

**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HALIYAL**

**DATED THIS THE 08<sup>th</sup> DAY OF OCTOBER, 2021**

**PRESENT:- DESHABHUSHAN KOUJALAGI,  
Civil Judge and J.M.F.C., Haliyal**

**OS. No.95/2021**

**BETWEEN : SRI. BASAVARAJ S/O NAGAPPA  
GOKAVI**

**...PLAINTIFF**

**AND : KUMARI. CHAITHRA D/O IRANNA  
HUBBALLI,**

Since minor, represented by her natural father  
and guardian Sri. Iranna S/o Mallikarjun  
Hubballi.

**...DEFENDANT**

**PARTIES TO LA NO.I**

**BETWEEN : SRI. BASAVARAJ S/O NAGAPPA  
GOKAVI**

**...PLAINTIFF/APPLICANT**

**(By: Sri. B N Ramesh, Advocate)**

**AND : KUMARI. CHAITHRA D/O IRANNA  
HUBBALLI,**

Since minor, represented by her natural father  
and guardian Sri. Iranna S/o Mallikarjun  
Hubballi.

**...DEFENDANT/OPPONENT**

**(By: Sri. P B Angadi, Advocate)**

**ORDER ON I.A. NO.1**

The instant application is filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. for the relief of temporary injunction to restrain the defendant from undertaking the construction work in the suit property till final disposal of the suit.

2. The plaintiff has filed affidavit in support of the instant application and stated that, the plaint averments are to be treated as part and parcel of the affidavit. It is also stated that, he is well settled in the suit property; the defendant has started construction work illegally and high handedly by encroaching the suit property and as such, he is constrained to file the instant application. It is further stated that, he has prima facie case and balance of convenience also lies in his favour and if the application is not allowed, he will be put to irreparable loss.

3. As per plaint averments, suit property is a residential property bearing CTS No.1796 measuring 7.68 Sq. Mtrs, 1799/7 measuring 166.54 Sq. Mtrs and 1798/1 measuring 7 Sq. Mtrs situated at Channabasaveshwara Galli of Haliyal Town. It is further averred that, the plaintiff is the absolute owner in possession of the suit property and defendant is the owner of adjacent CTS No.1794 and 1795. It is further averred that, the defendant has started to construct her house by encroaching 06 inch width X 100 Ft length area of the plaintiff's property on western side and at that time, the plaintiff has requested the defendant to not to encroach and construct the wall in the plaintiff's property but, the same was not considered by the defendant. The defendant without leaving the set back area and in violation of building

permission was again started construction work by erecting wall by encroaching the plaintiff's property. Due to the said act of the defendant, the house of the plaintiff has been damaged and rain water flow from the wall of the plaintiff's house.

4. It is further case of the plaintiff that, he approached Town Municipal, Haliyal on 14-09-2021 with his grievance and in that regard, the Town Municipal, Haliyal has issued a notice to the defendant to stop further construction work but, the same was not heeded by the defendant. Even the defendant has not heeded the words of elders who have requested her to stop the construction work. Due to the illegal construction work of the defendant, the house of the plaintiff was damaged in the rainy season. It is also averred that, the defendant has already constructed the wall by encroaching the suit property. The plaintiff being a poor man has no any shelter except the suit property and if the construction work is not completed, the plaintiff and his family members would be put to great loss and hardship. It is also pleaded that, the defendant has filed caveat petition on 20-09-2021 and the same is served on plaintiff on 21-09-2021 and as such, the plaintiff is constrained to file the present suit.

5. After registration of the suit, notice on IA No.1 has been issued along with suit summons. In response to the same, the defendant has put her appearance through her counsel and filed objections to instant application.

6. By denying the case of the plaintiff, it is contended by the defendant in her objections that, her grandfather was the owner of the CTS properties bearing Nos.1794 and 1795 with residential building thereon. The then building was very old and it was in dilapidated condition on its backside and the same was adjoining to the house of plaintiff, his brothers and sisters. As such, the grandfather of the defendant has constructed a house in the year 2014 as per the building permission and completion certificate was also issued to that effect. The said CTS No.1794 and RCC building was gifted to the defendant by her grandfather on 23-02-2018 through a registered gift deed and CTS records have been mutated in the name of defendant.

