



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO.6863 OF 2024 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO.4636 OF 2024 (CPC)

IN MFA No.6863/2024:

BETWEEN:

1. SRI. C. MANJUNATH,
S/O LATE T. CHINNAPPA,
AGED ABOUT 65 YEARS,
RA/T NO.69, 7TH MAIN,
KODIHALLI, HAL II STAGE,
BENGALURU-560 008.

...APPELLANT

(BY SRI. THIMMAIAH K.H., ADVOCATE)

AND:

1. SRI. N. SURESH,
S/O NARAYANAPPA,
AGED ABOUT 49 YEARS,
R/AT NO.69, 7TH MAIN ROAD,
HAL II STAGE, KODIHALLI,
BENGALURU NORTH,
BENGALURU-560 008.

...RESPONDENT

(BY SRI. MANU SHANKAR S.S., ADVOCATE)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 03.09.2024 PASSED ON I.A.NO.1 IN O.S.NO.2796/2024 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-26), REJECTING I.A.NO.1 FILED UNDER ORDER XXXIX RULE 1 AND 2 OF CPC.

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by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



IN MFA NO.4636/2024:

BETWEEN:

1. SRI N.SURESH,
S/O NARAYANAPPA,
AGED ABOUT 49 YEARS,
R/AT NO.69, 7TH MAIN ROAD,
HAL 2ND STAGE, KODIHALLI,
BANGALORE NORTH,
BENGALURU – 560 008.

...APPELLANT

(BY SRI. MANU SHANKAR S.S., ADVOCATE)

AND:

1. SRI MANJUNATH,
S/O CHINNAPPA,
AGED ABOUT 45 YEARS,
R/AT NO.69, 17TH MAIN,
KODIHALLI, HAL 2ND STAGE,
BENGALURU - 560 008.

...RESPONDENT

(BY SRI. THIMMAIAH K.H., ADVOCATE)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 05.07.2024 PASSED ON I.A.NO.1 IN O.S.NO.1594/2024 ON THE FILE OF THE XX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH-32), DISMISSING THE I.A.NO.1 FILED UNDER ORDER XXXIX RULE 1 AND 2 READ WITH SECTION 151 OF CPC.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondent in both the appeals.

2. These two appeals are taken up together though the Trial Court disposed of both I.A.No.1 independently in independent suits, but issue between the appellant and the respondent is in respect of 3 feet of passage and hence taken up together for common disposal.

3. M.F.A.No.4636/2024 is filed by the plaintiff in O.S.No.1594/2024 challenging the dismissal of I.A.No.1, wherein prayer is sought to restrain the defendant any anybody on his behalf from obstructing the usage of common passage in western side of the suit schedule property till the disposal of the suit.

4. In support of the said application, it is pleaded by that plaintiff that he is the absolute owner in possession of the schedule property. He acquired the schedule property through a registered partition deed dated 08.02.2016. In the western side of the suit schedule property, there is a 3 feet common passage for usage of himself, defendant and other co-owners. Except



the said common passage, there is no way to reach the suit schedule property. The property was partitioned in the year 1993 between T.Narayanappa, father of defendant and two others and the suit schedule property and other properties were allotted to the share of his father. In the sketch prepared during partition, it clearly shows that 3 feet common passage was left for usage of all family members. It is contended that as he intended to put up construction in the suit schedule property, he demolished the old building. At that time, the defendant illegally encroached the common passage by locking the gate and obstructing the plaintiff for usage of the common passage. Therefore, without any other alternative he filed the suit and sought for the relief of temporary injunction.

5. The application was resisted by the defendant contending that he is the absolute owner of the property bearing No.69, old No.204/3, new No.13, with vacant space towards its eastern side, which absolutely belongs to the defendant, over which the plaintiff has no any semblance of right, title and interest. The plaintiff is falsely claiming that there is a 3 feet passage towards the western side of the suit schedule property. It is contended that towards the northern side of the suit schedule property, there exists the property belonging to the



mother of the defendant by name Muniyellamma in Sy.No.226/2 measuring 16 feet x 41 feet and as per the partition deed dated 09.12.2001 entered into between Muniyellamma and her sons, she has clearly stated that after her death, the said property shall go to the defendant. After the death of his mother, as per her wish the said property fallen to his share. In the said property, there is a vacant space. Over the said space, the plaintiff has no any right, title and interest. The plaintiff with an intention to grab the land is making such a claim. There is no such passage as claimed.

