

KAUK410006492024



**IN THE COURT OF CIVIL JUDGE AND J.M.F.C. COURT,  
DANDELI, AT DANDELI, UTTARA KANNADA**

**Presided Over by SMT. ROHINI D BASAPUR L.L.M.**

Civil Judge & J.M.F.C., DANDELI

**O.S. 103/2024**

**DATED THIS THE 04<sup>th</sup> DAY OF FEBRUARY 2025**

**Plaintiffs/Applicants: 1. Sri. Premkumar S/o. Jnanayudam  
Perumal,**

Age: 72 years, Occ: Retired,

R/o: CSI Church Road, Bombay Chawl,

Dandeli , Dist: Uttara Kannada

**2. Smt. Sarojamma W/o Premkumar  
Perumal**

Age: 67 years, Occ: Home maker,

R/o: CSI Church Road, Bombay Chawl,

Dandeli, Dist: Uttara Kannada

**[By pleader Sri. M.C.H. Advocate]**

**-V/s-**

**Defendants/Opponents: 1) Smt. Marakka W/o. Konappa  
Harijan**

Age: 69 years, Occ: Home maker,  
R/o: CSI Church Road, Bombay Chawl,  
Dandeli, Dist: Uttara Kannada

**2) Sri. Timmappa S/o. Konappa  
Harijan**

Age: 45 years, Occ: Service,  
R/o: CSI Church Road, Bombay Chawl,  
Dandeli, Dist: Uttara Kannada

**3) Sri. Shrinivas S/o. Konappa Harijan**

Age: 40 years, Occ: Home maker,  
R/o: CSI Church Road, Bombay Chawl,  
Dandeli, Dist: Uttara Kannada

**[Def No. 1 to 3 by Shri R.I.H. Advocate]**

**ORDERS ON IA NO.I FILED BY THE PLAINTIFFS UNDER**

**ORDER 39 RULE 1 AND 2 OF C.P.C.**

The present application is filed seeking to grant temporary injunction restraining against the defendants or anybody acting on their behalf from undertaking the further construction of the structure in his property without leaving proper set back towards the northern side of the suit property, till the disposal of the suit.

**2.** In the affidavit, it is asserted that the defendants have commenced construction of a structure without maintaining the requisite setbacks on the southern and western sides of the plaintiffs' property. Furthermore, they installed a window directly facing the plaintiffs' toilet, infringing upon the plaintiffs' right to privacy. Additionally, the defendants began erecting a substantial wall at the edge of the sewage canal located on the western side of both the plaintiffs' and defendants' properties.

**3.** The plaintiffs have lodged a complaint with the municipality regarding the defendants' unlawful construction. Following an inspection, the authorities issued a notice to the defendants, instructing them to cease further construction until appropriate setbacks are established and to remove the window that faces the plaintiffs' toilet. Despite this, the defendants have continued their illegal construction activities without adhering to the required setbacks.

**4.** The actions of the defendants are in clear violation of legal regulations. Should the structure be completed without the necessary setbacks, it would adversely impact the plaintiffs' right to access light and air from the southern side of their property. Moreover, the window installed by the defendants directly opposite the plaintiffs' toilet constitutes a violation of their right to privacy.

**5.** Should the defendants proceed with the construction of the structure without adhering to the required setbacks and without removing the window facing his property, plaintiffs will

suffer significant injustice and incur substantial losses.

**6.** Granting an ad interim injunction will not result in any loss or injustice to the defendants. Conversely, if such an injunction is not granted, plaintiffs will face significant and irreparable harm that cannot be quantified in monetary terms. Plaintiffs have established a prima-facie strong case, and the balance of convenience is in their favor. This application is submitted accordingly.

**7.** Defendants No. 1 to 3 have submitted objections to the interim application, asserting that the plaintiffs have deliberately concealed material facts from this Court to secure an interim order in their favor. It is respectfully noted that upon reviewing the plaint, the description of the property and its precise measurements are inadequately provided. The plaintiffs references plot numbers 87 and 88; however, for Plot No. 87, a measurement of 20x30 feet is indicated, while no specific measurement is given for Plot No. 88. Furthermore, the plaintiffs have failed to disclose the area of construction and the area of vacant space, and no title deed has been presented regarding the ownership of Plot No. 88.

**8.** Additionally, it is submitted that the plaintiffs have violated setback regulations by constructing a toilet over a drainage area and has encroached upon the defendants' land, leaving no setback space. The illegal structure on the drainage area is evidenced by photographs.

