

IN THE COURT OF THE CIVIL JUDGE & JMFC, INDI

: PRESENT:

Sri. Altaf Husensab Khanaganvi,
B.com,LL.B,
Civil Judge & JMFC, Indi

Original Suit No.479/2018

Dated this 12th day of July 2019

PLAINTIFFS:

1. Basalingappa Dafale and others

- Versus -

DEFENDANTS:

1. Mahadev Pujari and others.

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I.A. NO.IV

Basalingappa S/o Mallappa Dafale
and others

**Applicants/
Original Plaintiffs**

V/s

Mahadev S/o Siddappa Pujari
and another

**Opponents/
Original Def. No.1 & 2**

I.A. NO.VI

Mahadev S/o Siddappa Pujari

**Applicants/
Original Def.No.1**

V/s

Basalingappa S/o Mallappa Dafale
and others

**Opponents/
Original Plaintiffs**

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Plaintiff by Sri. S.L.Nimbaragimath Advocate.

Defendant No.1 by Sri. S.V.Kulkarni Advocate.

Defendant No.2 to 4 by Sri. G.B.N. Advocate.

Defendant No.5 & 7 placed exparte.

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ORDER ON I.A.NO IV & VI

The plaintiff has filed I.A No.IV under Order 39 Rule 1 and 2 of CPC praying to pass exparte temporary injunction against the defendant No.1 and 2 restraining them from causing obstruction to public's peaceful use and enjoyment of the suit property bearing Sy.No.2 measuring 20 Guntas as shown in the letter ABCD in hand sketch map situated at Arjunagi village.

2. I.A is accompanied with the affidavit of the plaintiff No.2 wherein it is stated by the plaintiff that, the plaintiffs have filed this suit against the defendants for the relief of the declaration and injunction. It is alleged that, Since 1948 the suit property is kept for the public for woman latrine and children grave land. Since then previous land owners did not

obstruct the peaceful use and enjoyment of the suit property. Recently the defendant No.1 purchased the land bearing No.1/2 of Atharga village after the purchase of the land the defendant No.1 colluding with other defendants giving harassment to the public of Atharga. In the month of August 2018 the defendant No.1 tried to remove and destroy the compound wall and public of Athrga village gave representation to the defendant No.2 to 7 to take action against defendant No.1.

3. Further it is alleged that if the defendant No.1 and 2 have removed and destroyed the compound wall it will cause great harassment to public as well woman of the Atharga village. Further the plaintiffs have filed objection to IA No.6 with same contention Hence, prayed to allow the application and dismiss IA No.6.

4. On the other hand defendant No.1 has filed his written statement and adopted the contention of the written to the application in the written statement the defendant No.1 denied contents of application and submits that, the plaintiffs have filed representative suit and the plaintiffs have not taken paper publication on this ground the suit of the plaintiffs is not maintainable. Further contended that suit property boundaries

are not specifically mentioned. Further submitted that in the year 1942 the survey department consolidated Atharga land and gave new Survey Numbers. In the said proceedings Sy.No.2/2A measuring 3 Acres 22 Guntas, Sy.No.2/B measuring 16 guntas and Sy.No. 1/2/2 measuring 1 Acre 14 Guntas totally measuring 5 Acres 12 land were joined together and gave new Block No.1.

5. Further submitted that Sy.No.2/2A measuring 16 Guntas and Sy.No.2B measuring 4 guntas totally measuring 20 guntas were given block No.2. The land bearing Sy.No 1 measuring 3 acre 13 guntas and 1A, 1B,1C totally measuring 3 acres 22 guntas were consolidated and were given Block No.3.

6. Further it is contended that the plaintiffs are under wrong impression that the suit property is in defendant No.1 land filed this suit. It is further submitted that as per ME No 1857 the land measuring 20 guntas in Sy.No.2/2 was reserved for the use woman latrine which is in block No.2. This being real situation which is suppressed by the plaintiffs and the plaintiffs have intentionally shown the suit property towards south side in their hand sketch.

7. Further contended that the defendant No.1 has purchased the land measuring 3 acres 38 guntas half of block No.1 from its owner by name Shrishail S/o Siddappa Bolegaon and his name is certified under ME No.87. Further it is submitted that the defendant No.1 has filed application before defendant No.2 requesting them to restrain illegal construction work of public toilet in his land and the land reserve for the public toilet situate at east side of his land. Further submitted that defendant No.3 gave direction to the defendant No.2 to remove constructing toilet and the defendant No.2 failed to comply the order. Therefore show cause notice was given to the defendant No.2. Even the defendant No.2 very well know that the land reserve for the woman latrine fall in the block No.2 in order to escape from his liability the defendant No.2 has mislead the villagers and colluding with plaintiffs have filed this suit.

8. Further in the IA No.6 the defendant No.1 has contended that the plaintiffs have filed this bogus suit. If the TI order is not vacated he will be put to great hardship and loss on the contrary no loss will be caused to the plaintiffs. Hence prays to allow the application and dismiss the IA No.1 filed by the

plaintiff. not come with clean hands and the petitioner has not made out the prima facie case, balance of convenience does not lie in favour of the plaintiff. If the IA is allowed defendant will be put to severe irreparable loss and damages and so also untold hardship. There is no valid grounds to allow the application. Hence, prayed to reject the application.

