

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT
SIDDAPUR.**

PRESENT

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,
CIVIL JUDGE & JMFC,
SIDDAPUR.**

Dated this the 21st day of August, 2024

O.S. No.51/2023

**Plaintiff: Kanne Datta Dafedar
(By shri GSH/MNH Adv.)
V/s
Defendant: Shivananda Manjayya Gowda
(By shri M R P Adv.)**

I.A.No.I

**Applicant : Kanne Datta Dafedar
V/s
Opponent: Shivananda Manjayya Gowda**

ORDER ON I.A. No.I

The Plaintiff has filed I.A No.I, U/O XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908, seeking to restrain the defendant, his agents, servants, assignee's or any person from leaving the latrine waste in to the concrete ring tank installed in suit **B** schedule property till the disposal of the suit.

2) In the affidavit filed in support of I.A.No.I, the plaintiff has stated that, he is the absolute owner of the suit schedule property and is in possession and enjoyment of the same. The defendant is the owner of Sy. No. 1 adjacent to the suit schedule property. In the year 2014 the defendant has encroached some portion of the suit **A** schedule property and put up a fence. Accordingly, on 15-1-2015 the hadhbust procedure was conducted and it was found that, 00-00-15 anas land in suit **A** schedule property was encroached by the defendant. In view of the same the plaintiff asked the defendant to handover the encroached area, which is the suit **A** schedule property. Such being the case, the defendant has constructed a latrine adjacent to the eastern boundaries of suit **A** schedule property and has constructed a drainage sump in the suit **B** schedule property and he is letting the waste water from the latrine to the drainage sump. Next to the drainage sump, the well belonging to the plaintiff is situated, wherein the plaintiff uses the said well for his daily purposes. Hence, if the waste water from the latrine is let in to the drainage sump, it will affect the water in the well and contaminate the same. Hence, this application.

3) On the other hand, the Defendant has filed objections to I A No. I, wherein he has strongly objected the application and has denied the entire affidavit averments. It is the case of the Defendant that, the defendant has not encroached the suit schedule property. Further that, there is a pathway in existence since 50 years to the eastern side of the Sy. No. 1 running from north to south which is the boundaries of the suit schedule property and Sy. No. 1. Further that, there is compound put up with barred wire fence, at the boundaries to avoid the entry of animals in to the property since time immemorial. Further that, the

defendant is residing in house No. 28, and there is an latrine room attached to the house which is in existence since very long time and the defendant is using the same. Further that, since 2002 the defendant has installed a 4 feet safety tank to which the latrine water is let into and the same is under the ground and does not effect any one. Hence, the contention of the plaintiff that, on 24-2-2023 this defendant installed a new safety tank is false. Further that, the hadhbust procedure was not conducted after giving notice to the defendant and the defendant does not have any information with regard to the same. Hence, sought for rejection of application.

4) Upon perusal of the applications, objections and the material available on record, the following points arise for my consideration:-

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in the favour of plaintiff?
- 3) Whether the plaintiff will be put to irreparable loss or hardship, if injunction is not granted?
- 4) What order?

5) Heard the arguments and perused materials on the record.

6) My answer to above points are 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) Point No.1 to 3: As these points are interlinked with each other, this court shall take these points together for common discussion, in order to avoid repetition of facts and circumstances and for the sake of brevity.

8) Since the averments of the affidavit annexed to the application and the objections of the defendant is detailed at the inception of this order this court shall without repeating the same proceed to assess the facts and circumstances available on record by applying the three standing principles of granting temporary injunction.

9) The main dispute between the plaintiff and the defendant arises from the Hadhbust sketch issued by ADLR Siddapur wherein it is shown that, 00-00-15 is encroached by the persons in possession of Sy. No. 1. The plaintiff claims that, the defendant has encroached his 00-00-15 extent of land in the suit schedule property and has put up concrete tank for the purpose of letting the waste water from the latrine in to the same. Further that, the said tank is situated next to the drinking water well situated in the suit schedule property. Hence, if the water is let into the said tank it will contaminate the well.

10) On the other hand the defendant contends that, there is a road in an existence between the suit A schedule property and his sy. Number 1 and that he has put up a fence which is in existence since a very long time. Further, it is the specific contention of the defendant that, the notice was not issued to him prior to conducting the hadbusth survey and the defendant is not aware of the same. Further he contains that

he has not constructed any safety drainage tank in suit B schedule property.

11) It is pertinent note here that, other than mere allegations that, there exists a road between the two properties the defendant has not produced along with the written statement any documents to prima-facie show the existence of the alleged road. When such being the case, at this stage of the proceedings this court cannot ascertain on the fact of the existence of the pathway.

12) Moreover, it is pertinent to note that, the defendant has not challenged the hadbusth survey before the appropriate authority. **Sec. 61 (2) (h) of Karnataka Land Revenue Act**, specifically bars the jurisdiction of civil courts with respect to dispute arising out of boundaries set by the revenue authorities. It clearly states that no civil court has jurisdictions with regard to claims with respect to the boundaries fixed by the revenue authorities under the Karnataka land revenue Act or any other law for the time being in force. Such being the case this court cannot decide upon the validity of the hadbusth sketch produced by the plaintiff.

13) It is not in dispute that the plaintiff is the owner and a possession of suit **A** schedule property and that, the defendant are in possession of Sy. No. 1. The only dispute is about the encroachment towards the boundaries of the suit schedule property and Sy. No. 1 and they existence of a drainage sump in suit **B** schedule property. The defendant denied the said encroachment and stated that there is a pathway in existence between suit **A** schedule property and Sy.

Number, since time immemorial and the said pathway is the boundaries of the both properties. Further that, the defendant has put up a barred wire fence which is also existence since time immemorial. Further, that, there is a latrine room and safety tank present over Sy. No. 1 since time immemorial. As stated earlier, the defendant has not produced any documents to establish the existence of a pathway between the property belonging to the plaintiff and defendant.

14) Upon analyzing the above crux of the dispute it is seen that there is a triable case put forth by the plaintiff which requires adjudication. If the defendant are not restrained from letting the waste latrine water in to the newly constructed tank as alleged by the plaintiff it will contaminate the water in the well, which will cause irreparable loss and injury to the plaintiff and it becomes a health hazard. The granting of temporary injunction is for the main purpose of maintaining status-quo and to safeguard and preserve the suit subject matter till the disposal of the suit. In this case if the injunction is not granted as sought by the plaintiff the suit itself will become infructuous and will cause an irreparable loss and injury to the plaintiff which cannot be compensated by any means. Accordingly, this court answers Point No. 1 to 3, in the **AFFIRMATIVE**.

15) Point. No. 4: In view of above discussion and the answer given to Point No.1 to 3, this court proceeds to pass the following:

ORDER

I.A. No. I filed by the Plaintiff, Under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908, is hereby allowed.

The defendant, his agents, servants, assignee's or any person claiming under him is hereby restrained from leaving the latrine waste into the concrete ring tank newly installed in the suit **B** schedule property till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this 21st day of August 2024)

(BHARATH CHANDRA K.S.)

CIVIL JUDGE & JMFC,

SIDDAPUR.