**9.** It is further submitted that CTS No. 2513 is unrelated to the

plaintiff, as this land is owned by the City Municipal Council of Dandeli. The plaintiffs have unlawfully constructed a toilet on this land without any title, rights and has not obtained the necessary permissions from the relevant authorities of the City Municipal Council of Dandeli. Therefore, the current temporary injunction order is subject to dismissal.

**10.** It is respectfully asserted that there exists no valid cause of action to initiate the current suit, and the plaintiffs lack any rightful title to the property in question, which precludes the filing of this suit. Consequently, should the interim application be granted, it would result in significant hardship and loss for the defendants, particularly as defendant No. 1 is a disadvantaged individual who has been subjected to harassment by the plaintiffs. Therefore, defendants No. 1 to 3 respectfully request the dismissal of the application.

**11.** Having heard learned counsel for the parties and perusing the record, the points that arise for my consideration are as follows:-

### **POINTS**

- 1.** Whether the plaintiffs have made out a prima-facie case?
- 2.** Whether the balance of inconvenience is in favor of the plaintiffs?
- 3.** Whether the plaintiffs would

suffer irreparable loss or injury if the prayer for injunction is not be granted?

**4.** What order?

**12. My answer to the above points are as follows:-**

**POINT No.1 to 3 :-** In the affirmative

**POINT No.4 :-** As per the final order,  
for the following:-

### **REASONS**

**13. Point No.1 to 3:** All these three points are taken up together for common discussion for brevity.

**14.** Plaintiffs submit that, the plaintiffs have filed a complaint with the municipality regarding the defendants' unlawful construction of a structure on their property. The defendants have been ordered to cease construction until setbacks are established and to remove a window facing the plaintiffs' toilet. Despite this, the defendants continue their illegal activities without adhering to the required setbacks. The plaintiffs argue that the structure's completion without setbacks would negatively impact their right to access light and air from their property and violate their privacy. If the defendants continue construction without setbacks and the window facing the plaintiffs' property, the plaintiffs will suffer significant injustice and incur substantial losses. The plaintiffs have established a prima-facie strong case and the balance of convenience in their favor.

**15.** On the other hand defendants have submitted that, the plaintiffs have concealed material facts to secure an interim order in their favor, citing inadequate descriptions of the property and measurements. The plaintiffs have also failed to disclose the area of construction and vacant space, and no title deed has been presented regarding the ownership of Plot No. 88. The plaintiffs have also violated setback regulations by constructing a toilet over a drainage area and encroaching upon the defendants' land, as evidenced by photographs. CTS No. 2513 is unrelated to the plaintiffs, as it is owned by the City Municipal Council of Dandeli and the plaintiffs have unlawfully constructed a toilet without any title rights. The plaintiffs have no valid cause of action to initiate the suit and lacks rightful title to the property in question, which precludes the filing of the suit. If the interim application is granted, it would result in significant hardship and loss for the defendants.

**16.** Basically the present suit is filed seeking to restrain defendants from constructing the structure without leaving set back area. With this regard it is pertinent to take note of the decision of ***Hon'ble High Court of Karnataka in Dr. K. Panduranga Nayak vs Smt. Jayashree and Others*** on 22 September 1989. AIR 1990 KANT236 wherein it is held that the aspect of deciding with regard to the construction without leaving setback area falls within the domain of the concerned Municipality and a suit for injunction will not lie. The act provides for elaborate procedure to be followed by the commissioner in such event. Thus, the act itself has provided for a machinery to inquire into

such grievance. Hence, it is for the commissioner to take action as it deems fit and proper. Accordingly, this court has no powers to decide over the set-back area.

**17.** Further, as per Section 9 of the Code of Civil Procedure, 1908 states that courts have the jurisdiction to try all civil suits, unless specifically barred. As such when the remedy is available to the plaintiff in other law, he cannot seek remedy in civil court.

**18.** Moreover, to seek injunction a party has to give full and clear description of the properties upon which he is claiming injunction and approach with clear hands. In the present suit, the plaintiffs have failed to provide the exact and full description of property at plot number 88.

**19.** Hence, for the above stated reasons, I am of the opinion that if the injunction is granted, it would result in significant hardship and injury for the defendants. For these reasons, I respond in negative to points No. 1 to 3.

**20. POINT No. 4:-** Therefore for the aforesaid reasons I pass the following:

### **ORDER**

IA No.I under Order 39 Rule 1 & 2 of  
CPC is hereby dismissed.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the **04<sup>th</sup> day of February 2025**)