7. It is further contended that, the property bearing CTS No.1794 has been once again surveyed by City Surveyor, Haliyal by issuing notice to plaintiff and adjoining property holders on 24-01-2020 and it was found that, there is no encroachment. Neither the defendant nor her grandfather have encroached the suit property and cement pole is also fixed in the backyard property of the defendant to identify the boundaries.

8. It is further contended that, recently the uncle of the defendant has filed OS No.17/2021 before the Hon'ble Sr. Civil Judge and JMFC, Haliyal against the present defendant and her father for partition and separate possession in the property bearing CTS No.1794 and the building thereon bearing No.B/100 and B/100/1. After the said development in the family of the defendant, the present suit has been instituted by the plaintiff at the instigation of uncle of the defendant.

9. It is further contended that, the plaintiff has filed two caveat petitions before this Court and in the Court of Hon'ble Sr. Civil Judge and JMFC, Haliyal on 23-02-2021 against the defendant herein and her mother and high handedly increased the height of the of the building, got repaired and extended the roof of her house inspite of objections raised by defendant's mother and in the absence of defendant's father. The plaintiff has produced old photograph of his house and attempting to misguide the Court. The defendant has not left any water from the first and second floor of her property on the roof of the plaintiff's house or in the property of the plaintiff. It is further contended that, the first and second floor of defendant's building is supported by an RCC pillar on the front side and the same in her property. The plaintiff has got issued notice to the defendant from TMC, Haliyal by putting pressure and the defendant has given reply to the said notice. Thereafter, the officials of TMC, Haliyal have inspected the building and got confirmed the present position of the building.

10. It is further contended that, work of the first floor is completed and work of second floor has reached slab level. If further work is hampered, the same would cause irreparable loss and injustice to the defendant. The construction work is strictly undertaking in the property of the defendant and she is not causing any damage to the plaintiff's property. It is also contended that, viewed in any angle, prima facie and balance of convenience are in favour of the defendant and as such, instant application is liable to be rejected.

11. Heard on both sides. Perused the entire materials available on record.

12. Under the above circumstances, the following points arise for the consideration of the Court:

POINT NO.1: Whether plaintiff has made out a prima-facie case?

POINT NO.2: Whether balance of convenience lies in favour of the plaintiff?

POINT NO.3: Whether if TI is not granted, plaintiff would be put to untold hardship and irreparable loss?

POINT NO.4: What Order?

13. Findings of the Court on the above points are as under:

POINT NO.1: In the Negative

POINT NO.2: In the Negative

POINT NO.3: In the Negative

POINT NO.4: As per final order for the following:

**:REASONS:**

14. **POINT NO.1 TO 3:** Since points No.1 to 3 are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

15. In support of his case, the plaintiff has relied on CTS extract of property bearing No.1796, 1798/1, 1799/6, 1799/7, sketch of property bearing CTS No.1799/7, copy of application submitted by him on 14-09-2021 to the TMC, Haliyal, notice issued by TMC, Haliyal, copy of his adhar card and four photographs.

16. On the other hand, the defendant has relied on certified copy of Rule Card of CTS No.1794, 1795, sketch of property bearing CTS No.1794 and 1795, sketch of property bearing CTS No.1794, 1795, 1797, 1798 and 1799, copy of Form No.3 in respect of CTS No.1794, Blue Print of the building in CTS No.1794 and 1795, copy of Building Confirmation Letter issued by TMC Haliyal on 09-02-2021, copy of Notice issued by City Survey Office, Haliyal to plaintiff's father, defendant and others, certified copy of sketch of CTS No.1794, another Blue Print dated 21-11-2020, notice dated 18-09-2021 issued by TMC, Haliyal, copy of plaint and IAs in OS No.19/2021, copy of Caveat Petition filed by plaintiff, sketch of CTS No.1796, 1797/1,2, 1793/1,2,3, 1799/1 to 8, fifteen photographs with CD, copy of reply of defendant to TMC, Haliyal dated 30-09-2021, CTS extracts of property bearing No.1797/1, 2, 1798/1,2,3, 1799/1,2, 3,4,5,6,7,8.

