

Order passed on Exh.5

1] Plaintiff has moved the present application to restrain the defendant from constructing the house till disposal of the suit.

Facts of the application are summarized as under :-

2] Plaintiff submitted that the defendant is constructing the house in the Government road/'pandi' and the said road is went in the direction of Andhaner and one side is went to the school in the village. The defendant is constructing the house in the square of the said road.

3] The defendant appeared in the suit and filed his written statement by vide Exh.19.

Facts of the defendants case are summarized as under :

He contended that the plaintiff's property in gut No.330, 331 and 15 are not accompanied to the said road. They having separate alternative road. The defendant further submitted that the plaintiff never passed from the road passing from the defendants house. He further denied the contents of the plaint. Plaintiff has filed false suit due to political rivalry.

4] I consider the following points for my determination and record my findings thereon with reasons mentioned as under :-

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	POINTS	ANSWERS
1]	Whether plaintiff has established prima facie case in his favour?	Yes.
2]	Whether balance of convenience lies in plaintiff's favour?	Yes.
3]	Whether plaintiff will suffer irreparable loss, if temporary injunction is not granted?	Yes.
4]	What order?	Application is allowed as per final order.

REASONS

As to Point No.1 :-

5] Heard learned advocate Shri.S.H.Mene for the plaintiff. He submitted that the defendant constructing the house in the road which is causing obstruction in ingress and outgress of plaintiff and other persons also. He drawn my attention towards the 7/12 extract of agricultural land of the plaintiff. He also drawn my attention towards the construction sanction of the defendant. It having specific clause that if any litigation is started in respect of the said construction the said permission ipso facto cancelled.

6] Learned advocate Shri.M.D.Bharuka submitted that the plaintiff has filed the false suit. The plaintiff having no concern with the road passing from the defendants house. The suit is politically motivated. He further submitted that the defendant is not constructing the house in the road. He further submitted that other land owners are not come forward and

if the road is really blocked the adjacent land owners of the defendant were to come to the court and demanded the injunction.

7] It appears from the village map filed by the plaintiff that there is existence of the said road as described by the plaintiff. Further plaintiff submitted that he is accessing the said road by using the road from the boundary marks of gut No.332, 333, 331. The said corroborated by village map. Therefore plaintiff's submission is found probable and the plaintiff having prima facie case. Hence I answered Point No.1 in the affirmative.

As to Point Nos.2 and 3 :-

8] Learned advocate Shri.S.H.Mene submitted that if the construction is not stopped the road will be blocked and it will difficult for the plaintiff to brought the agricultural equipment in his agricultural field. It will difficult for him to transport the goods of agriculture.

9] Learned advocate Shri.M.D.Bharuka for the defendant submitted that if the construction is stopped the unnecessary harassment would cause to the defendant.

10] It appears to me that the construction sanction given by the gram panchayat is unique one and it creates doubt. It specifically reflects from the said sanction if there is any litigation ipso facto constructing sanction will be cancelled. Though for the sake of convenience we suppose that the condition is true and genuine one. As soon as the present suit is filed the said construction permission is deemed to be cancelled and if the defendant will be permitted to construct the house the construction become

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unauthorised one. The issuance of the said conditional construction permission itself creates the doubt that, the gram panchayat was well aware with the fact that there is chances of litigation if the defendant construct the house on the said spot. If construction is not stopped it will cause adverse effect to the ingress and outgress of the present plaintiff and other persons. Therefore balance of convenience lies in favour of the plaintiff and if application is rejected great prejudice would cause to the plaintiff than the defendant. Plaintiff could not access the road and transport his agricultural equipment. If the application is rejected it will cause multiplicity of proceedings. Hence I answered point Nos.2 and 3 in the affirmative.

As to Point No.4 :-

11] Considering the answers of point Nos.1 to 3 I pass the following order :-

ORDER

- 1] Application Exh.5 is allowed.
- 2] The defendant shall stop his construction till disposal of the suit.

Date :- 07/04/2014.

Sd/-
(D.U.Dongare),
Joint Civil Judge (J.D.),
Kannad.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word as per the original order.

Name of the Stenographer : P.S.Pandav
Court : Jt. C.J.J.D. & JMFC, Kannad.
Date : 07/04/2014
Order signed by the : 10/04/2014
Presiding Officer on
Order uploaded on : 29/04/2014