

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

Dated on this the 10th day of August, 2020

Original Suit No.47/2020

PRESENT: SMT. SANMATHI S.R.

BA.L.,LL.B.,LLM.,

Addl. Civil Judge & J.M.F.C, Honnavar

Plaintiff : Sri.Mahesh Shivaram Shet

(By Sri.M.L.N., Advocate)

//Vs.//

Defendants: 1. Sri.Nagappa Manjunat Raikar & others

(Defendant No.1 to 3 by Sri.V.R.N Advocate)

(Defendant No.4 by Sri.K.R.N Advocate)

IA.NO.III

Applicant: Sri.Mahesh Shivaram Shet

//Vs.//

Respondents: 1.Sri.Nagappa Manjunat Raikar & others

O R D E R O N I A N O . I I I

The plaintiff has filed this application Under Order 39 Rule 1 and 2 r/w section 151 of CPC seeking Temporary injunction to restrain defendant No.1 to 3 from continuing construction in the suit schedule property till disposal of the suit.

2. In the affidavit filed along with application, it is stated that, he is the owner in possession of the land to the extent of 12 ane in Sy.No.4A/4B of Nagarabastikeri(V), Honnavar(T). His house bearing No.31B is situated in the said land. He along with his family is staying in that house. Adjacent to his land at the southern side defendants grand father Ganapayya Marthappa Nagappa shet's land in Sy.No.14A2 to the extent of 1 gunta 14 ane is exists. In that land a house belonged to defendants is situated. The defendants have started to construct new house by demolishing the existing old house in that place. They have started to construct house without leaving

set back. This plaintiff along with his brother enquired in the Grama panchayat about the same. They came to know that the defendants have not taken license from the 4th defendant Grama panchayat to construct new house and not even submitted blue print of the building. This plaintiff and his brother told defendant No.1 to 3 to construct the building by leaving set back as per law. For that defendants denied. Later as per the direction of defendant No.4 survey of the defendants land was conducted through private surveyor in the presence of plaintiff and the defendants. Defendant No.4 specifically directed the defendant No.1 to 3 to leave the set back and marked the place to construct house. It was directed to the defendants that they should follow the terms and conditions decided in the panchayat Nyaya samiti held in the Grama panchayat on 18/05/2020 and 21/05/2020. But defendants with out following the terms and conditions laid down by the Grama panchayat started to construct the house. His house is situating adjacent to the defendants old house which they have demolished and intending to construct new house. His house is old house made up of mud. If the defendants continued construction of house without leaving setback, it would cause damage to his house and it will collapse and he will be put to irreparable loss. Plaintiff has no objection if the defendants construct the house by leaving specified setback. But defendant without following the terms and conditions laid down by the panchayat started to construct house and he has prepared with material to complete the work in a hurried manner. Defendant No.1 filed false caveat against this plaintiff and other 4 persons to complete the construction work. Plaintiff orally and in writing has filed his objection to defendant No.4 and asked him not to allow defendant No.1 to 3 to construct house with out obtaining license and without leaving set back. But, defendant No.4 has not taken any action against them. Hence defendant No. 4 is made as necessary

party to the suit. For these reasons he filed this suit seeking permanent injunction to prevent defendants to construct house in the suit schedule property. Consequently, he filed this application seeking temporary injunction against defendant No. 1 to 3 till disposal of the suit.

3. On the other hand defendant has filed objection to this application and oppose the same. In the objection it is stated that the plaintiff has constructed his house in his agricultural land without converting the same as alienated land. He had not left setback from the boundary of the defendants. Whereas, defendants have admitted that their house is adjacent to plaintiff's house. It is stated that their house was in deteriorated condition and hence, they have applied to Grama panchayat seeking license to repair the same by demolishing old house. Defendant No.4 has granted license on 09-05-2020 to remove the old house and to repair the same. It is further stated that this being the rainy season defendants having no proper accommodation to stay, hence defendants started to construct house on the same foundation. But, plaintiff file objection to the 4th defendant out of jealous and tried to prevent these defendants from constructing their house. On hearing both side 4th defendant conducted spot inspection and as per the decision held in the Grama Panchayat on 22-05-2020 both plaintiff and defendants agreed to follow the terms and conditions imposed by the 4th defendant. They have admitted that they have left a portion of old building, but denied the allegation that the rainy water which falls from the old building is causing damage to the plaintiff's house. They have started to construct house by leaving the space as directed by 4th defendant. Hence contended that, they have not violated any terms and conditions stated by the 4th defendant. It is stated in para No.5 of the objection that the defendants have constructed new building in front of a portion of old building by putting temporary

sheet (ತಗಡಿನ ಛಾವಣಿ) and staying in that newly constructed house.