17. It is argued by the learned counsel for the plaintiff that, the defendant is undertaking construction work by encroaching some portion of the suit property and by violating the building permission conditions. It is also argued that, the TMC, Haliyal has issued notice to the defendant to stop further construction work and even the plaintiff has repeatedly

requested to stop the construction work but, the defendant has not stopped the same. It is further argued that, earlier there were no pillars in the front portion of the building of the defendant but now the defendant has put concrete pillar by encroaching the suit property and continued her construction work without leaving set back area and the same has been damaged the house of the plaintiff. It is further argued that, due to illegal construction work of the defendant, rain water is flowing from the wall of the plaintiff's house and if the defendant is not restrained from further construction work, the house of the plaintiff will be damaged. On these grounds, the learned counsel for the plaintiff prays to allow the application.

18. On the other hand, the learned counsel for the defendant by denying any encroachment in the suit property has argued that, the defendant is undertaking construction work within her property as per building permission. It is also argued that, the defendant has already completed construction of first floor and construction of second floor has reached to slab level and if at this stage, the further construction work is restrained, the defendant would be put to great hardship and irreparable loss. It is further argued that, the survey sketch produced by the defendant clearly shows that, there is no encroachment in the suit property and the plaintiff has filed the present false suit at the instigation of uncle of the defendant who has recently filed a suit for partition against the defendant and her father. It is also argued that, the plaintiff himself has filed two caveat petitions against the defendant and by doing so, he has got repaired his house by extending the roof of his house and now raising objections

for the construction work of the defendant without having any right. On these grounds, the learned counsel for the defendant prays to reject the instant application.

19. To get an order of temporary injunction, it is necessary to make out a prima facie case by the applicant. The prima facie case means, the party who is seeking temporary injunction must have a triable case. In other words, the applicant must have a strong case for trial and there are every probabilities of succeeding in his case by undergoing a trial. However, this does not mean that, the applicant must have a cent percent case. The applicant from the face of it has to convince the Court that, he has every chance of succeeding in his case if, the Court decides the matter on merits. Apart from the above, the applicant has to show that, balance of convenience lies in his favour. Balance of convenience means, the Court must be satisfied by the applicant that, the greater mischief or hardship or inconvenience would likely to be caused to him in case of rejection of his prayer for the temporary injunction and less hardship will be caused to the opposite party if Court grants injunction against the opposite party. Apart from the aforesaid two principles, to get an order of temporary injunction, the applicant has to show that, if his prayer for temporary injunction is rejected, he would be put to irreparable loss. The applicant is entitled for the relief of temporary injunction only if he proves the aforesaid well settled principles.

20. In the aforesaid background, it is necessary to discuss the case of the plaintiff herein. The Court has scrutinized the documents relied by both the parties. There is no dispute with regard to ownership of

the plaintiff and defendant in respect of their respective properties. However, the plaintiff alleges that, the defendant is undertaking construction work by encroaching 06 inch width and more than 100 Ft length of the suit property towards its western side. The same has been denied by the defendant. It is one of the main contention of the plaintiff that, the defendant has erected RCC pillar by encroaching the suit property and she has continued construction work by violating building permission rules. The burden is on the plaintiff to prove that, the defendant has put concrete pillar by encroaching the suit property and continued her illegal construction. So far as alleged encroachment is concerned, the plaintiff has not produced any documents at this stage. On the other hand, the defendant has contended that, before commencement of construction work, her property has been surveyed. In this regard, the defendant has produced Haddubast Sketch of CTS No.1794. In the said sketch, no encroachment of the property of the plaintiff is shown.

