

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND J.M.F.C KUMTA**

PRESENT

**Sri.Vignesh Kumar, B.A. (Law)., LL.B.
J.M.F.C. Kumta.**

O.S No. 123/2018

Dated this 18th Day of February, 2019

Plaintiffs/Applicants : Ramesh Govinda Hosmane,
Aged 60 years, agriculturist,
R/o Bargi, Kumta Tq. and two others.

(By Sri. NKS/MNS., Advocates)

V/s

Defendant/Respondent: Prakash Dayananda Pandith,
Aged 50 years, agriculturist,
R/o Bargi, Kumta Tq.

(By Sri. PSN/GGG., Advocates)

:: ORDER ON I.A.NO. III ::

This is an application U/Order 39 Rule 1 and 2 R/w. Section 151 of CPC filed by the Applicants/Plaintiffs against the defendant seeking to restrain the defendant or

any person acting on his behalf from pulling down the compound wall existing in the eastern and southern side of the suit property bearing Sy.No. 82/3 and Sy.No. 86/6 of Bargi village.

Facts in brief are as follows:

2. In the affidavit annexed to IA, it is stated that the plaintiffs are owners in possession of suit property bearing Sy.No. 82/3 and Sy.No. 86/6 of Bargi village. The defendant is the owner in possession of Sy.No. 82/4, which is situated to the eastern side of Sy.No. 82/3 and northern side of Sy.No. 86/6. It is stated that there is a compound wall built about 50 years back. It is alleged that the defendant has approached the survey authorities to get his property measured and trying to create a sketch showing the encroachment by the plaintiffs. In the guise of false survey sketch the defendant is trying to pull down the compound wall existing to the eastern and northern portion of his property. Hence, it is prayed to allow the IA.

3. On the other hand the defendant has filed his objection admitting the ownership and possession of the suit property by the plaintiffs. It is stated that only with an intention to stop the survey work, the plaintiffs have filed this false suit. It is necessary to issue commission and conducting the survey of suit properties. Hence, prayed to dismiss the IA.

4. Heard the arguments. Perused the entire case records.

5. The following points would arise for my consideration:

P O I N T S

- 1) Whether the plaintiffs/applicants have made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the applicants/plaintiffs?
- 3) Whether the applicants/plaintiffs would be put to irreparable loss or injury in the event the application is not allowed?
- 4) What order?

6. My findings on the aforesaid points is as under:

Point No. 1: In the Affirmative

Point No. 2: In the Affirmative

Point No. 3: In the Affirmative

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

REASONS

7. **Points No. 1 to 3:-** In order to avoid repetition of facts all these points are taken up together for discussion.

8. This is a suit for bare injunction. It is the case of the plaintiffs that they are the owners in possession of suit schedule properties. The defendant is the adjoining land owner bearing SyNo. 82/4 of Bargi village. It is alleged that the defendant is planning to demolish the old compound wall situated between the boundaries of suit schedule property and Sy.No. 82/4 belonging to the

defendant. I have perused the documents produced by the plaintiff. On perusal of the photographs its evident that there exists an old compound wall.

9. During the course of hearing, learned counsel for the defendant filed a memo stating that the defendant has got no intention to pull down the said compound wall. Infact the defendant intends to get his property measured by the survey authorities, for which the plaintiffs must cooperate. Learned counsel for the plaintiffs filed his objection to the said memo as the memo of undertaking was not signed by the party and it is ambiguous.

10. It is evident from the documents and pleadings on record that the defendant intends to get his property measured by the survey authorities. For the purpose of conducting the said survey it is not necessary to obtain separate permission from this court. Infact as per order dated 30.10.2018 this court had only restrained the

defendant from causing any damage or demolishing the compound wall situated in suit property. No doubt the learned counsel for the defendant had filed a memo of undertaking, but it is not signed by the party and as such it has got no legal sanctity.

11. If the compound wall existing on the eastern and southern boundary of suit properties are damaged, the plaintiffs would suffer irreparable loss and hardship. There will be threat to their lawful possession of the suit property. As such it is necessary to restrain the defendant from the damaging or demolishing the compound wall. Therefore, Points No.1 to 3 are answered in the **Affirmative**.

12. **Point No.4:-** For the reasons assigned to Points no.1 to 3, and to meet the ends of justice I proceed to pass the following:

ORDER

I.A.No. III filed under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. is hereby allowed.

The defendant, his men, servant or any persons claiming under or through him are hereby restrained by way of temporary injunction from causing any damage or demolishing the compound wall situated in the suit schedule property until further order.

Cost shall follow the suit.

(Dictated to the Stenographer, typed by him, corrected, signed and then pronounced by me in the open court on this the 18th day of February, 2019)

Sd/-

(VIGNESH KUMAR)
Prl. Civil Judge and JMFC
Kumta