

KAUK030008782024



IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & J.M.F.C-II.,
AT: KARWAR

PRESENT: ***Smt. Akshatha C.R.***
B.B.A., L.L.B.(Hons.)

Addl.Civil Judge & J.M.F.C-II of Karwar

ORIGINAL SUIT NO. 92/2024

Dated: 10th Day of June 2024.

Plaintiff/s : Smt. Sudha Omu Harikantra

(By Smt. R.P.B.,Adv.)

V/s.

Defendant/s : Smt. Jayashree D/o. Pandu Harikantra
& others.

(Deft. No.1 to 10 In person,
by Deft.11 By Sri. P.B.T. Adv.)

I.A.No.I

Applicant/s: Smt. Sudha Omu Harikantra

(By Smt. R.P.B.,Adv.)

V/s

Respondent/s : Shri. Chandrakant Teela Harikantra

(Deft. No. 11 by Sri. P.B.T., Adv.)

ORDERS ON I.A.NO.I

1. The plaintiff has moved the instant application U/O. XXXIX Rule 1 and 2 read with Section 151 of C.P.C. seeking to restrain the defendant No.11, his men, agents, servants or anybody claiming through him from constructing any structure on the suit schedule property till the disposal of the suit.

2.1. In the affidavit annexed to the application it is stated that plaintiff is the joint owner of the suit schedule property and her residential house is situated therein and she has been staying in the said house. That she succeeded the said property from her father after his death and there are also other joint owners of the suit property who are arrayed as defendant No.1 to 10 in this suit. That the suit schedule proeperty is in her joint possession and enjoyment along with other co-owners. Property is yet to be demarcated by doing hudbust from the Survey Department. It is further stated that defendant No.11 who does not have

any sort of right, title or interest in the suit property and who is a total stranger is claiming right in the suit property though he does not have any such right for the obvious reason that she inherited it from her father. Such being the facts, during second fortnight of May 2024 defendant No.11 started to dig ground and erect poles in order to construct a structure on the suit land without seeking permission from the joint owners of the suit property and local bodies as well. She alleges his act to be highly illegal.

2.2. Hence she submitted an application dated 22.05.2024 to C.M.C., Karwar so as to restrain the defendant No.11 from constructing structure in the suit land illegally and in response to the said application, C.M.C., Karwar was pleased to issue notice dated 28.05.2024 to the defendant No.11 asking him to stop the illegal construction in the suit schedule property. Nevertheless, defendant No.11 has been constructing the structure by ignoring the notice issued by the local authority. Ergo, she has filed this suit seeking the relief of

permanent injunction against the defendants along with present I.A. Even the defendant No.1 to 10 cannot permit the defendant No.11 to construct the structure on the suit property since it is in her joint possession along with defendant No.1 to 10. She avers that for the aforesaid reasons the construction is illegal, unauthorized and unscientific. The construction taken up by the defendant No.11 is dangerous to the life and property of the joint owners of the suit property. That the essential ingredients require to grant the relief of temporary injunction lies in her favour and in this regard she sought to allow her application.

3.1. Per contra, the defendant No.11 stoutly resisted the application on the grounds that plaintiff has suppressed the material facts and introduced defendant No.11 as stranger to her. That he has born and brought up in the house bearing No.403/A situated in the suit land and he is the owner of CTS No.12029 for the extent of 27.88 Sq.Mtrs which is part and parcel of the suit schedule

property. Accordingly, C.M.C., Karwar has issued E-swattu No.3-1-503-448 in the name of deceased Sri. Tila Janu Harikantra who is none other than father of defendant No.11. That the said house and the beneath land is the ancestral property of the defendant No.11 and his deceased uncle by name Sri. Loku Janu Harikantra by virtue of the Judgment passed in O.S.No.71/1960 dated 29.06.1961 and also based on the Mutation Entry No.A1236 of Baad-III village certified by the revenue authorities. They are in the joint possession of the suit schedule property without any interruption. Besides, column No.11 of the Record of Rights pertaining to the suit schedule property reflects the names of oen Tila Janu Harikantra who is the deceased father of defendant No.11 who demised on 02.02.1971. It is also pertinent to note that mother of defendant No.11 by name Smt. Belli Tila Harikantra has also died on 18.02.2020 and presently CTS No.12029 is standing in the name of deceased mother and defendant No.11 as well as in the name of his siblings by name Keshav, Vishnu, Nirmala and Shanti. However, they were not arrayed as parties in this

suit. Hence he sought to dismiss the I.A. on this ground alone.

