

IN THE COURT OF THE II ADDL. CIVIL JUDGE AND
J.M.F.C., KARKALA

Present: - Sri. Satisha B., B.A.,LL.B.,
II Addl. Civil Judge and J.M.F.C., Karkala.

Dated :- This the 11th day of December, 2017.

ORIGINAL SUIT NO.142/2016

Between:

Plaintiff : Mr. Ivan Miranda
Aged about 49 years,
S/o. Late John Miranda
Residing at:
Miranda Colony,
Ranganapalke, Kowdoor Village,
Karkala Taluk,
Udupi District.

-Vs.-

Defendant : Vikasa Autorikshaw
Malakara and Chalakara
Sangha, Rept. By its
President Ranganapalke
Kowdoor Village,
Karkala Taluk.

PARTIES TO I.A. NO.II

Applicant/Plaintiff ... Mr. Ivan Miranda,

-V/s-

Opponent/Defendant ... Vikasa Autorikshaw

ORDER ON IA NO.II FILED UNDER ORDER XXXIX RULE 1
AND 2 AND SECTION 151 OF CODE OF CIVIL
PROCEDURE,1908

The present application is filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 and Section 151 of Code of Civil Procedure, with a prayer to pass an order of temporary injunction restraining the opponent/defendant association and its members and all persons claiming through or under them from constructing or erecting any structures or in any way causing any kind of obstruction over the land in S.No.453 of Kowdoor Village, situated in front of the plaint 'A' schedule properties as frontage, till disposal of the suit.

2. It is averred in the affidavit annexed to application that, the present suit filed by the applicant/plaintiff against the opponent/defendant association for a relief of permanent injunction. It is further averred that, the suit 'A' schedule properties which consisting of commercial and residential building belong to him and his wife i.e., Smt. Lavina Miranda. He is in actual and peaceful, possession, management and enjoyment of the said property by paying the revenue cesses to the government and concerned local authority. The said properties are situated

touching the Bailoor-Palli public road on its eastern side and said main road is passing through Sy.No.453 of Kowdoor village. In between the aforesaid public road there is a suit 'A' Schedule properties as well as vacant space which are being used by me, my house people and occupants of my aforesaid complex as frontage to suit 'A' schedule properties to have ingress and egress from the aforesaid public road. He and others have been using the aforesaid vacant space in Sy.No.453 of Kowdoor Village openly, peacefully, continuously and uninterruptedly for long time. He and other occupants of his building have acquired valid, legal and recognized natural right of access and right of ingress and egress on the frontage area in Sy.No.453 of Kowdoor village from all and any point or corner of the suit 'A' schedule properties. The opponent/defendant is a unregistered association of local auto rikshaw drivers, consisting of some persons on inimical term with him. The opponent/defendant association and its members have been threatening to cause unlawful obstruction over the aforesaid frontage area by dumping mud over the same to block access from main road to the suit 'A' schedule properties. They are threatening to construct a auto rikshaw shed cum shelter for parking the auto rikshaw in and across the aforesaid frontage area, to cause injury

to my legal right of frontage in respect of Sy.No.453 of Kowdoor village. That on 16.08.2016 some members of opponent/defendant association came near to my house and caused threat of construction of their auto shed cum shelter in the aforesaid frontage area. He is not able to prevent the opponent/defendant association and its members from committing their threatened illegal and tortuous acts without an order of injunction from this court. Hence, this application and accordingly, the applicant/plaintiff prayed to allow the same.

3. The learned counsel appearing for the Opponent/defendant filed objection and vehemently contended that, instant application is not maintainable either in law and on facts. It is further contended that, the plaintiff with concocted story approached this Hon'ble court seeking interim relief. The story narrated by the plaintiff is cooked up story to gain wrongfully from the hands of this court. It is further contended that the other than cooked up story plaintiff has not placed any material evidence to demonstrate that there is an apprehension to file the suit against this defendants. The applicant/plaintiff to overcome the consequences of the complaint registered against the

plaintiff alleging the illegal construction approached this court with cooked up story to gain wrongfully. Plaintiff has fear from nook and corner that one or the other day the illegal construction put up in the name of Miranda Complex at Kowdoor Village will be demolished by the Bailoor Grama Panchayath. To over come the consequences and to escape from the clutches of law, plaintiff approached this court seeking interim relief and the plaintiff on account of the license granted by the Registrar of Firms and societies and also by the Bailoor Grama Panchayath is finding fault with the defendant in one or the other pre-text. Plaintiff by keeping the vehicles in the land bearing Sy.No.453 is obstructing the parking of the auto rikshwa in one or the other way. Defendants viewing to the illegal act of the plaintiff lodged complaint before the jurisdictional police. Plaintiff did not tolerate the legal steps taken by the defendant. Plaintiff in order to defeat the defendants from nook and corner is finding fault inviting the defendants for a legal battle every fortnight. Defendants since peace loving, poor people did not heed to the request of the plaintiff. Plaintiff dissatisfied by the approach of the defendants to find fault and invite for the legal battle used to send some henchmen to park their vehicle in Sy.No.453. Apart from that

plaintiff in order to dominate his right over the land bearing Sy.No.453, was dumping waste mud, garbages etc. Viewing to the illegal act of the plaintiff complaint was given to the Bailoor Grama Panchayath and also to the jurisdictional police alleging the illegal act of the plaintiff and altogether unhappy to tolerate the honest and sincere approach of the defendants filed the present suit suppressing all true facts. The Applicant/plaintiff suppressed the true facts while filing of this suit. Defendants submits that there are number of instances wherein the illegal act of the plaintiff was opposed in the larger interest of public, and peace. Defendants are peace loving and daily bread earners. Unless and otherwise they fly their auto rikshaw on day to day basis, they can not survive. It is the plaintiff out of vengeance and to succeed in the ill wishes with one or the other pre-text is finding fault with the defendant's. With these, the defendant has prayed to dismiss the application with costs.

