

KABI200004852015



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 9th DAY OF JANUARY 2025

: **PRESENT:**

SRI. SAYED MOHIUDDIN URF KHAWAJA PEERAN., BA. LLB.,(Spl.)
CIVIL JUDGE & JMFC., H.B.HALLI.

O.S.No.88/2015

PLAINTIFF/s : **Smt.B.Leelavathi W/o late**
B.Sathyanarayana Achari,
Aged about: 50 years, R/o Door No.287,
2nd Ward, Ramanagara, H.B.Halli Taluk,
Ballari District.

Vs

DEFENDANT/s : **1) Hussainsab S/o Honnursab,**
Aged about: 55 years, Hamli, R/o Car
Street, near Padagatti Temple,
Ramanagara, H.B.Halli, H.B.Halli
Taluk, Ballari District.

2) Mabusab S/o Honnursab,
Aged about: 48 years, Hamali,
R/o Car Street, near Padagatti Temple,
Ramanagara, H.B.Halli, H.B.Halli
Taluk, Ballari District.

3) Smt.Raichur Ameenabbe W/o
R.Khajahussain dead by her Lrs.,
Aged about: 60 years

3a) Rajabajshi S/o Khajasab,
Aged about: 36 years, Beldar,

3b) Hussainsab S/o Khajasab,
Aged about : 34 years, Beldar,

3c) Hasensab S/o Khajasab,
Aged about : 33 years, Beldar,

3d) Laalusab S/o Khajasab,
Aged about : 29 years, Beldar,

3e) Anwarsab S/o Khajasab,
Aged about : 28 years, Painting,

All are R/o near Padagatti Temple, Ramanagara,
Hagaribommanahalli , Hagaribommanahalli
Taluk, Ballari District.

I.A.No.XII

**APPLICANT/PLAINTIFFs : Smt.B.Leelavathi W/o late
B.Sathyannarayana Achari,**

(Rep. by Sri. **H.B.R.**, Advocate)

V/s

**RESPONDENT/DEFENDANTs : Hussainsab S/o Honnursab
and Ors.**

(Def. No.1 & 2 Rep.by Sri.**B.P.**, Advocate)
(Def. No.3(a) to 3(e) Rep.by Sri.**T.G.M.**, Advocate)

ORDER ON I.A.No.XII

The plaintiff has filed IA No.XII under Order 39 Rule 1 and 2 R/w Sec.151 of CPC seeking order of temporary injunction to restrain the defendants from making further

construction or laying stones or mud or other materials in the suit schedule property open site bearing property No.258, Khata No.2-287 measuring East-West: 45 feet, North-South: 40 feet till disposal of the suit.

2. In the accompanying affidavit to the IA it is stated by the plaintiff that, she is the absolute owner and in possession of the suit schedule property. Her husband was purchased the suit schedule property from its lawful owner Hanumantha Shetty S/o N.Sathyannarayanappa on 12.10.1976 for Rs.1,000/-. From the date of purchase, he was in possession and enjoyment over the suit schedule property, and he had put up two Zinc sheet portion in the suit schedule property. After his death, she started to construct the house in the remaining portion, but due to financial difficulties she has not completed the said construction work. The defendant No.1 to 3 have no manner of right, title and interest over the suit schedule property. They are the adjacent owners of the suit schedule property. The defendant No.1 and 2 are residing towards Southern side of the suit schedule property. They have constructed the house in their property by encroaching

4 feet extent in the suit schedule property and put up the latrine and steps to staircase. The 3rd defendant encroached 4 feet towards western side in the suit schedule property and put up a Katta in the encroached portion. She led her evidence as PW1, defendants side evidence were also concluded. Case was posted for further cross-examination of CW1/Court Commissioner. Recently she was busy with her sons marriage, by taking advantage of the same the defendant No.1 to 3 are trying to lay the pipeline over the encroached portion and also laying the mud and stones over the said encroached portion. She has resisted the illegal acts of the defendants, but the defendants have not heed her request. Hence she has approached the jurisdictional police station to lodge the complaint. The police authorities have orally directed her to obtain necessary orders from the Hon'ble Court. The defendants have no manner of right, title and interest over the suit schedule property. They are adjacent owners, they have encroached the suit schedule property. Now again they have started to dug the pipeline over the encroached portion and putting the mud layer in the

encroached portion by constructing a permanent structure in order to disfiguring the suit schedule property. She has made out prima facie case, balance of convenience lies in her favour. If the temporary injunction order is granted no injustice will be caused to the defendants. If the temporary injunction is not granted she will be put to irreparable loss and injury. Hence, she prays to allow the IA.