Hence contended that if the TI is granted till disposal of this suit, defendants will be put to hardship. It is further stated that, they have constructed new house as per the license issued by 4th defendant without violating any terms and conditions and about 75% of construction work is completed and only fixing the windows and the door are left. As such, if the defendants are prevented from continuing the construction work, it will cause hardship and irreparable loss to them and to the property. Hence, prays to reject the application.

4. Heard both side on application.

5. The point that arise for my consideration is as follows:-

1. Whether the plaintiff has made out prima-facie case in his favour to grant ad-interim injunction as sought for ?

2. In whose favour balance of convenience lies?

3. To whom the greater hardship will be caused in the event if the injunction is granted or refused?

4. What order?

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

Point No. 1: In the Affirmative

Point No. 2: Balance of convenience lies in favour of plaintiff

Point No. 3: Plaintiff will suffer more hardship if TI is rejected.

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

REASON

7. Point No.1:- The plaintiff has filed this suit seeking permanent injunction to prevent defendants from continuing construction of building in violation of terms and conditions imposed by 4th defendant. It is his assertion that defendants without following terms and conditions i.e. without leaving the specified space as decided in Nyaya samiti held in the Grama Panchayat constructing house in the suit schedule property. It is alleged that defendants left a portion of their old building which is causing nuisance and causing damage to the plaintiff's house. It is his specific allegation that defendants without taking license from the 4th defendant constructing building in the suit schedule property. It is his contention that even filing objection to the 4th defendant they have not taken any steps to prevent defendants from continuing the illegal construction. It was brought to the notice of 4th defendant that the defendant No.1 to 3 without leaving set back and without taking license constructing house, but 4th defendant has not taken any steps against them. Hence, filed this suit.

8. On the other hand defendant No.1 to 3 in their objection stated that they have not violated any terms and conditions imposed by the 4th defendant. They have stated in the objection that they are constructing new house in suit schedule property. According to them, they have started to construct house on the same foundation as per the license issued by the 4th defendant. It is stated that, they have completed 75% of construction work and only fixing of windows and doors are left. Hence, contended that if TI is granted they will be put to hardship. They denied that their construction work is causing nuisance to the plaintiff and his house. Hence, prayed to reject the application.

9. Plaintiff in support of his application produced documents like RTC's to show about existence of suit schedule property and his

property. Existence of plaintiff's land and house adjacent to suit schedule property is not in dispute. Defendants have admitted about existence of plaintiff's house adjacent to suit schedule property. He has produced copy of objection filed before 4th defendant stating his objection to the construction of house in suit schedule property. On the other hand defendant No.1 to 3 have produced attested copy of resolution dated 22-05-2020 held in the Grama Panchayat, Nagarbastikeri with respect to survey No.14A2, 14/5. On perusal of resolution it revealed that this plaintiff and another person by name Francis Saveer Soja have filed objection to 4th defendant regarding construction of house by these defendants in suit schedule property. As per the terms of resolution plaintiff asked direction against defendants to leave 3' foot set back from the boundary mark stone and the other person asked for proper survey of suit schedule property as he alleged encroachment of his land by the defendants. In the resolution plaintiff and defendants agreed to follow the terms and condition regarding leaving of setback as stated to construct new house in the suit schedule property.

10. In the attested copy of said resolution survey number of the suit schedule property is wrongly shown. In this regard 4th defendant produced original resolution book and certified copy of the same. He also filed application and has given explanation stating that due to typing mistake defendants survey No.14A/2 is wrongly shown as 14A/5. The RTC produced by defendant No.1 to 3 clearly revealed that the survey number of defendant is 14A2. Whereas, in the resolution book survey number of the suit schedule property is written as 14/A/2. On perusal of attested copy issued to the plaintiff and to the defendant No.1 to 3 and in the resolution book and in explanation given by 4th defendant, the survey number of the property belonged to defendant No.1 to 3 is shown ambiguously creating confusion about identification of defendants property.

11. Defendant No.1 to 3 have produced attested copy of NOC dated 09-05-2020 issued by 4th defendant. It is their argument that this is the license issued by the 4th defendant to construct new house in the suit schedule property. As per the pleadings of the defendants in their written statement they are repairing the old building. Whereas, defendant No.3 in the meeting held on 18-05-2020 stated that they are about to construct new house in the suit schedule property. In the objection it is stated that they have constructed new house in the suit schedule property. The NOC issued by 4th defendant on 09-05-2020 is with respect to demolish of old house situated in the suit schedule property. In the said NOC there is condition where it is specifically stated that the defendants shall take license to construct new house in the suit schedule property. On perusal of the pleading and the proceedings held in the 4th defendant and the NOC issued by the 4th defendant it revealed that defendant No.1 to 3 are constructing house newly.