6. The Trial Court having considered the grounds urged in the said suit, dismissed the application in coming to the conclusion that the plaintiff and the defendant are relatives. But the disputed thing is that, whether there exists a 3 feet common passage for the use of the plaintiff and the defendant and other co-owners and the defendant obstructing the use of said common passage as alleged by the plaintiff. The plaintiff has not produced any reliable documents to show the existence of 3 feet passage. The plaintiff has produced the photo alleging that the defendant by locking the gate is obstructing the plaintiff to use the said gate. The Trial Court having taken note of said photo comes to the conclusion that the passage in the said



photo is more than 3 feet and not establishes the existence of the alleged 3 feet common passage. The Trial Court taken note that the plaintiff had lodged a complaint before the Joint Commissioner, BBMP requesting to remove the illegal encroachment of the common passage. But they have not made any effort to remove the illegal encroachment of the defendant. He has produced the said complaint dated 26.06.2020. But in the plaint he has stated that the cause of action for the suit arose on 02.01.2024 when the plaintiff with an intention to put up construction demolished the old building, during that time, the defendant illegally encroached the common passage. The Trial Court having considered the material on record comes to the conclusion that the plaintiff has not established the existence of a 3 feet common passage and dismissed the application.

7. Being aggrieved by the said order, M.F.A.No.4636/2024 is filed before this Court.

8. M.F.A.No.6863/2024 is filed by the plaintiff in O.S.No.2796/2024 challenging the dismissal of I.A.No.1, wherein prayer is sought to restrain the defendant or any persons claiming on behalf of him from making use of 'B'



schedule property for the purpose of his ingress and egress to his property.

9. It is the case of the plaintiff in O.S.No.2796/2024 that the suit schedule 'B' property measuring east to west 10 feet and north to south 15 feet is the part of 'A' schedule property, which is absolutely belonging to the plaintiff and it is not a common passage. The defendant with a malafide intention is trying to make use of 'B' schedule property and transporting building materials through the same causing great inconvenience and harassment to him and his family members.

10. In the said suit, the defendant contended that there was a partition between the father of the plaintiff and his father in the year 1993 and a sketch was prepared which clearly shows that on the western side of the suit schedule 'B' property there is a common 3 feet passage for the purpose of usage of all the family members and ever since from the year 1993, the defendant, plaintiff and other co-owners have been using the common passage and now the plaintiff is trying to obstruct the common passage and therefore the plaintiff is not entitled for any relief of temporary injunction.



11. The Trial Court having considered the contentions of both the parties and taking note of the material on record comes to the conclusion that in order to go to the property of the defendant, there is no any other way and the material shows that there was no alternative way to the defendant at the time of incident to approach his property. The defendant has taken up the contention of easement of necessity and that he cannot put up construction and he cannot reside in it, if no such ingress and egress is allowed. The Trial Court also taken note that the defendant is none other than the cousin brother of the plaintiff. He has not claimed right, title or interest over the 'B' schedule property. The claim is only for 3 feet approach way to go to his property. Having taken note of the pleadings of the parties, the Trial Court comes to the conclusion that if injunction is granted, there will be no ingress and egress to the property of the defendant. The Trial Court also comes to the conclusion that the defendant cannot dump the materials so as to disturb the plaintiff in 'B' schedule property and cause inconvenience and rejected the application filed by the plaintiff.

12. Being aggrieved by the said order, M.F.A.No.6863/2024 is filed before this Court.



13. The learned counsel for the appellant in M.F.A.No.6863/2024 would vehemently contend that the Trial Court dismissed the application filed by the respondent in O.S.No.1594/2024 coming to the conclusion that no passage of 3 feet is in existence and no such documents are placed before the Court. But, in the present case in O.S.No.2796/2024, the Trial Court comes to an erroneous conclusion that there is no other alternative road to the respondent to reach his property and hence there cannot be any order of injunction. The very finding of the Trial Court in O.S.No.2796/2024 is against the finding in O.S.No.1594/2024. When the Trial Court rejected the application filed by the respondent in O.S.No.1594/2024, ought to have granted the relief in O.S.No.2796/2024. The learned counsel also relied on the photographs which discloses that already in the said area he had put up a sheet with pillars and he is using the same.

14. The learned counsel for the respondent in M.F.A.No.6863/2024 would contend that at the time of partition in the year 1993, a sketch was prepared and the father of the appellant in M.F.A.No.6863/2024 signed the same and the sketch clearly discloses that in order to access the land which is in the hind portion, a 3 feet passage is left and he is claiming



the same. The learned counsel contend that the Trial Court committed an error in dismissing the application in O.S.No.1594/2024 and the Trial Court in O.S.No.2796/2024 rightly comes to the conclusion that there is no other access to go to the land of the defendant and hence it does not require interference of this Court and it requires interference of this Court in O.S.No.1594/2024.

15. Having heard the learned counsel for the appellant and the learned counsel for the respondent in both the appeals and considering the grounds urged in the appeals, the points that arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in rejecting the application in O.S.No.1594/2024 and whether it requires interference of this Court?
- (ii) Whether the Trial Court committed an error in rejecting the application in O.S.No.2796/2024 and whether it requires interference of this Court?
- (iii) What order?

