

IN THE COURT OF CIVIL JUDGE & JMFC, SINDAGI

**Present: Sri. ASHAPPA,
B.Com., LL.M.
Civil Judge & JMFC, Sindagi.**

Original Suit No.396/2017

Dated this 20th day of June 2019

Plaintiff/s:

Ameensab S/o. Moulasab Dodamani @ Naikodi
R/o.Kalakeri Tal: Sindagi.
(By Sri.Y.B.Talageri, Adv.)
// Versus //

Defendant/s:

Usmangani S/o. Nabisab Dodamani @ Naikodi & Anr.
(By Sri.B.G.Nellagi, Adv.)

I.A.No.I & I.A.No.VI

Applicant:

Ameensab S/o. Moulasab Dodamani @ Naikodi

Versus

Opponent:

Usmangani S/o. Nabisab Dodamani @ Naikodi & Anr.

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COMMON ORDER ON I.A.No.I & I.A.NO.VI

The plaintiff has filed I.A.No.II U/O.39 Rule 1 and 2 of CPC praying this court for grant of temporary injunction restraining the defendants, his agents or anybody claiming through defendants from interfering in the peaceful possession and enjoyment of suit

property by the plaintiff and also not to destroy the bunds of suit schedule property, till disposal of the suit.

2. In support of the I.A. the plaintiff has filed affidavit and in the affidavit it is stated that he has filed this suit against the defendants for declaration and permanent injunction. It is further stated that, plaintiff is the owner and in possession of land Sy.No.330/1 measuring 04 acres 05 guntas of Kalakeri village. It is further stated that suit bund is in existence since 100 years, Neem and other trees are existing on the suit bund. The defendants on 1.8.2017 tried to destroy the bund and also tried to cut the trees existed on the bund. It is further stated that the defendant in collusion with revenue official without the knowledge of the plaintiff has increased the extent of his land up to suit bund, taking undue advantage defendants are trying to destroy the suit bund and also trying to cut the trees. The plaintiff requested defendants not to interfere and not to destroy the bund and trees. But the defendants not heed the request of the plaintiff hence cause of action arise to file the suit. It is further stated that plaintiff has made out prima-facie case and balance of convenience is in his favour. Therefore plaintiff has filed the present I.A. for grant temporary injunction as prayed in the I.A.

3. After issue of summons and notices to the defendants, defendants appeared through their counsel and filed written statement in detail. Defendants also filed memo stating that contents of written statement be treated as objections to the I.A.No.I. In the written statement the defendants denied the ownership of plaintiff over land Sy.No.330/1. It is further denied there is a bund existence since from 100 years. The defendants further denied the possession of plaintiff over the suit property. The defendants never tried to demolish the bund as alleged by the plaintiff. It is further stated that one Husainsab Naikodi was the absolute owner of land Sy.No.330 measuring 21 acres 24 guntas and after his death his sons succeeded to suit properties. But in the revenue records due to clerical mistake the extent of land of Sy.No.330/1 was wrongly shown as 7 acres 35 guntas instead of 8 acres 24 guntas and same mistake has been continued in the revenue records. It is further stated that the said mistake appearing in the revenue records came to the knowledge of defendants and they filed application before Tahasildar Sindagi and Tahasildar after due enquiry has corrected the revenue records showing the extent of Sy.No.330/1 measuring 4 acres 11 guntas in the name of defendant No.1 and 04 acres 13 guntas in the name of defendant No.2. The plaintiff has not chosen to challenge the order of the

Tahasildar hence this court has no jurisdiction to modify or alter the extent mentioned in the revenue records and jurisdiction of civil court is specifically barred U/Sec.61 of KLR Act. The plaintiff has no cause of action to file the suit. Therefore prays to dismiss the suit.

4. Thereafter the plaintiff has also filed I.A.No.VI U/O.26 Rule 9 of CPC praying this court to appoint Tahasildar Sindagi / ADLR as court commissioner to inspect the existence of suit bund and to file report.

5. In support of the I.A. the plaintiff has filed affidavit and in the affidavit it is stated that plaintiff is the owner of land Sy.No.330/1 measuring 04 acres 05 guntas. The defendants also owners and possessors of land Sy.No.No.330/1A measuring 3 acres 29 guntas and Sy.No.320/1B measuring 3 acres 30 guntas. In between the land of plaintiff and defendants there is a bund at about 10 feet height and trees are existed on the bund. It is further stated in the application that defendants appeared and filed written statement and denied the existence of bund. Therefore to ascertain these facts the appointment of court commissioner is necessary. Hence prays to allow the application.

6. Perused the order sheet objections to I.A.No.VI not filed by the defendants.

7. Heard the counsels appearing on both sides.

8. After hearing of both side counsels the following points arises for my consideration are as under;

1. Whether the plaintiff proves he has made out prima-facie case in his favour?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff suffers irreparable loss if the temporary order is not granted?
4. Whether plaintiff made out sufficient ground to appoint the Court Commissioner, at this stage, as prayed?
5. What order?