12. On perusal of entire materials the defendant No.1 to 3 have not produced license regarding construction of house in the suit schedule property. They argued that, the NOC issued on 09-05-2020 by the 4th defendant is itself a license issued by 4th defendant. On the other hand defendant No.4 in his written statement stated that it was directed to plaintiff and defendants to follow the terms and conditions imposed in the Nyaya Samiti instead of that they have disputed the matter. He denied that, they have not taken any steps in response to the objection filed by the plaintiff. He has reiterated the terms and conditions set out in the resolution passed on 22-05-2020. In page No.3 of the written statement it is stated that the plaintiff orally informed to this defendant about violation of terms and conditions imposed in the resolution by the defendant No.1 to 3. In this regard he along with president visited the place and confirmed that defendant No.1 to 3 have not violated any terms and conditions.

Hence, denied the allegation that he has not taken any steps in response to the objection filed by the plaintiff. In para No.5 of his written statement he has taken specific contention that this court is not having jurisdiction to entertain the suit. According to him, as per section 64 of Panchayat Raj Act if either person is not satisfied with the order of PDO he can file appeal to the Executive Officer, Taluk Panchayat, hence prays to the dismiss the suit.

13. It is certain that if the party is not satisfied with the order of PDO, he can file appeal to the Executive Officer, Taluk Panchayat. But, in this case the dispute is not regarding the validity of the resolution passed by the 4th defendant. It is the dispute that the defendant No.1 to 3 are constructing house without leaving setback as specified in the resolution. It is further disputed that the defendant No.1 to 3 have not taken valid license from the 4th defendant to construct house. In this case, defendant No.1 to 3 have not produced license issued by the 4th defendant to construct house. The alleged NOC issued by the 4th defendant on 09-05-2020 is not a license at all. They can not take support of that document to defend their illegal construction as a legal construction. Suppose they have taken license from the 4th defendant, then what restrained them to produce the same before the court. On the other hand the conduct of the defendant No.4 shows that he is acting as an agent of defendant No.1 to 3. When the materials placed on record, are clearly shows that the construction made by the defendant No.1 to 3 is without license and an illegal construction, the affidavit filed by the defendant No.1 to 3 to the effect that they have not violated any conditions imposed by the 4th defendant is not having any value in eye of Law. In fact, the said affidavit is a false affidavit filed by them.

14. In this case, the apprehension of the plaintiff that, if the defendants are allowed to continue their construction in the suit schedule property it will cause irreparable damage to them. Because,

the portion of the house which is left without demolishing is causing nuisance. According to him, the rainy water is directly falling on his house from that old house and damaging his old house. Further it is stated that, defendants have not leave the setback area and constructing house. Defendants themselves admitted that they have constructing house in the suit schedule property. Though, they have stated that about 75% of the work completed, they have not produced documents to show that they have completed 75% of the work. They themselves stated in the pleading that a portion of the old house is not demolished. According to them, they are staying in the newly constructed house. If so, what restrained them to produce photos with CD. Moreover, they have not produced documents to show that they have got valid license to construct house in the suit schedule property. On the face, it can be concluded that the construction made by the defendant No.1 to 3 is an illegal construction. Hence, I am of the clear opinion that the plaintiff has made out prima-facie case to get TI in his favour. Hence, Point No.1 answered in the Affirmative.

15. Point No.2 and 3:- In this case plaintiff has made out prima facie case in his favour. The material placed on record, revealed that defendant No.1 to 3 are not having valid license to construct house. The conduct of the defendant No.4 shows that he is trying to defend the illegal construction as a legal. Though defendant No.1 to 3 stated that about 75% of the work completed and at this stage if they are prevented from continuing the construction they will put to hardship, there is no documents produced on record to believe that they have completed 75% of the work. They have not produced documents to show that how much money they have invested and to what extent they will be put to loss. It is not possible to believe the contention of the defendants that they have filed affidavit and hence what they are saying is truth. Moreover, they themselves stated that a portion of

the house is left without demolishing the same. It is highly impossible to believe that they have completed 75% of the work in these heavy rainy fall days. Hence I hold that, they have failed to show that, if TI is granted they will be put to irreparable loss and hardship and hence balance of convenience lies in their favour. Considering the facts and circumstance of the case and the materials placed before the court, if the defendants are allowed to continue the construction without ascertaining whether they have leave the set back area or not, it would lead more hardship to the plaintiff. Because, it is difficult for him to get the relief at the later stage. Due to latches he might lost his right. Hence, I am of the considerable opinion that the balance of convenience is in favour of plaintiff rather defendants. Accordingly, I am of the clear opinion that the plaintiff will be put to more hardship compare to defendants. Hence, Point No.2 and 3 answered in favour of plaintiff.

16. Point No.4: In view of my answer to point No.1 to 3 as stated above, I proceed to pass following:-

ORDER

IA No.III filed by the plaintiff U/o.39 Rule 1 and 2
R/W section 151 of CPC is hereby allowed.

Defendant No.1 to 3 are here by restrained from
continuing construction work in the suit schedule property
till disposal of this suit.

Sd/-

**(Smt.Sanmathi S.R.),
Addl.Civil Judge & JMFC., Honnavar.**