced photographs pertaining to the same or he ought to have complained to the concerned authority with regard to the illegal act of the defendant as alleged by the plaintiff. Prima-facie, no documents were produced by the plaintiff in this regard to show that the defendant has made an attempts to damage the fencing of the suit property Moreover, the plaintiff claimed that, his license was not renewed for the further period after 2021-22, which is pending for consideration before the concerned panchayath. The present suit was filed by the plaintiff on 31-01-2024. However, the very defendant had lodged written information against the defendant before the Police Inspector, Karwar police station making allegation that, the plaintiff has illegally removed all the boundary stones laid in his property and in the said complaint it is

mentioned that, the defendant got surveyed the property through the competent surveyor of the Survey Department and after completion of the process of Sub-Division in the Survey Records and in the RTC and as per the boundary shown by the competent surveyor at the time of making Sub-Division of the same, the defendant put the boundary stones which were removed by the plaintiff. On Perusal of acknowledgment dated; 22-12-2022 issued by SHO, Karwar, Rural Police Station, it reveals that, the SHO had received the complaint filed by the defendant. It is pertinent to state here that, originally the erstwhile owner of the defendant had 7 guntas of land in Sy.No.88/1 and subsequently, the vendor of the defendant sold an extent of 3 guntas and 8 anas of land out of the said 7 guntas in favour of the defendant. The original survey number sold to defendant was of the property Sy.No.88/1 and after purchasing the same an extent of 3 guntas and 6 anas by the defendant, the said land was allotted with Sy.No.88/11 after Sub-Division of the same as per MR.No. T31/2018-19 dated; 15-02-2019 in the survey records. The Record of Rights produced by the plaintiff itself in respect of the property belongs to the defendant goes to show that the property purchased by the defendant was sub-divided in the Revenue Records in the year 2019 and if the said Sub-Division is not correct or

if it is contrary to the existing facts or situation, certainly the plaintiff ought have been challenged the said bifurcation or Sub-Division made by the concerned survey authority in the year 2019. No documents were produced by the plaintiff to show that, he has challenged the Sub Division. In fact as stated supra, the defendant himself lodged complaint against the plaintiff on 21-12-2022 and after lapse of more than one month, the plaintiff has filed the present suit seeking for the relief of the permanent injunction against the defendant. Apart from the above, it is pertinent to state here that, the Kadwad Grama panchayath had issued notice to the very plaintiff for the production of document before the panchayat in respect of obtaining license for the construction of the workshop.

10. However, prima-facie the plaintiff has not produced any document, it appears that the plaintiff has not produced any such documents either before panchayat or before this court. If he had obtained necessary license, then he ought to have been produced the same before the court and on the other hand, the plaintiff in the affidavit filed in support of IA No.I stated that, the defendant unnecessarily filing application against him before the panchayat and if the defendant

has filed as such unnecessarily application, then the plaintiff is having every opportunity to exhaust his remedy before the concerned panchayat or his Higher Authority. Prima-facie, except making allegation, at this stage, the plaintiff has not produced single document to substantiate the contentions that, the plaintiff interfered with the peaceful possession and enjoyment of the plaintiff over the suit property by damaging the fencing of the suit property on the southern side. Prima-facie, it reveals that, the plaintiff has not made out a prima-facie case. However, it is settled principle of law that, court shall not hold a mini trial while dealing with interlocutory application for granting temporary injunction. In the present case, at this stage, the plaintiff has not made out prima facie case and in the absence of establishing prima-facie case, injunction cannot be granted even if party makes out case of balance of convenience and irreparable injury. Hence, with these observations, **Point Nos.1 to 3 under consideration are answered in the Negative.**

11. **POINT NO.4:-** In view of the above discussion and answers to the above points, it is just and proper to pass the following:

ORDER

IA No I filed by the plaintiff U/o 39 Rule 1 and 2 is hereby dismissed. However, the parties are hereby directed to co-operate with the court to dispose off the matter within a year from this day.

Call on for compliance by 14-09-2024

(Dictated to the stenographer, typed by her, corrected and then pronounced by me in open court on this 31st day of August - 2024).

**C/c.Addl.Civil Judge and J.M.F.C-II,
Karwar**