

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present :** SMT. SHRUTHI SHREE S, *B.A. LL.B.*  
**Prl. Civil Judge & J.M.F.C.,**  
**Kundapura.**

**Dated this the 23<sup>rd</sup> day of August, 2023**

**Original Suit No. 2/2015**

**Parties to I.A. No. II:**

**Applicant/s:** Sri. Vasu Devadiga,  
S/o Narasimha Devadiga,  
R/a Mallana-hithlu of  
Koteshwara Village,  
Kundapura Taluk.

**(By Advocate Sri/Smt. M.M.H.)**

*//Vs//*

**Opponent/s:** 1) The Assistant Executive Engineer,  
Public Works Department,  
No. 2 Sub-Division, Kundapura.

2) The Executive Engineer,  
Public Works Department,  
Udupi.

3) The Tahsildar,  
Taluk Office, Kundapura.

4) The State of Karnataka,  
Represented herein by -  
The Deputy Commissioner,  
Udupi, Udupi District.

5) Grama Panchayath,  
Koteshwara, Kundapura Taluk,  
Represented herein by its  
Panchayath Development Officer.

**(By Advocate Sri. Y.N.K. for D5  
A.G.P. for D1 to D4)**

**Parties to the suit :**

**Plaintiff** : Sri. Vasu Devadiga  
V/s

**Defendant** : 1) The Assistant Executive Engineer, Kundapura  
and others

\* \* \* \*

**ORDER ON I.A. NO. II**

The plaintiff has filed I.A. II under order XXXIX Rule 1 and 2 R/w section 151 of CPC seeking to restrain the defendants from changing Northern boundary of suit schedule property, from destroying fencing on the compound surrounding suit schedule property in order to form any road, pending disposal of the suit.

2. In the accompanying affidavit it is contended that plaintiff purchased suit schedule property under sale deed dated 27-08-2002 from its earlier owner in the original survey number 127/1AP2 measuring 7 cents of land. Thereafter got the same converted for residential purpose and an extent of 48.07 sq.mt. was left over to Town Municipal Corporation by way of gift deed dated 22-02-2018. Thereafter on 03-04-2018 obtained permission from TMC., Kundapur and have also obtained loan from Bank of India, Kodikal Branch to an extent of Rs.8,00,000/- for construction of house by securing the same as equitable

mortgage. Whereas defendant Nos. 1 and 2 are having property adjacent towards North of suit schedule property and 3<sup>rd</sup> defendant having issued license for construction of house building, are obstructing residential house of the plaintiff. Whereas Western portion of 48.07 sq.mt. were left out by him favoring TMC., for formation of road. After leaving the said area towards Western side, he has constructed compound wall on three directions i.e., West, South and East whereas towards North of suit schedule property there exist barbed fence and adjacent to it is property belonging to defendant No. 1 and 2 for which they have separate access but are obstructing usage of Northern portion of plaintiff property under the pretext that I have encroached their portion of land. However he has sought permission from 3<sup>rd</sup> defendant on 01-03-2018, 04-10-2021 for construction of compound but no permission is provided by 3<sup>rd</sup> defendant. Thereafter defendant Nos. 1 and 2 in collusion with 3<sup>rd</sup> defendant destroyed fencing, flowering plants and also are trying to encroach the said portion towards the road. However plaintiff has already left portion of his property for formation of road towards West side, the alleged act by defendant Nos.1 and 2 in collusion with defendant No.3 are again trying to encroach upon Northern portion of suit schedule property for formation of road. The alleged acts are causing loss and injury to the

plaintiff. It is evident that defendant Nos.1 and 2 are ill-minded as they have sufficient access for their property but they are claiming such access through plaintiff's suit schedule property. On this said dispute, local Panchayath were held which did not yield any result for which plaintiff is before this Court seeking to restrain defendants from damaging Northern boundary, fencing compound or anything within the boundaries of suit schedule property. Accordingly seeks to allow the application.

3. Per contra defendant No.1 to 4 filed written statement adopting the same as objection to this application wherein it is contended that the suit Sy.No is falling within road limits which is Kundapura beach road, but plaintiff has been putting up a shed which is attached to the said road which is against provisions of public premises act. Suit schedule property is part of public road wherein plaintiff is not having any right to run any business or a shop premises in the property. That one Sri. Anathapadmanabha Udupa filed application before Lokayuktha seeking for eviction of plaintiff from suit schedule property which is existing in a public road and as per directions of Lokayuktha, notice was issued by concerned official under Public Premises Act to evict the plaintiff. Also necessary action in O.S. No. 195/2014 against plaintiff is

taken which is pending adjudication for which the present application is not maintainable.

4. Similarly defendant No.5 also filed written statement with same contention and adopted it as objection to this application. According they seek to reject the application.

5. Heard arguments from both the sides on I.A. No. II and perused materials available on record.

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

### **POINTS**

- 1) Whether the applicant/plaintiff has made out prima facie case in his favor to allow I.A. No. II?
- 2) Whether the applicant/plaintiff has made out the balance of convenience in her favor to allow I.A. No. II?
- 3) Whether the applicant/plaintiff proves that it would suffer irreparable loss and hardship if temporary injunction order has not been passed in I.A. No. II?
- 4) What order?

7. My answer to the above points are as follows:

**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:**

## **R E A S O N S**

8. **POINT NOS. 1 to 3:** These points are interlinked with each other, to avoid repetition of facts, they are taken together for common discussion.

9. Admittedly the present suit is filed by the plaintiff against the defendants seeking for permanent injunction restraining them from trespassing or dispossessing plaintiff from 'B' schedule land without due process of law. The materials produced along with this application reveals that suit schedule property is a government land is also action is taken by concerned officials in respect of suit schedule property. On the other hand, it is alleged that suit 'B' schedule property is existing in public road and also that it is causing hurdle for public to use the said road and accordingly had sought eviction of plaintiff from the suit 'A' schedule property. So also from the materials placed on record,

it is evident that another suit in O.S. No. 195/14 is also filed by the plaintiff herein. But, there is no material made out by the State to reflect that any such legal action in particular was taken by defendants to evict plaintiff from the suit schedule property. So also it is necessary to state that no such suit for eviction is made out by the State to evict plaintiff if he is occupying suit 'A' scheduled property illegally. Further, it is necessary to state that though notice for vacating suit 'A' schedule property under Public Premises Act is said to have been issued but no further action seems to have been taken by state. Pending any such legal action to evict plaintiff if he is in such unauthorized occupation of suit 'A' schedule property, if this possession in the same is unlawfully disturbed it would put his right and livelihood at stake. Therefore, it is necessary that without following any due process of law, plaintiff is not evicted from suit 'B' schedule property. However, it is necessary to state that State is not restrained by way of this order to not initiate any action warranted under process of law if any, for evicting plaintiff from suit 'B' schedule property if he is in its unauthorized occupation. Therefore pending such action this application deserves consideration in view of all necessary ingredients at present being in favor of plaintiff. Accordingly Point No.1 to 3 are answered in the **AFFIRMATIVE**.

**10. POINT NO.4:** In view of findings on point No. 1 to 3, I proceed to pass the following:

**O R D E R**

I.A. No. II filed by the applicant/plaintiff under order XXXIX Rule 1 & 2 R/w Sec. 151 of CPC is hereby allowed.

Consequently, defendants or anybody acting on their behalf are hereby restrained from evicting plaintiff from suit 'B' schedule property without due process of law pending disposal of the suit.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **23<sup>rd</sup> day of August, 2023**)

**(Shruthi Shree S.)  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**