16. Having heard the learned counsel for the respective parties, I have already pointed out that both the appeals to be



considered together in view of the common issue involved between the parties with regard to the existence of common passage of 3 feet. It is important to note that in O.S.No.1594/2024, the plaintiff has sought for the relief of declaration to declare that the defendant has no right, title or interest in respect of the common passage situated at the western side of the suit schedule property and also sought for the mandatory injunction directing the defendant to remove the illegal encroachment of the common passage on the western side of the suit schedule property. In the suit filed by the plaintiff in O.S.No.2796/2024, the relief is sought for permanent injunction and inter alia, sought for the relief of temporary injunction restraining the defendant from claiming 3 feet passage. Having considered the relief sought by the plaintiff in O.S.No.1594/2024, his claim is that there is a 3 feet passage on the western side of the suit schedule property belonging to the plaintiff.

17. On the other hand, it is the contention of the plaintiff in O.S.No.2796/2024 that there is no such existence of 3 feet common passage. It is not in dispute that both are cousins. It is also not in dispute that earlier there was a partition among the brothers of the joint Hindu family. The fact that the



property of the defendant in O.S.No.2796/2024 is in existence in the hind portion of the property of the plaintiff in O.S.No.2796/2024 is not in dispute. But the defendant claims that there is a passage of 3 feet. No doubt, the Trial Court in O.S.No.1594/2024 dismissed the application on the ground that in order to prove that there is a 3 feet of passage, no documents are placed on record. The Trial Court in O.S.No.2796/2024 taken note of the claim made by the plaintiff with regard to 'B' schedule property which has been shown in the suit. The same belongs to the plaintiff and having taken note of the material on record, the Trial Court comes to the conclusion that total extent of the property of the defendant is only 18 x 26 feet, totally measuring 468 sq.ft. and whether there was a passage existing to the property of the defendant and he has blocked it is a matter required to be determined during the trial. At this stage, the material clearly shows that apart from 'B' schedule property, there is no other way to reach the property of the defendant. If temporary injunction is granted restraining the defendant from using 'B' schedule property, he cannot go to 'B' schedule property. It has to be noted that when the suit is filed for the relief of declaration that the plaintiff in O.S.No.2796/2024 is not having any right to the passage which the plaintiff is claiming in



O.S.No.1594/2024, the matter requires to be tried before the Trial Court. The fact that both belong to the very same family is not in dispute and earlier there was a partition among the members of the family and subsequently there was a partition among the legal heirs of respective parties is also not in dispute.

18. The learned counsel for the respondent in M.F.A.No.6863/2024 also places on record the xerox copy of the sketch, which according to him is signed by the father of the plaintiff in O.S.No.2796/2024. All these factors whether there was a sketch and whether there was any passage or no such passage, all requires to be considered during the course of trial. At present, the same cannot be decided with regard to the existence of the common passage and also the very passage is given to access the property and also the property belongs to the very same family and whether there was an understanding between the family members at the time of partition in order to access the property, which is in the hind portion of the suit schedule property, all these factors to be considered only during the course of trial.

19. The learned counsel for the plaintiff in O.S.No.1594/2024 has filed the photographs which shows the



main road as well as the passage which he is claiming. The appellant i.e., plaintiff in O.S.No.2796/2024 also has produced the photographs to show that he has already put up a zinc sheet with shelter on the suit schedule property. The property which the plaintiff in O.S.No.1594/2024 is claiming is located behind the property of the plaintiff in O.S.No.2796/2024. When such materials are produced before the Court, it requires trial and hence it is appropriate to direct both the parties to maintain status quo during the pendency of the suits. The Trial Court rightly comes to the conclusion in O.S.No.2796/2024 that there is no other way to go to the property of the defendant, which is located behind the property of the plaintiff in O.S.No.2796/2024 and there cannot be any injunction order and hence I do not find any error committed by the Trial Court.

20. The Trial Court also rejected the application filed by the plaintiff in O.S.No.1594/2024 in coming to the conclusion that there are no documents to show the existence of 3 feet common passage and this Court has also given finding that existence of passage to access the property of the plaintiff in O.S.No.1594/2024 requires trial and hence directed both the parties to maintain status quo. The plaintiff in O.S.No.2796/2024 should not restrain the defendant to go to his



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property which is located in the hind portion. The plaintiff in O.S.No.1594/2024 also should not cause any disturbance and not make any attempt to remove the shelter which is in existence and only make use of the same for ingress and egress to his property which is located behind the property of the plaintiff in O.S.No.2796/202. This order is very clear with regard to maintaining of status quo by both the parties till the disposal of the suit.

21. With the above observations, both the appeals are disposed of. The observations made by this Court while disposing of these appeals, shall not influence the Trial Court while considering the matter on merits in both the suits.

Sd/-
(H.P.SANDESH)
JUDGE

MD
List No.: 1 Sl No.: 42