3.2. It is further contended that co-owners of the suit schedule property including defendant No.11 are in the separate possession of the different areas of suit land. That the Record of Rights clearly indicates the severance of status between the parties to the suit. Besides it is clearly stated in column No.11 of the record of rights that one Tila Janu Harikantra who is none other than the father of defendant No.11 have lawful right and interest over the house and the land beneath the house. Hence revenue records disclose that answering defendant is in the possession of a separate parcel of the suit land and his name is recorded in the capacity of co-sharer/co-owner. Since defendant No.11 is in the separate possession of parcel of suit property, his possession cannot be disturbed except filing a suit for partition and in the instant suit plaintiff has not sought the relief of partition. Further, at this juncture plaintiff is not entitled for prohibitory relief.

Hence I.A. is liable to be dismissed. The plaintiff being a co-owner is not entitled to the relief of injunction restraining another co-owner in the common property.

3.3. He specifically contends that mere construction or improvement in the common property does not amount to ouster and in any way defendant No.11 has not acted detrimental to the interest of the plaintiff or the other co-owners. He is only renovating his dilapidated house which is more evident from the photographs of the old house produced by him and written representations made by him to the Government authorities about fallen condition of his old house due to monsoon and requested for financial aid for its renovation. The fact that plaintiff is the joint owner is not the sole criteria to grant temporary injunction. That the other co-owners have also raised construction over the suit schedule property time to time and it is not the case of the plaintiff that she had objected for the construction done by other co-owners too nor she has instituted any civil suit seeking to restrain the other co-owners from raising

construction. It *ex-facie* appears that plaintiff has selectively chosen defendant No.11 and is seeking the relief of injunction against him. That the construction of the defendant No.11 in no way harms the neighbouring co-owners. Besides, the house of the plaintiff is sufficiently far away from the house of the defendant No.11. Except the plaintiff, none of the other co-owners have raised any objection to the construction undertaken by the defendant No.11. It is contended that conduct of the plaintiff smacks of some ulterior purpose rather than assertion of any legal right. Further it is urged that defendant No.11 has made huge investment for the reconstruction of his dilapidated house. In case, injunction is granted against him he will suffer irreparable loss and injury which cannot be compensated in terms of money. Consequently, he will suffer huge financial loss moreover plaintiff has no prima facie case. Hence he prays to dismiss the instant interlocutory application.

4. Heard both the sides. Perused the materials placed fore of this Court.

5. In view of the same the following points arise for my consideration.

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

2. Whether the balance of convenience leans in favour of the plaintiff?

3. Whether dismissal of the instant application would cause irreparable damage or injury to the plaintiff?

4. What order?

6. My answer to the above points are as follows.

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 to 3:** Since these points are interlinked and connected with each other they are taken for common discussion for the sake of brevity.

It is the specific case of the plaintiff that she is one of the joint-owners of the suit schedule property and she is

having a residential house in the suit property wherein she has been staying. She succeeded to the suit property after the demise of her father. That the suit property is in her joint possession and enjoyment along with other joint owners. It is yet to be demarcated by doing hudbust from the Survey Department. When the facts stood thus, defendant No.11 who does not have any manner of right, title or interest in the suit schedule property is claiming right over the suit schedule property. Though the facts have been made clear to him, he is not understanding. During second fortnight of May 2024, he started to dig ground and to erect poles in order to construct a structure over the suit land without obtaining permission neither from the joint owners nor from the local authorities. In this regard, she submitted application dated 22.05.2024 to C.M.C., Karwar to restrain defendant No.11 from constructing structure in the suit land. Pursuant to her application, C.M.C., Karwar issued notice to defendant No.11 to stop the construction in the suit property. However, he continued the construction by ignoring the notice issued by local

authority. In this regard she has filed the suit along with instant application.

8. Conversely, defendant No.11 contended that he is constructing the structure over the land where his old house was situated and alleges that said CTS No.12029 is standing in the name of his deceased mother, himself and his siblings. It is further stated that all the co-owners of the suit schedule property are in the separate possession of the different areas. In this regard he sought for dismissal of the application.

9.1. Perused the documents submitted by the plaintiff. In support of her case, the plaintiff has produced the following documents.

Sl.No.	Particulars
1	Record of Rights pertaining to Sy.No.1373A/8
2	Mutation Entry at M.R.No.H26
3	Copy of Property Cards pertaining to CTS No.12042, 12043, 12039, 12040, 12025 and 12026
4	Copy of application submitted by the plaintiff to C.M.C.,Karwar dated 22.05.2024.

- 5 Copy of notice issued by C.M.C.,Karwar to defendant No.11
- 6 Photograph of suit land.

