

IN THE COURT OF THE CIVIL JUDGE AND JMFC, H.B.HALLI

**PRESENT: SRI. NITIN Y. RAO** B.com, LLB (Spl).  
Civil Judge & JMFC, H.B.Halli.

DATED THIS THE 07<sup>th</sup> DAY OF OCTOBER-2016.

**O.S.No.122/2016**

Plaintiff/Petitioner Smt. K. Gunasagamma W/o. K.  
Thotappa, Aged about 49 years, House wife,  
R/o. Military Bayalu, Behind church, Near  
Kudligi Road, H.B.Halli Taluk, Ballari Dist.

( By Sri. Lingana Gouda, Advocate )

Vs-

- Defendants/  
Respondents
- 1) H. Parashuram S/o. Late Bheemappa,  
Retired Teacher, R/o. Military Bayalu,  
Behind church, Near Kudligi Road,  
H.B.Halli Taluk, Ballari Dist.
  - 2) J. Umapathi S/o. J. Gurupadappa,  
Aged about 62 years, Agriculturist R/o.  
Malvi Village, H.B. Halli Taluk, Ballari  
Dist.

(by Sri. K.S.S. advocate)

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**ORDERSON.II. U/Or 39 R 1 & 2 of CPC**

1. This is an Interlocutory application filed by the plaintiff/applicant seeking temporary injunction for restraining the defendants/opponents and all persons

claiming through them from obstructing the construction work undertaken by her in the suit schedule property.

2. Contents of the affidavit filed along with this application are as under:

3. Applicant has purchased the suit schedule property bearing property no. 6/268 and door no. 81 measuring 51 feet East-West and 21 feet North-south situated at Military Byalu in H.B. Halli Taluk, through a registered sale deed dated 26-07-1988 executed by its lawful owner Sri. M.Surya Prakash Rao through his GPA holder Raghava Rao for valuable consideration of Rs. 5,500/-. After the purchase, applicant obtained license from the concerned village panchayath on 22-04-1992 and constructed her house in the same and has been residing with her family in the said house. Since, the said house is very small, applicant has now decided to construct a bigger house by demolishing the old house. She demolished the old house on 25-05-2016 and after obtaining construction license from the concerned authorities, began constructing her house. While getting her site measured, applicant learnt that

the first opponent had encroached property to an extent of  $\frac{1}{2}$  feet and put up a compound wall in the same. Applicant has further submitted that there is a common wall in between her house and the house of the second opponent which measures 14 inches. Out of the said 14 inches 7 inches of the common wall belongs to the applicant. While demolishing her old house, she did not demolish the common wall only to avoid causing loss to the second opponent. Applicant has been constructing her house within the limits of her property after obtaining valid license from the Municipal Corporation. The first opponent has encroached the applicant property to an extent of  $\frac{1}{2}$  feet and is unnecessarily causing obstruction to the applicant's construction work and second opponent has been supporting the first opponent in order to cause loss and injustice to the application. Constrained by the same, the applicant instituted the instant suit and filed this interim application seeking temporary injunction against the opponent.

4. In response to the service of suit summons, the first opponent appeared through his counsel and filed his written statement and adopted the same as objections to the applicants interim application. Since, the second opponent did not appear before the court inspite of being duly served with the suit summons, he was placed exparte. The first opponent in his objection denied the entire affidavit averments of the applicant and contended that he has purchased his properties bearing plot no. 180 measuring East-West 51 feet and North-South 21 feet through the sale deed dated 26-07-1988 executed by its lawful owner M. Surya Prakash Rao through his GPA holder Raghava Rao for valuable construction Rs. 5,500/-. After the purchase, the first opponent obtained license from the concerned village panchayath and constructed house in the said plot. He has also constructed compound wall surrounding his house and left 3 feet margin space towards the north. Applicant being the adjacent owner, demolished her old house and is now constructing a new house in the suit schedule property without leaving 3 feet margin space in between her property and the property of this

opponent. Now if the applicant puts windows and water spouts, he will be put to great inconvenience as the rain water may fall towards his house. Since the applicant is putting up construction by violating the conditions of the license issued by the Municipal Corporation and causing unnecessary hardship this opponent, the opponent has prayed for rejection of the applicants interim application.

5. On the basis of the above pleadings and on hearing both sides, the following points arise for my consideration.

- 1) Whether the applicant has made out prima-facie case?
- 2) Whether balance of convenience lies in her favour ?
- 3) Whether irreparable loss would be caused to the applicant if the instant I.A is rejected?
- 4) What order?

6. My answers to the above points:

Point No:1: In the negative.

Point No.2: In the negative.

Point No.3:In the negative .

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

### **REASONS**

7. **Point No.1 to 3:-** :- To avoid repetition of facts and for the sake of convenience point No.1 to 3 are discussed together.

8. As stated earlier, it is the case of the applicant that she being the absolute owner in possession of the suit schedule property has demolished her old house with an intention to construct a new house and has also commenced the construction work after obtaining valid license from the concerned authorities. In support of her case, the applicant has placed on record the original registered sale deed dated 26-07-1988, tax assessment extract, blue print, building construction license, tax paid receipts and photographs of the suit schedule property. The opponent on the other hand who has contended that the applicant has been constructing her house without leaving three feet margin space in between his

house and the house of the applicant has not produced any documents at this stage.

9. On perusal of the evidence placed on record at this stage. It is noticed that the first opponent has not alleged that the applicant has encroached his property and putting up construction in the same. It is the only contention of the first opponent that the applicant has undertaken construction work without leaving three feet margin space between his house and the house of the applicant and thereby the applicant has violated the conditions of the license issued by the concerned Municipal Corporation. Though the first opponent submits that he has filed objections in respect of the same before the concerned authorities, he has not produced before the court any such documents. On perusal of the photographs placed on record by the applicant, one can make out that there is sufficient margin space between the house of the first opponent and the house of the applicant. If at all the applicant has violated the conditions of the license, then the concerned authorities will look into the matter and initiate

action against her. With the limited evidence placed before me at this stage, I do not find any apparent irregularity on the part of the applicant. When the applicant has obtained valid construction license from the concerned authorities and putting up construction in her own property, then the opponents who are the adjoining plot owners should not have any grievances against the applicant. Taking note of the above mentioned circumstances I have arrived at the conclusion that the applicant has not only made out prima-facie case but also proved that balance of convenience lies in her favour and that irreparable loss would be caused to her if the instant I.A is not allowed as she has been construction her house in her own land. Considering the same, I have answered point 1 to 3 in the affirmative.

10. **Point No.4**:- For the foregoing reasons, I pass the following;

**ORDER**

**I.A.No.II filed by the plaintiff/  
applicant U/Order 39 R 1 & 2 of CPC  
is hereby allowed with cost.**

**The defendants / Opponents and all persons claiming through them are hereby restrained by way of temporary injunction from obstructing the construction work undertaken by the applicant in the suit schedule property till disposal of the suit.**

(Dictated to the Stenographer Transcribed and computerized by him, corrected and then pronounced by me, in the open Court on this the 7<sup>th</sup> day of October 2016, at H.B.Halli.)

(NITIN Y.RAO)  
Civil Judge & JMFC,  
H.B.Halli.