3. To the said application, the defendant No.1 and 2 have filed the objections by denying the contentions of the plaintiff, and further contended that the application filed by the plaintiff is not maintainable. When the case was posted for cross-examination of Court Commissioner, the plaintiff has filed the present application. The ADLR, H.B.Halli was inspected the suit schedule property and submitted his report, then after the plaintiff has filed the objections to the Commissioner report. With an intention to drag on the proceedings the plaintiff has filed the false application. There is no proper reasons in the application. Hence they prays to dismiss the IA.

4. Heard the arguments and perused the records.
5. The following points arise for my consideration:
 1. Whether the plaintiff has made out *prima-facie* case?
 2. Whether the balance of convenience lies in favour of plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?
 4. What order?
6. My answers to the above points 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

7. **Point No.1 to 3**:- As the facts involved in point Nos.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendants for the relief of Mandatory Injunction with respect of suit schedule property.

According to the plaintiff, she is the absolute owner and in possession of the suit schedule property. Her husband was purchased the same from Hanumantha Shetty S/o N.Sathyanarayanappa for Rs.1,000/-. During his life time he was in possession and enjoyment of the suit schedule property. After his death the plaintiff is in possession and enjoyment of the suit schedule property. The defendant No.1 and 2 are adjacent owners of the suit schedule property. The plaintiff got surveyed her plot and then she came to know that the defendant No.1 and 2 were encroached upon their property towards Southern side to an extent of 4 feet and the 3rd defendant also encroached the suit schedule property towards Western side to an extent of 4 feet. The defendants have no manner of right, title and interest over the suit schedule property, but they have encroached the suit schedule property towards Southern side to an extent of 45 X 4 feet and towards Western side to an extent of 4 X 50 feet, therefore she has filed the present suit for the relief of Mandatory injunction.

Specific contention of the defendants is that previously the suit schedule property belongs to the father of defendant No.1 and 2, he had sold the same to Nanyapura Hanumanthappa Shetty, in turn the plaintiff's husband had purchased the same from Nanyapura Hanumanthappa Shetty. Since long back the defendant No.1 and 2 were constructed the house in their property which is adjacent to the suit schedule property. In order to park the vehicles the defendant No.1 started to construct the Portico within the vicinity of his property by putting up pillars. There is a 3 feet gap between the property of the plaintiff and defendants. Therefore the question of alleged encroachment does not arise. The plaintiff is no way concerned to the defendants property. With an intention to harass the defendants she has filed the false suit, hence they prays to dismiss the IA.

9. I have perused the material available on record. In the present case on hand the evidence of the plaintiff and defendants were concluded. In the present case on hand the Court Commissioner was appointed and he has submitted his report. The plaintiff has filed the objection to the

Commissioner report. Summons was issued to the Court Commissioner, Court Commissioner appeared before the Court and examined as CW1, and he partly cross-examined by the Counsel for the plaintiff. When the case was posted for further cross-examination of CW1, the plaintiff has filed the present application by advancing the case. According to the plaintiff the defendant No.1 and 2 have encroached the suit schedule property measuring 45 X 4 feet in Southern side and defendant No.3 had encroached the suit schedule property measuring 4 X 50 feet in Western side. The defendants have denied the same. The contention of the plaintiff is that now the defendant No.1 to 3 are trying to lay pipeline in the encroached portion and also trying to laying mud and stones over the said encroached portion, therefore she prays for temporary injunction. At this stage, in support of the said contention the plaintiff has produced the photo copies. Except the photo copies no other documents are produced by the plaintiff to show that the defendants are trying to make further constructions or laying stones or mud over the encroached area of the suit schedule property. As

per the plaint schedule towards East and North there is a 60 feet road. There is no material on record to show that the photo copies produced by the plaintiff are with respect to the Western and Southern side of the suit schedule property. The Court Commissioner in his report Page No.28 he has not shown any encroachment towards the Southern side of the suit schedule property. To the said Commissioner report the plaintiff has filed the objections and Court Commissioner was partly cross-examined. The present suit is filed by the plaintiff against the defendants for the relief of Mandatory injunction. At this stage the plaintiff has filed the present application for temporary injunction. In support of her contention of present application, except photo copies she has not produced any documents before the Court. As stated above as per the Commissioner report no encroachment has been shown by the Court Commissioner towards Southern side of the suit schedule property. Under such circumstances, I am of the opinion that at this stage the plaintiff has failed to made out prima facie case for granting the temporary injunction as prayed in IA, and balance of convenience not

lies in her favour. If the temporary injunction order is granted injustice will be caused to the defendants. If the temporary injunction is not granted no injustice will be caused to the plaintiff. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

10. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

The IA No.XII filed by the plaintiff U/O
39 Rule 1 and 2 R/w Sec.151 of CPC for
temporary injunction is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 9th day of January 2025.)

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., H.B.HALLI.