9.2. On the other hand, defendant No.11 has produced the following documents in support of his case.

Sl.No.	Particulars
1	RTC pertaining to Sy.No.1373A/8 measuring to an extent of 0-1-0 situated at Baad-III village, Karwar
2	Mutation Entry at M.E.No.A1236 dated 01.01.1975 relating to Baad-III village, Karwar
3	Old RTC pertaining to Sy.No.1373A/8 for the year 1988-89.
4	Extract from the Property Register Card pertaining to CTS No.12029.
5	Extract from the Property Register Card pertaining to CTS No.12029 dated 24.07.2014.
6	CTS Map
7	E-swattu bearing No.3-1-503-44B.
8	Extract from the Property Register Card pertaining to CTS No.12028.
9	E-swattu bearing No.3-1-503-44A.
10	CC of the Decree in O.S.No.71/1960.
11	Water Bill dated 02.05.2023.
12	Water Bill dated 12.04.2024.
13	Acknowledgment Letter dated 16.03.2024.
14	Office copy of the representations given to
15	Tahasildar, Karwar and C.M.C.,Karwar dated
16	06.08.2022, 26.07.2022, 16.05.2024 respectively.

- 17 to 30 SAS Form along with Tax Paid Challans pertaining to House No.403/A for the period commencing from 2009-10 to 2024-25.
- 31 Old spot photographs
- 32 Present spot photographs
- 33 Photocopy of Voter I.D.Card of defendant No.11
- 34 Photocopy of PAN Card of defendant No.11
- 35 & 36 Death Certificate of Sri. Tila Janu Harikantra and Smt. Belli Tila Harikantra respectively.

10. I have scrupulously gone through the documents produced by the rival parties. No doubt, an area measuring to an extent of 0-5-12-0 guntas of land in the suit schedule property standing in the name of plaintiff, defendant No.1 to 3 and one Neela Pandu Harikantra and in this regard she has also produced Mutation Entry at M.R.No.H26 and copy of the Property Cards pertaining to C.T.S.No.12042, 12043, 12039, 12040, 12025 and 12026. It is equally important to take note of the Mutation Entry at M.E.No.A1236 dated 01.01.1975 pertaining to Baad-III village produced by defendant No.11. It says that “as per the Judgment rendered by the Munsiff Court in O.S.No.264/1964 wherein trial was conducted with respect

to Sy.No.1373A/8 in between 1) Vima(Uma) Yadav Harikantra, 2) Gowri Yadav Harikantra, 3) Rama com Tila Harikantra 4) Neela com Pandu Harikantra 4(a)) Jayashree Pandu Harikantra 4(b)) Aravind Pandu Harikantra 4(c)) Girijabya Pandu Harikantra (plaintiffs therein) and defendants by name 1) Tila Janu Harikantra, 2) Loku Janu Harikantra, Court was pleased to decree the suit and held that plaintiffs are entitled to the possession of the suit schedule property i.e., Sy.No.1373A/8 whereas defendants are held entitled only for the house situated in the said survey number and its beneath land." Hence the names of defendants have been entered in the column of other right holders." In the said suit, father of the plaintiff i.e., Uma Yadav Harikantra and defendant No.1 to 3 herein were the plaintiffs. Based upon the verdict of the Court in said suit, said entry was mutated. It speaks about the history as to why the names of Tila Janu Harikantra and Loku Janu Harikantra reflect in column No.11 of R.T.C. in respect of the house and the land beneath the house. Old RTC pertaining to suit schedule property for the year 1988-89

also reflects the names of Tila Janu Harikantra and Loku Janu Harikantra with respect to house and its beneath land. It clearly states that “ತಿಲಾ ಜಾನು ಹರಿಕಂತ್ರ ಇವರಿಗೆ ಇದರಲ್ಲಿಯ ಮನೆ ವ ಅಡಿ ಜಾಗಾದ ಹಕ್ಕು ಅದೆ”. Tila Janu Harikantra is stated to be the father of the defendant No.11. The house to which aforesaid entry is referred to is the same house which is stated by the defendant No.11 to be in dilapidated condition and in that regard he has given many representations to the Government authorities about fallen condition of the old house due to heavy rain and requested for financial aid. It is pertinent to note here that plaintiff has not disputed the fact that RTC is referring to the same house of defendant No.11 bearing H.No.403/A. Further, E-swattu pertaining to land to the extent of 27.88 sq.meters in suit schedule property shown to be standing in the name of Late Sri.Tila Jaanu Harikantra along with photograph of the old house situated therein. Letters addressed by defendant No.11 to Tahasildar, Karwar, Commissioner, C.M.C., Karwar dated 26.07.2022 and

16.05.2024 corroborates the contention of the defendant No.11 that house was in dilapidated situation due to monsoon. Self-Assessment Tax Form for Properties with Building along with tax paid receipts with respect to House No.403/A for the period 2009-10 to 2024-25 exhibits the names of Late Sri. Tila Janu Harikantra. Photographs relating to old house are also produced to show that house was in dilapidated condition. Besides photographs with respect to construction undertaken by defendant No.11 have also produced. Thus it is glaringly evident that defendant No.11 does have right, title and interest in the CTS No.12029.