21. Though the plaintiff has alleged that, the defendant has erected RCC pillar towards western side of the suit property by violating building permission but, the approved Building Plan dated 21-11-2020 relied by the defendant shows that, the defendant is permitted to erect three pillars and out of which, one is shown towards eastern side of defendant's property. It is pertinent to note that, the plaintiff has sought for temporary injunction to restrain the defendant from further construction work in the suit property. At this stage, the plaintiff has not placed any documents to show that, the defendant is undertaking construction work in the suit property. According to defendant, she is

constructing building in CTS No.1794 and 1795. The plaintiff has not produced any single document to show that, the defendant has encroached the suit property as alleged in the plaint. On the other hand, the defendant has relied on Haddubast sketch wherein, no encroachment is shown. Though it cannot be ruled out that, the TMC, Haliyal has issued a notice to the defendant to stop the construction work but, in the said notice, nowhere it is mentioned that, the defendant is undertaking construction work against the permission. What stated in the said notice is that, the defendant has to construct the building by surveying and by identifying boundaries of her property. Admittedly, before commencing the construction work, Haddubast survey has been done and no encroachment is shown in the sketch. The plaintiff has to make out a prima facie case that, the construction carrying out by the defendant is illegal on the face of it. In this case, no such documents have been placed by the plaintiff to show that, the defendant is undertaking illegal construction in the suit property. Having regard to the same, Court does not find any prima facie case.

22. Coming to the next aspect, it is admitted fact that, the defendant has already erected the pillars. It is also admitted fact that, the defendant has already completed the construction of first floor and construction of second floor up to slab level. The plaintiff himself in his letter addressed to TMC, Haliyal on 14-09-2021 has admitted that, the defendant has already constructed the building. After completion of substantial portion of the building, the plaintiff has knocked the door of the Court to restrain further construction work by the defendant. In a

normal course of business, completion of first floor and construction of second floor up to slab level would take considerable time. When such being the case, the plaintiff ought to have taken proper steps to stop the construction work at the initial stage itself. The plaintiff has not taken any steps to stop the construction work at the earliest point of time. Admittedly, it is a matter of trial to probe the issue of encroachment and at this pre-trial stage, the same cannot be considered by holding a mini trial. When the defendant has already undertaken construction of substantial portion of the building and if at this stage, the defendant is restrained from further construction work, the more sufferer will be the defendant rather than the plaintiff as the defendant might have invested lakhs of rupees for construction work and stored building materials. Moreover, the disposal of the suit would take its own time and if the defendant is restrained from completing second floor of the building, there are likelihood of storage of water in the second floor in rainy season and the same would flow on the house of the plaintiff. In that event also, the plaintiff would suffer. Hence, balance of convenience is also not lies in favour of the plaintiff.

23. Though it cannot be ruled out that, merely because substantial portion of the building is already constructed is not a ground for continuation of illegal construction work but, it is the duty of the plaintiff to approach the court without there being any laches on his side. As already stated above, if the Court grants injunction in favour of the plaintiff at this stage, the more inconvenience would be caused to the defendant rather than the plaintiff. It is true that, the defendant has not left

any side set back in first and second floor of her building. However, if plaintiff succeeds in his case, the defendant would be bound by the order of the Court. Whatever it may be, at this stage, Court opines that, if the temporary injunction is granted in favour of the plaintiff, the defendant would be put to great hardship and loss as her construction work of the building has reached its finality. Therefore, the plaintiff has failed to make out prima facie case. Balance of convenience also not lies in his favour. The defendant would put to great hardship if Court inclines to grant temporary injunction at this stage. In view of aforesaid discussion, Points No.1 to 3 are answered in the **NEGATIVE**.

24. **POINT NO.4:** In view of the findings on Points No.1 to 3, Court proceeds to pass the following:

**ORDER**

The application filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, computerized by her corrected and then pronounced by me in the Open Court on this the 08<sup>th</sup> DAY OF OCTOBER, 2021.)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge and J.M.F.C., Haliyal