4. The points that arise for my consideration are as under:

1. Whether plaintiff has made out a prima facie case for grant of temporary injunction?

2. Whether the balance of conveniences lies in favour of plaintiff?
3. Whether the plaintiff will put to irreparable loss and injury, if an order of temporary injunction is not granted?
4. What order?
5. The learned counsel for the applicant/plaintiff Sri. K. Sriramana Acharya and learned counsel for the opponent/defendant Sri. Rathan Kumar H., have been heard.

6. In support of arguments, the applicant/plaintiff has cited the following decisions:

1. AIR 1987 MADRAS 183 (Bharathamatha Desiya Sangam, Madavaram and another -v/s- Roja Sundaram and others)
2. ILR 1998 KAR 2820 (Hubli-Dharwad Municipal Corporation -v/s- Dr. W.O. Airan since deceased by his L.Rs.)
3. AIR 1975 ALLAHABAD 341 (Mst. Bhagwanti -v/s- Mast. Jiuti and another)
4. AIR 1990 ALLAHABAD 19 (Bala Din Yadav and another -v/s- Ramdulare and others)
5. AIR 1983 GUJARAT 119 (Prabhudas Kalyanji and others -v/s- Haji Hasan Haji Yusuf Maklal and others)

7. I have perused the application and entire materials on record.

8. My findings 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

9. **Point No.1:** It is well settled law that first rule for grant of temporary injunction is that applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a prima facie case in his favour. The specific case of plaintiff that, the present suit filed by the

plaintiff against the defendant association for a relief of permanent injunction restraining them and its members and all persons claiming through or under them from constructing or erecting any structures or in any way causing any kind of obstruction over the land in S.No.453 of Kowdoor Village, situated in front of the plaintiff 'A' schedule properties as frontage, till disposal of the suit. Per contra, defendant contended that the plaintiff to overcome the consequences of the complaint registered against the plaintiff alleging the illegal construction approached this court with cooked up story to gain wrongfully. Plaintiff has fear from nook and corner that one or the other day the illegal construction put up in the name of Miranda Complex at Kowdoor Village will be demolished by the Bailoor Grama Panchayath.

10. In view of rival submissions, I have carefully perused material placed on record, it is undisputed fact that, property in question belongs to the Government. The main dispute between the plaintiff and defendant is that, defendant association parking the auto rickshaws' on the said property and it will cause disturbance to usage of the frontage of the plaintiff property for ingress and egress from the state highway. The counsel for the

plaintiff vehemently argued that by parking of said auto rickshaws' it will causing the disturbance for usage of frontage and to ingress and egress to his property.

11. During the course of arguments, the learned counsel for the plaintiff has cited a decision of the Hon'ble High court of Madars reported in AIR 1987 MAD ((Bharathamatha Desiya Sangam, Madavaram and another -v/s- Roja Sundaram and others) has held that:

Easements Act (5 of 1882), S.47-Highway-Right of access to-Owner of land abutting road is entitled to access to it from every point on the boundary of land-He is entitled to enforce his right notwithstanding the fact that there is some space available between the offending constructions-Offending constructions would constitute a continuing wrong and though suit is filed five or six years after constructions, it would be maintainable. (Limitation Act (36 of 1963), S.22).

12. The facts of the said decision are not applicable to the case on hand. In the above decision the respondent has put up the construction and such construction affected the access to the appellant, in present case the plaintiff has not put forth any

material documents to show that the defendant has constructed structures on the said property and same is causing obstruction to ingress and egress to his property. On the other hand the learned counsel for the defendant argued that, defendants are daily bread earners. Unless and otherwise they fly their auto rickshaw on day to day basis. The plaintiff on account of the license granted by the registrar of firms and societies and also by the Bailur Grama Panchayat is finding fault with the defendant. However, to substantiate his contention the defendant has not produced any cogent document to show that Bailur Grama Panchayat has been given a licence to them to park the auto rickshaws' on the said property. The rights claiming on the property is belongs to the government. However at this stage it is not possible to come to the conclusion that, whether such obstructions are causing disturbance to the plaintiff property for ingress and egress, unless full-fledged trial. Therefore, at this stage I do not find any prima facie lies on the plaintiff. Accordingly, I answered the Point No.1 **in the Negative.**

13. **Point No.2 and 3:** Since these two points are inter-linked they are taken up together for common discussion to avoid

repetition of facts and discussion. The second condition by showing that balance of convenience lies his favour and he will suffer irreparable loss and injury if the injunction as prayed is not granted. While answering point No.1, I have concluded that, the plaintiff not established prima facie lies in his favor at this stage. Further, it is clear from the above said discussion that, to decide the controversy between the parties and whether plaintiff is entitled for the relief as claimed in the suit, it requires full-fledged trial, unless recording of the evidence it is difficult to come to the conclusion. I am of the opinion that, if injunction is not granted, no loss or injury would be caused to the plaintiff and the balance of convenience also not lies in favour of plaintiffs. Accordingly, I answer the Point No.2 and 3 **in the affirmative**.

14. **POINT NO.4:** In view of discussion and the findings arrived at point No.1 to 3, I proceed to pass the following:

ORDER

IA No.II filed by the plaintiff under
Order XXXIX Rule- 1 and 2 and section 151
of Code of Civil Procedure is dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her and then pronounced in open court on this the 11th day of December, 2017)

(Satisha B.)
II Addl. Civil Judge & J.M.F.C.,
Karkala.