



CNR: KAHC010503712026

NC: 2026:KHC:38831
WP No. 22832 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 22832 OF 2026 (GM-CPC)

BETWEEN:

SRI T.S. AHSOK KUMAR
AGED ABOUT 46 YEARS
S/O LATE T.R.SHIVARAMAIAH
R/O 11TH BLOCK, NEW EXTENSION
MADIKERI, KODAGU DISTRICT - 571 201.

...PETITIONER

(BY SRI PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

SMT. MAITHRI
AGED ABOUT 48 YEARS
W/O. NANDA KUMAR P.M.
R/A NEAR BRAHMIN KALYANA MANTAPA
BRAHMINS VALLEY, MADIKERI
KODAGU DISTRICT-571 201.

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI AND QUASH THE ORDER DATED 24.04.2026 PASSED BY THE SR. CIVIL JUDGE AND CJM, MADIKERI, IN M.A.NO.1/2025 AS PER ANNEXURE-A AND THE ORDER DATED 07.12.2024 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, MADIKERI, ON I.A. NO.2 IN O.S.NO.45/2024 AS PER ANNEXURE-A1 AND ETC.,



CNR: KAHC010503712026

NC: 2026:KHC:38831
WP No. 22832 of 2026

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 24.04.2026 in M.A.No.1/2025 passed by the Senior Civil Judge and CJM, Madikeri and the order dated 07.12.2024 passed in I.A.No.2 in O.S.No.45/2024 by the Principal Civil Judge and JMFC, Madikeri, the petitioner/defendant is before this Court.

2. The respondent herein has filed O.S.No.45/2024 seeking a declaration that the construction put up by the defendant, extending the structure to the suit schedule property is in violation of the approved plan, is illegal, and a direction to the defendant to remove the illegal structure put up by him, also sought for consequential relief of perpetual injunction and compensation of Rs.3,00,000/- for causing damages. In the suit, the plaintiff had filed I.A.No.2 under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking a temporary injunction restraining the defendant from



CNR: KAHC010503712026

**NC: 2026:KHC:38831
WP No. 22832 of 2026**

proceeding with his illegal constructions. That application was allowed by the trial Court by order dated 07.12.2024. Against that, the petitioner/defendant filed M.A.No.1/2025.

3. The Appellate Court dismissed the defendant's appeal, confirming the order of the trial Court. While confirming the order of the trial Court, the Appellate Court observed that by applying the yardstick for grant of interim injunction the trial Court had granted the interim relief, restraining the defendant from proceeding with further construction. When the defendant's construction appears to be illegal, as it overlaps the suit property, the trial Court has rightly granted the interim injunction by exercising its sound discretionary power, and there is no material placed before the Court to show that the said order is perverse and illegal. It is observed that the trial Court examined the comparative hardship and balance of convenience in a judicious manner and ultimately granted the interim injunction. The Appellate Court came to the conclusion that there is no error in the order passed by the trial Court.

4. The Appellate Court has also observed that the defendant has not at all disputed the construction work



CNR: KAHC010503712026

**NC: 2026:KHC:38831
WP No. 22832 of 2026**

reaching the first floor. The projection on the first floor clearly overlaps and encroaches upon the portion of the suit property from the level of the first floor. It is the clear stand of the plaintiff that the defendant has adopted an illegal approach to his construction by violating the building by-laws. The plaintiff has lodged complaints before various authorities. In this regard, the plaintiff has produced documents. In addition to the said stand, the plaintiff has contended that, upon inspection, the CMC Madikeri has issued a notice to the defendant to stop the construction. The defendant has not disputed this aspect by producing any authenticated proof. The Appellate Court observed that the photos and corresponding materials produced by the rival parties clearly demonstrate the prima facie case in favour of the plaintiff. Accordingly, the Appellate Court has dismissed the appeal filed by the defendant.

5. Learned counsel appearing for the petitioner/defendant submits that the petitioner is carrying out construction within his property, and the trial Court has granted an injunction on the ground that the construction will affect the light and air to the plaintiff's property. The Appellate Court has dismissed the



CNR: KAHC010503712026

NC: 2026:KHC:38831
WP No. 22832 of 2026

appeal on the ground that, as per the photographs, the construction is overlapping. It is submitted that when construction is carried out within his land, the question of leaving setbacks and other such requirements will not arise. He has relied on a judgment of the Madras High Court in ***K.Mohideen Ibrahim Vs. M. Muhammed Abdullah***¹. He relied on paragraph No.8 which reads thus:

"8. The ratio behind these decisions is that when one of the owners of a common wall opens windows in that common wall, he does so in exercise of his rights as a co-owner and, therefore, cannot acquire a right of easement in respect of the windows against the co-owner. A right which cannot be pre-vented from being exercised by physical interference during the period of enjoyment cannot be acquired as an easement. Before time can commence to run under the Easements Act, there must be an invasion of some legal right. Acts which are neither preventable nor actionable cannot be relied upon to found an easement. In the case of a common wall, each co-owner is entitled to a reasonable user of the wall owned in common and so long as each co-owner uses it reasonably without interfering with the enjoyment of that wall by the other co-owner or without doing anything which would weaken, damage, increase or diminish the wall enjoyed in common, he is entitled to do what he likes and the other co-owners will have no cause for complaint unless the acts alleged amount to his ouster or to the destruction of the party wall. The opening of the apertures in the common wall by the plaintiff

¹ AIR 1978 MADRAS 97



CNR: KAHC010503712026

should, therefore, be treated as incidental to the enjoyment of the common property and it does not amount to trespass upon the right of the other co-owner which would entitle him to prevent such trespass by physical obstruction or by an action in a court of law When there is no scope for such an action, the plaintiff cannot be deemed to have acquired a right of easement by prescription to ancient light and air through those apertures."

6. Relying on this, it is submitted that the Appellate Court ought not to have dismissed the appeal. Further, if the injunction is granted, it would cause lot of hardship to the defendant, and in fact the balance of convenience is in favour of the petitioner/defendant. It is submitted that when he was making the construction till it reached the first floor level, the plaintiff did not make any objection. In view of the same, the plaintiff is not entitled to the relief. Further, it is submitted that this is the only place where the petitioner is constructing to reside, and because of the injunction granted by the trial Court, he is not able to proceed with the construction, and it is causing lot of hardship to the defendant. All these aspects were not considered by the trial Court as well as the Appellate Court, and both the Courts went wrong in granting the injunction.



CNR: KAHC010503712026

**NC: 2026:KHC:38831
WP No. 22832 of 2026**

7. Having heard the learned counsel for the petitioner, perused the entire material on record. The whole case of the plaintiff is that the defendant is making construction overlapping the property of the plaintiff. Both the trial Court and the Appellate Court have perused the photographs and came to the conclusion that, on the face of it, there is overlapping. The Appellate Court has held that unless the said construction is stopped during the pendency of the suit, it would cause lot of hardship to the plaintiff. As the plaintiff is able to satisfy the three ingredients for the grant of interim injunction, the trial Court has granted an injunction. Considering the argument of the learned counsel for the petitioner and the judgment that he has relied upon, this Court is of the view that the plaintiff could successfully prove before the Court that he is entitled for injunction and both the Courts have concurrently granted an injunction. Unless the said finding is perverse or arbitrary, this Court cannot interfere with the same.

8. The impugned order needs no interference from this Court. Hence, this Court is passing the following order:



CNR: KAHC010503712026

NC: 2026:KHC:38831
WP No. 22832 of 2026

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 Sl No.: 46