



ORDER BELOW EXH. 34 IN R.D. NO.106/2021.

(PASSED ON 28/10/2021)

This is an application filed by defendants under order 7 Rule 10 of the Code of Civil Procedure for returning the plaint to the plaintiff.

2) The defendants submitted that, the plaintiff has filed this suit for declaration and perpetual injunction. The defendant No. 1 to 3 and 7 have appeared and filed their written statement. They have filed sanctioned layout and construction plan. The plaintiff is not entitled to claim any relief in respect of sanctioned construction plan. The defendants are making the construction as per the permission granted by the local authority. If the plaintiff has any grievance, then the plaintiff should have to approach before the competent Forum to seek the relief. The defendant submitted that, this Court has no jurisdiction to try and entertain this suit. Therefore, the plaint may be returned to the plaintiff.

3) The plaintiff filed say at Exh.46 and denied all the contentions in the application. The plaintiff submitted that, he has filed this suit for declaration of easementary right and therefore the suit is triable by this Court. He submitted that, the application has been filed by the defendant only with intent to prolong the hearing of temporary injunction application. Hence, the plaintiff prayed for rejection of application.

4) I perused the plaint. The plaintiff has come before this Court with a specific case that he has easementary right to get air and light as well as he has easementary right of way. The plaintiff has prayed for declaration of those easementary rights. As per the provisions of section 35 of Indian Easements Act read with section 34 of Specific Relief Act, the suit for declaration and injunction in respect of easementary right is maintainable and this Court has jurisdiction to try and entertain such suit. Therefore, there is no merit in the application and it deserves to be rejected. Therefore, I proceed to pass following order:-

ORDER

The application at Exh.34 stands rejected with costs.

sd/-

(D.R. Mali.)

Date :- 28/10/2021

2nd Jt. C.J.J.D. and J.M.F.C.,Wai.