9. My answer to the above points are as under;

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| Point No.1 | : In the partly affirmative |
| Point No.2 | : In the partly affirmative |
| Point No.3 | : In the partly affirmative |
| Point No.4 | : Does not survive at this stage |
| Point No.5 | : As per final order, for the following; |

: R E A S O N S :

10. **POINT No.1 to 3:** All these points are inter linked with each other, I have taken up together for discussion to avoid repetition of facts.

11. The plaintiff has filed this present suit for the relief of declaration and permanent injunction restraining the defendants from destroying the suit bund which is in existence since from 100

years. It is also stated that the defendants are trying to cutting the trees existence on the bund. Therefore if the defendant is not restrained by way of injunction they may be chance to remove the bund and cut the trees, the rights of the plaintiff will be deprived and plaintiffs put to irreparable loss.

12. On the other hand the defendant appeared and denied the ownership and possession of the plaintiff over the suit property. He further stated that due to mistake of revenue authorities the extent of their land has been shown in the revenue records measuring 7 acres 35 guntas instead of 8 acres 24 guntas and same mistake has been continued in the revenue records. Thereafter the defendants filed an application for correction of revenue records same has been corrected by the Tahasildar Sindagi. It is further stated that the plaintiff has not right or title over the suit property, only to harass the defendant has fled this false suit. Hence prayed to reject the I.A's.

13. After gone through the revival contention of the parties I have perused the documents filed by the both parties. The revenue records of land Sy.No 330/1 for the year 2017-18 shows that the name of plaintiff is appearing in the column no 9 and 12 to the extent of 4 acres 05 Guntas. On perusal revenue records of Sy.No 330/1A name of defendant no 1 is appearing to the extent of 3

acres 29 Guntas. On perusal revenue records of Sy.No 330/1B the name of defendant no 2 is appearing to the extent of 3 acres 30 Guntas. The documents further submitted under list dated 20.02.2019 the Tahasildar Sindagi made an correction in respect of extent of defendants. After making correction in reveune records as per the order of Tahasildar the name of defenant no appearing to the extent of 4 acres 11 Guntas and the name of defendant no 2 is appearing to the extent of 4 acres 13 Guntas. The photos filed by the plaintiff along with plaint also discloses that there is bund and tress are existence in between the land of plaintiff and defendants. On going though the all material one thing is clear that there is boundary dispute in between the land of plaintiff and defendants. These rights are to be determined only after full pledged trial of the case. At this stage the merits of case can not touched by this court. The available material clearly goes to show that the mae of plaintiff is appearing in respect of land Sy.No 330/1 measuring 4 acres 05 Guntas, name of defendant no 1 is appearing in respect of land Sy.No 330/1A measuring 4 acres 11 Guntas and name of defendant no 2 is appearing in respect of land Sy.No 330/1B measuring 4 acres 13 Guntas. The ownership and possession itself is dispute in between the plaintiff and defendants. So to decide dispute in between the parties it required evidence on both side as

stated above. Therefore at this stage it is just and necessary to direct the both parties to maintain status quo in respect of the suit schedule bund till disposal of the suit. If the order of status quo is not granted there is chance remove the bund along with trees by the defenants and the purpose of filing suit by the plaintiff will be defeated. Hence it is just and necessary to direct the both plaintiff and defendants to maintain status quo in respect of suit bund till disposal of the suit. Accordingly points No.1 to 3 answered as affirmative in partly.

14. **Point No.4**: The plaintiff filed another application under order 26 rule 9 of C.P.C for appointment of court commissioner to inspect the suit bund and trees. Here the title of the parties to the property itself is in dispute. Thus at this juncture it is not proper to appoint the Court Commissioner to inspect the schedule property. At this stage if the Court commissioner is appointed it is nothing but collection of evidence which cannot be permitted under law. After recording the evidence of both sides, if the appointment of Commissioner is found necessary then it will be considered and hence at this stage application filed by the plaintiff is not consider by this court. Accordingly, I answer point No.4 does not arise for consideration.

15. **Point No 5**: In view of reasons discussion above I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff U/O.39 Rule 1 and 2 of CPC is hereby partly allowed.

Both parties are here by directed to maintain status quo in respect of suit schedule property till disposal of the suit.

I.A.No.VI filed by the plaintiff under Order 26 Rule 9 of CPC is kept in abeyance till completion of the evidence on both sides.

No order as to costs.

(Typed to my dictation directly on computer to the stenographer, corrected, signed by me, and then pronounced in the open Court on this the 20th day of June 2019)

(ASHAPPA)
Civil Judge & JMFC, Sindagi