11. EXISTENCE OF OLD HOUSE; It can be seen that defendant No.11 has produced several SAS Form for properties with building and tax paid receipts pertaining to House bearing No.403/A which is standing in the name of Tila Janu Harikantra. Thus it can be implied that house bearing No.403/A was existed. Now the further question which arises is whether house No.403/A was existed in the

suit schedule property? Or whether it is the same house to which column No.11 of RTC is referring to? To establish the same defendant No.11 has produced E-swattu document which clearly demonstrates that house No.403/A was situated in Sy.No.1373A/8 at Baad-III village. Further to show that said house was in dilapidated condition, defendant No.11 has produced office copy of representations made to Tahasildar, Karwar and Commissioner, C.M.C., Karwar wherein he has referred to dilapidated condition of his house bearing No.403/A and sought for financial aid for renovation of the house. Besides, plaintiff has not uttered a single word as to the existence of old house in the suit property belonging to defendant No.11 nor denied that he had a house in the suit land. Ergo, there is no ambiguity with regard to existence of old house in the suit land.

12. WHETHER PLAINTIFF IS PUTTING UP THE CONSTRUCTION IN THE PLACE WHERE HIS OLD HOUSE WAS SITUATED?

It is not the case of the plaintiff that defendant No.11 is constructing house in the suit schedule property other

than the place where his earlier house was situated or the construction undertaken by him exceeds his share in the suit schedule property. It is pertinent to note here that defendant No.11 has taken the contention that old house was in dilapidated condition and he is renovating it. If the defendant is constructing the structure in some other place rather than the one where his earlier house was existing then his earlier house would have been in existence till date irrespective of its condition or the place where the old house was situated should have had debris if it is fallen down as asserted by the defendant No.11. It is not the version of the plaintiff that defendant No.11 is putting up construction in some other place rather than the one where his old house was existing. Moreover, there are no documents on record to that effect. Plaintiff does not whisper a single word either in plaint or in the instant application about the existence of old house belonging to defendant No.11. Further, it is the contention of the defendant No.11 that he is constructing the house in CTS No.12029. Extract from the Property Register Card

pertaining to CTS No.12029 dated 25.07.1992 bears the names of Loku Janu Harikantra, Keshav, Vishnu, Chandrakant, Nirmala, Shanti Tila Harikantra and Bellu/Belli Tila Harikantra. Thus it is intelligible that defendant No.11 does have rights in CTS No.12029. Besides, plaintiff has not made out in which of the CTS numbers which are shown to be the suit schedule property, defendant No.11 is putting up the construction. Therefore, the version of the plaintiff does not inspire the confidence of this Court.

13. At one stretch plaintiff contends that defendant No.11 not at all have any right, title or interest in the suit schedule property. On the other hand, she avers that defendant No.11 can construct the structure once the property is bifurcated among the stake holders by identifying the boundaries by the survey department. She cannot blow hot and cold simultaneously. It is crux of the case that defendant No.11 is putting up construction in the land belonging to the plaintiff. Indisputably, there are other

joint owners of the suit schedule property along with plaintiff. She has cited some of the CTS numbers which are comprised in the Sy.No.1373A/8 measuring to an extent of 0.8.12.0 guntas of land. However, she has failed to make out in which of these CTS numbers defendant No.11 has been putting construction. Besides, it is not her case that defendant No.11 is not constructing the structure in the place of his old house rather he is constructing in some other place which belongs to her. The contention of the plaintiff that defendant No.11 does not have any right, title or interest in the suit property does not hold good for the foregoing discussion and reasons.

14. Defendant No.11 has taken the contention that plaintiff has not arrayed other siblings of defendant No.11 as a party to the suit. Hence on this count alone I.A. may be dismissed. Plaintiff is the Dominus Litus. Unlike other suits he cannot be compelled to contest the suit against a person especially in a suit seeking the relief of bare

injunction. Hence the contention of the defendant No.11 is not tenable.

15. An Injunction is an equitable remedy which is “a judicial process that compels a party to refrain from doing or to do a particular act or thing”. Granting of temporary injunction is not a matter of right, but the petitioner has to satisfy the essential ingredients as required Under Order 39 Rule 1 CPC. Every piece of evidence produced by either party has to be taken into consideration while deciding the existence of a prima facie case to justify the issuance of a temporary injunction. In other words, the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily. Ergo, for the foregoing discussion and reasons, this Court answers Point No.1 to 3 in the ***Negative***.

16. Point No.4: In light of answering point No.1 to 3 in the Negative, this Court proceeds to pass the following.

ORDER

I.A. No.I filed by the plaintiff U/O. XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby dismissed with costs.

(Typed by me on my laptop, corrected, signed by me and then pronounced the Order in the open Court on this the **10th day of June 2024**)

Smt. Akshatha C.R.
Addl. Civil Judge & JMFC-II,
Karwar.