9. Heard on both side and perused the records placed before the court.

10. The points that arise for my consideration are
- 1) Whether the plaintiffs show that they have got prima facia case?
 - 2) Whether the plaintiffs show that the balance of convenience lie in their favour?
 - 3) Whether the plaintiffs show that irreparable loss will be caused to them if TI is refused?
 - 4) Whether the defendant No.1 made out a sufficient ground to allow his application?
 - 5) What Order?

11. My answers to the above points are

- Point No. 1: In the Affirmative
Point No. 2: In the Affirmative
Point No. 3: In the Affirmative
Point No. 4: In the Negative

Point No. 5: As per final order for the following

REASONS

12. **Point No.1 to 3:-** All these points are inter linked to each other, hence I have taken-up the above point No.1 to 3 together for common discussion.

The plaintiffs have filed suit against the defendants for the relief of declaration and injunction in respect of the suit property. It is case of the plaintiffs that the defendant No.1 without any right title and interest causing obstruction to the peaceful use and enjoyment of suit property which was kept for woman latrine and children grave land. The suit property was kept reserve for the woman latrine and child grave land in the year 1948. Since then public of Atharga are use and enjoyment of the suit land. Recently the defendant claiming the suit land is belonging to him and started to obstruct use and enjoyment of Atharga public in the suit land. Hence the plaintiffs have filed this suit against the defendants.

13. On the other hand defendant No.1 has denied the plaint averment and denied the right of the public of Atharga in the suit property. The defendant No.1 has submitted that in the year 1942 survey number lands were merged and given new

block Number. The said suit property was given block No.2. Further it is contention of the defendant No.1 that he purchased the land measuring 3 acre 22 guntas from its previous owner which is different land. The panchayat authority constructed the toilet in his land and the land reserve for the woman toilet and child grave is in block No.2 which is south side of his land. Further it is submitted by the defendant No.1 that he gave representation to the defendant No.2 to stop construction of toilet in his land and in view of this the explanation was also called from the defendant No.3 from defendant No.2. It is claimed by the defendant No.1 that the toilets have been constructed in his land and he tried to remove them by giving representation to the defendant No.2 and 3 authority and this suit filed by the plaintiffs with malafide intention.

14. On perusal of records placed by the both parties. It appears from the material placed before the Court that, the plaintiffs alleged the defendant No.1 land is situated easter side of the suit property. The defendant denied the existence of the suit property towards western side of his property and claims that plaintiffs have encroached his land and he is absolute owner of the property bearing Block No.1/2 of Atharga village.

15. The plaintiffs have produced ME No.1857 and photo copies which discloses that the suit property is kept reserve for women latrine and child grave land and the plaintiffs are in possession of the suit property. On careful perusal of the plaint averment they disclose toilet compound is constructed in the year 2013 under the government scheme. The defendant denied the rights of the public of the Atharga and claiming to be owner of Block No.1/2 and submitted that the suit property is situated in Block No.2 not in his property. The controversy amongst the both the parties are in respect of existence of the property which is subject matter of the trial. At this juncture it cannot be decided. It appears from the records that there are prima facie material to show that plaintiffs are in possession and enjoyment of suit property photo copies and plaintiff document show prima facie case and plaintiffs are in possession of suit property. Rest of the document produced by both parties in respect of rights of properties which would be considered at time of trial.

16. On perusal of the records it reveals that plaintiffs are use and enjoyment of the suit property. If act of defendant is not restrained people of Atharga will suffer loss. At this stage right

of the properties cannot determine and mini trial cannot be conducted.

17. The defendant contended that the plaintiff under wrong impression filed this suit which is also subject matter of trial. The plaintiffs have shown prima facie case. If the TI is not granted more loss will be caused to plaintiffs and public of Atharga village rather than defendant. On the contrary no loss will be caused to the defendant. The rights of the suit property and existence of the suit property as per pleadings is also subject matter of trial. Balance of convenience lies in favour of plaintiff.

18. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty are resolved in his favour at the trial. In the instant case if the TI is not granted the right of the plaintiff will be frustrated. In the instant case, if the defendant No.1 is not restrained more loss will be caused to the plaintiffs and public of the Atharga village. The plaintiff has prima facie case the balance of convenience lies in favour of the plaintiffs. Therefore, the plaintiffs have made out the

sufficient ground to allow the application. Accordingly, I am inclined to answer the Point No.1 to 3 in the Affirmative.

19. **Point No.4:** I have come to the conclusion that plaintiffs have prima facie case and entitle for TI for the aforesaid reasons accordingly defendant has not made out any sufficient ground to allow the application. Hence I am inclined to answer point No.4 in the Negative.

20. **Point No.5:-** For the above said discussion and reasons I am inclined to proceed to pass the following

ORDER

I.A No. IV filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

It is hereby ordered that, the defendant No.1 and 2 and their henchmen are restrained from causing obstruction to the plaintiff's peaceful possession and enjoyment of suit property bearing Sy.No 2 measuring 20 guntas as shown by letters ABCD in the plaint hand sketch till disposal of the suit.

IA No.VI filed by the defendant No.1 U/o 39 Rule 4 of CPC is hereby dismissed.

No order as to costs.

(Direct dictated to the stenographer on computer, typed by her corrected by me then pronounced in the Open Court on 12th day of July 2019)

(Altaf Husensab Khanaganvi)
Civil Judge & JMFC, Indi.

