

**T.S. No. 472 of 2019**

**Order no. 9**  
**18.09.2019**

The plaintiff takes steps through his Ld. Advocate. Defendant no. 1 also takes steps through his Ld. Advocate. Defendant nos. 2 and 3 also take steps through their Ld. Advocate. No steps is taken on behalf of the other defendants.

Today is fixed for hearing of the injunction filed by the plaintiff at the initiation of the proceedings.

The recored is taken up for hearing.

Defendant no. 1 has filed written objection and defendant nos. 2 and 3 being KMC has filed objection along with annexures.

At the time of hearing Ld. Advocates from both sides, the Lawyers on behalf of the Municipal Authority has submitted that this suit is not maintainable in its present form and law as because the proceedings as per K.M.C. Act has been drawn by the Municipal Authority in respect of suit schedule premises and already served a notice upon the defendant no. 1 to stop the construction work on the suit schedule premises as it is being carried out without sanction. In that case, this proceedings is no longer required and not maintainable. So, injunction application filed by the plaintiff is to be rejected.

In support of their claim, have filed annexures A, B, C and D. Ld. Lawyer for the defendant no. 1 has also raised objection by submitting that no such encroachment is being done from their end and Municipal Authority has already initiated proceedings so this suit is not maintainable and injunction prayer is to be rejected.

Ld. Lawyer for the plaintiff submits that on the basis of the submission made by defendant nos. 2 and 3 supported with affidavit and defendant no. 1, it is apparently established that unauthorized construction upon the suit premises was going on at the instance of defendant no. 1. It is further submitted that this suit has been filed mainly against the defendant no. 1 with a prayer for relief by passing a decree for declaration that defendant no. 1 has no right to encroach into the common passage in between the kitchen and the main building, further a decree of permanent injunction restraining the defendant no. 1 and his men and agents from creating any disturbance, obstruction, annoyance to the plaintiff in respect of the peaceful use of the premises as mentioned in the schedule by restraining their men and agents from making any illegal construction on such common passage of the suit schedule property and mandatory injunction directing the Municipal Authority, defendant nos. 2 and 3 to demolish the extended portion of the tin shed constructed by the defendant no. 1. So, the relief as claimed by the plaintiff with regard to the declaration and permanent injunction are not to be provided by the Municipal Authorities. As such,

the suit is very much maintainable and the injunction as passed by this court is correctly passed and to be made absolute because the Municipal Authority did not yet take any visible steps to stop the illegal construction made by the defendant no. 1.

I have carefully gone through the plaint, injunction application, objection along with annexures filed by the defendant nos. 2 and 3 and also have gone through the objection filed by the defendant no. 1. It appears that this plaintiff has prayed for relief for passing the decree for declaration. The plaintiff has no right to encroach into the common passage which is purely subject of Civil Court of competent jurisdiction not the subject of Municipal Authorities and also passing a consequential relief by way of permanent injunction is a subject of Civil Court's jurisdiction. So, on the basis of such the submission made by the defendant regarding the maintainability of the proceedings is having no leg to stand and liable to be turned down.

From the annexure C and other annexures, it is transpired that the Municipal Authority has initiated the proceedings on the basis of the complaint filed by the parties. For stopping such illegal constructions held by the defendants. So, there is no any harm and impediment to proceed by the Municipal Authority in accordance with the K.M.C. Act regarding such alleged construction work without sanction. But so far this suit is concerned, I am in definite opinion that injunction order by way of status quo with regard to the nature, character and possession against the plaintiff and defendant no. 1 are to be made an absolute. So that further complicity in future no to to be avoided.

Accordingly, the plaintiff and defendant no. 1 are hereby directed to maintain status quo in respect of the suit schedule property with regard to the nature, character and possession on and from the date of ad interim order 04.04.2019 to till the disposal of the suit.

Thus, the injunction application under Order 39 Rules 1 and 2 CPC stands disposed of on contest.

Since, WS filed by the defendant no. 1 and defendant nos. 2 and 3 within time, so, it is accepted and the date to be fixed for framing of issues.

To 06.12.2019 for framing of issues.

D/C by me:

Judge

Judge