

Reg. Civil Suit No. 30 /2018

ORDER BELOW EXH. 5

Vide this application plaintiff has prayed for interim relief restraining defendants from causing obstruction to the construction of house being carried out by plaintiff on the property at C.S.No. 211 admeasuring area 273.3 Sq.Mt. (Village property Number 16) and bounded as under :-

On East : Property of Ramchandra Ganpati Koli
On West : Property of defendant i.e. C.S.No. 210
On Sourth : Road
On North : Road namely koli lane

The property described hereinabove is hereinafter referred as suit property.

2. As per plaintiff the suit property is his ancestral property. Defendants are no way concerned with the same. On the western boundary of suit property there is property at C.S.No. 210 belonging to defendants. When plaintiff started to construct in suit property defendants resisted him. Thus, plaintiff caused and got the suit property measured through Inspector, Land record on 31/10/2017 vide measurement registered number 139. After measurement the concerned officer has prepared the map and thereafter plaintiff has started to construct in suit property as per the measurement dated 31/10/2017. However, again on 01/03/2018 defendants obstructed plaintiff from making construction. Hence present application.

3. Vide their say and written statement as well as counter claim at Exh. 16 defendants have strongly combated the application. Defendants admits plaintiff's title and possession over the property at C.S.No. 211. However they contend that plaintiff has encroached upon

C.S.No. 210 situated on western side of C.S.No. 211 and started to construct thereon. Thus it can not be said that plaintiff is constructing in C.S.No. 211 only. However, concealing these facts plaintiff has approached to the court. Thus, plaintiff can not be permitted to construct over the property at C.S.No. 210 by encroaching upon it. Ultimately they have prayed for rejection of the application.

4. Heard both sides. Perused record. The points crop-up for determination and reasoned findings thereon are recorded as under :-

Sr.No.	Point for determination	finding
1	Whether plaintiff has made out prima facie case in his favour?	Yes.
2	Whether balance of convenience lies in favour of plaintiff ?	Yes.
3	Whether plaintiff would suffer irreparable loss if an interim relief as prayed is not granted in his favour ?	Yes.
4	What Order ?	As per final order

REASONS

AS TO POINTS NO. 1 AND 2 :

5. The plaintiff's title and possession over property at C.S.No. 211 and defendant's title and possession over property at C.S.No. 210 is not in dispute. The fact that property at C.S.No. 210 is situated on western side and adjacent to property at C.S.No. 211 is also not in dispute. Further, vide their say/written statement defendants admitted the measurement of C.S.No. 211 dated 31/10/2017 conducted vide measurement register number 139. Moreover, vide their say on the application for status-quo filed by plaintiff at Exh. 21 defendants have submitted to the court that they will not obstruct plaintiff's construction if it is as per the measurement dated 31/10/2017. Thus,

it can be said that the defendants have no objection in respect of the measurement dated 31/10/2017.

6. As per plaintiff the construction being carried out by him is consonant to the measurement dated 31/10/2017 and within the four boundaries of property at C.S.No. 211. Defendants have come with the theory that causing encroachment upon property at C.S.No. 210 the plaintiff has started to construct.

7. In support of their contentions defendants have produced on record the photographs of the wall, Map of property at C.S.No. 210 and have also filed the affidavits of Krishnath Balaso Dongale (Exh. 26), Rangrao Shivaji Dongale (Exh. 27), Maruti Sambhaji Dongale(Exh. 28) and Sadashiv Shivaji Dongale (Exh. 29).

8. On the other hand plaintiff also has produced on record the photographs of the construction being carried out by him, the measurement Map of property at C.S.No. 211 (Exh. 22/1), permission for construction granted by Village Panchayat (Exh. 22/2) and the Map of C.S.Nos. 210, 211, 214 (Exh. 22/3). Plaintiff has also filed on record the affidavits of Dinkar Koli (Exh.30), Pankaj Koli (Exh.34), Shivaji Sonule (Exh.33).

9. However, on perusal of photographs produced on record by both sides as well as the maps one can not come to the firm conclusion that plaintiff has encroached upon C.S.No. 210.

10. As per plaintiff he is constructing within the four boundaries of the property at C.S.No. 211. Further, vide instant application also

the plaintiff has sought an interim relief restraining defendants from obstructing construction in C.S.No. 211 only. Plaintiff does not pray for interim relief in respect of the construction in property at C.S. No. 210. Admittedly the plaintiff is owner and occupier of property at C.S.No. 211. Further, he has got the suit property measured and the measurement is not in dispute. Besides, the Ld. Advocate for plaintiff makes statement at bar that the construction being carried out by plaintiff is within the area specified by measurement, and in case if the court come to the conclusion at final hearing that plaintiff has encroached upon and constructed over property at C.S.No. 210, plaintiff will remove the said encroachment at his own costs.

11. On the other hand vide counter claim the defendants have prayed for the removal of encroachment. However, At this juncture besides their oral contentions noting is on record to prima facie show the encroachment on C.S.No. 210 at the hands of plaintiff. Considering material on record this court is of prima facie view that the case put up by plaintiff is more believable than the defendants' case. Thus, this court is of view that prima facie case goes in plaintiffs favour. Hence, point No. 1 is answered in affirmative. Resultantly, the balance of convenience also follows the plaintiff. Hence, point 2 is also answered in affirmative.

AS TO POINT NO. 3 :

12. Admittedly, the major portion of construction by plaintiff is over. It is needless to mention that plaintiffs would have spent a considerable amount on the construction. Further, as per plaintiff he has no substitute place of residence. Thus, if interim relief as prayed is not granted in his favour, despite spending huge amount on

construction again plaintiff has to pay for rent for the indefinite period till the conclusion of trial. Thus, considering material on record this court is of view that if interim relief as prayed is not granted in plaintiff's favour, he would suffer irreparable loss, despite being owner of suit property.

13. On the other hand admittedly defendants are not residing in property at C.S.No. 210 as the same is collapsed. Further, nothing is on record to show the so called encroachment in property No. 210 at the hands of plaintiff. Thus, no irreparable loss or damage would cause to defendants if the application is allowed. Hence, point No. 3 is answered in affirmative.

AS TO POINT NO. 4

14. From the aforesaid discussion it is clear that the plaintiff is entitled for interim relief as prayed. Hence, in answer to point No. 4 following order is passed :-

ORDER

- 1) Application is allowed.
- 2) The defendants and persons claiming under them are hereby temporarily restrained from causing any obstruction to plaintiff while constructing in suit property till final hearing of the suit.
- 3) Cost in cause.

Radhanagari.

Date : 29-06-2018.

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

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

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	29/06/2018
Order signed by the P.O. On	29/06/2018
Order uploaded on	06/07/2018