

IN THE COURT OF THE CIVIL JUDGE
AT BASAVAKALYAN

DATED THIS THE 26th DAY OF APRIL 2019

PRESENT:

SHRI: RAGHAVENDRA UPADHYE
B.A. LLM
CIVIL JUDGE BASAVAKALYAN

O.S.NO.1 of 2018

Plaintiffs:-

1. Smt Zahina bee w/o Haji Noorullakhan Toti,
age: 67 years Occu: Household, r/o Azam colony
Tq.Basavakalyan Dist:Bidar.
2. Smt Ghousia Begum w/o Haji Noorullakhan Toti,
age: 55 years Occu: Household, r/o Azam colony
Tq.Basavakalyan Dist:Bidar.

(By Sri.S.B.Mashalkar Adv.,)

-versus-

Defendants:

The Commissioner
CMC Tq:Basavakalyan, Dist.Bidar.

(By Sri.AND Advocate)

R. Upadhye
26-4-2019

Date of institution of suit : 01.01.2018.

Nature of suit : Suit for perpetual injunction.

Date on which recording of evidence commenced : 24.04.2018.

Date on which judgment was pronounced : 26.04.2019.

Total duration : Years Months Days
01 03 25

Rajendra K. H. H.
**Civil Judge & JMFC.,
Basavakalyan.**

J U D G M E N T

This suit is instituted by the plaintiff against the defendant for perpetual injunction in respect of demolishing the building in municipal property No.27-138/2-D & 27-38/2D/2 situated in block No.6 at Basavakalyan. Defendant has counter claimed seeking direction to demolish the suit shops.

2. **The gist of the plaintiff's case is as follows :**

The plaintiffs are the absolute owners and possessors of the municipal property No.27-138/2-D & 27-38/2D/2 situated in block No.6 at Basavakalyan. The plaintiffs have jointly purchased said properties from the Masaji and brothers and another portion from the president Ediga Samaj and constructed the commercial shopping complex as in the

surrounding place the shopping complex were already established.

The plaintiffs have purchased the suit properties from one Masaji s/o Laxuman Godbole, Sharnappa s/o Laxuman Godbole and Limbaji s/o Laxuman Godbole open odd size plot bearing TMC No.27-104/2(old) its new No. 270138 total measuring 856 Sq feet. The another portion 1080 sq feet open plot purchased from president Ediga Samaj Basavakalyan. The plaintiffs approached the defendant office for issuance of construction permission enclosing proposed map. For this the CMC not given any heed to the request of plaintiffs. The plaintiffs waited for six months, started construction work including both properties they established the commercial shopping complex over the said suit properties. The said construction work taken for the years together but no one defendant official visited to the spot and raised any objection. The plaintiffs invested huge amount of Rs.20,00000/- and completed the construction work. Now with an ill intention taking steps against poor plaintiffs and trying to demolish constructed building by using JCB machineries. If the defendants succeeded in their ill motive, will cause irreparable loss to plaintiff.

The defendant not ready to heed the request of plaintiffs. The defendant officials pasted the orders dated 28.12.2017 on the constructed building of the plaintiffs and there is every chances of dis-mental the building on the spot.

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Defendant commissioner CMC Basavakalyan issued notice dated 23.12.2017 and also pasted orders dated 28.12.2017 on the building for demolishing the constructed building on cost of the building owners. Hence plaintiffs prayed to decree the suit as prayed.

3. After issuing the suit summons defendant appeared through counsel and filed written statement.

4. Gist of written statement of defendant:

This suit for bare perpetual injunction filed by the plaintiffs in respect of two separate and distinct properties of two plaintiffs in a single suit is not maintainable under law. The plaintiffs' vendors have encroached the Government Parampok land sy.no.154 measuring 3 acres of Basavakalyan without complying the legal formalities of grant of land conversion of the land and sanction of the layout illegally formed the plots and wrongly sold the disputed plots to the plaintiffs. So the plaintiffs cannot derive the valid ownership and title under those sale deeds in favour of the plaintiffs pertaining to the suit plots. The plaintiffs have not filed the construction permission application for construction of shopping complex by fulfilling the legal requirements with the defendant's office. So the town planning authority has rejected the application under town planning rules and it was intimated to the defendant's office on 19.07.2017. Directorate of Municipalities Government of Karnataka Bangalore had issued notice and

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the directions for removal of the demolition of the illegal construction taken up through its Govt. Notification G.O.No.23350/DMA121/GPS/2017-18 dated 01.05.2018, where at Sl.No.3 the name of the plaintiff the illegal construction of the building upon the disputed plot properties is shown as illegal one and is liable to be demolished.

The construction of the shopping complex illegally made by the plaintiffs upon the disputed plot properties which are located upon the Government land sy.no.154 of Basavakalyan. So the illegal construction of the shopping complex is liable to be demolished. Hence prayed to dismiss the suit of the plaintiff.

5. On the basis of pleadings following issues have been framed;

1. Whether plaintiff proves that they are in possession over the suit property?
2. Whether the plaintiff proves the defendant illegally causing interference and obstruction to the possession of the plaintiff over the suit property?
3. Whether the defendant proves that this suit is not maintainable?
4. Whether the defendant proves that suit property is illegal construction?
5. Whether plaintiff is entitled for the reliefs claimed in the plaint?

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6. Whether defendant is entitled for the reliefs claimed?

7. What decree or order?

6. In order to prove the case of the plaintiff, plaintiff no.1 got herself examined as PW1 and one witness examined as PW2 and got marked 11 documents as Ex.P1 to 11 and closed his side. On the other hand, defendant examined himself as DW1 and got marked 6 documents as Ex.D1 to D6 and closed their side of evidences.

7. Heard the arguments.

8. **My findings on the above points are as under:**

Issue No.1	:	In the affirmative;
Issue No.2	:	In the affirmative;
Issue No.3	:	In the Negative;
Issue No.4	:	In the Negative;
Issue No.5	:	In the affirmative;
Issue No.6	:	In the negative;
Issue No.7	:	As per final order

for the following;

REASONS

9. **Issue No.1,2 and 4:** These issues are interrelated to each other and required common discussion. Therefore to avoid multiple discussion, I would like to discuss these two issues together under common consideration.

10. The plaintiffs have filed this suit for perpetual injunction in respect of demolishing the existing building in

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municipal property No.27-138/2-D & 27-38/2D/2 situated in block No.6 at Basavakalyan. In order to prove the case, plaintiff no.1 herself examined as PW-1 and filed affidavit in lieu of examination in chief reiterating contents of plaint. PW2 deposed he is the close relative of plaintiffs and he use to do all the works of plaintiffs and supported the case of plaintiffs.

11. In support of case of plaintiff produced 11 documents. Ex.P1 is the Certified copy of the sale deed document No. 1120/1996-97, Ex.P2 is the C/C of sale deed bearing No. 1460/2004-25, Ex.P3 is the Encumbrance certificate of Municipal property No. 27-138/2D, Ex.P4 is the Encumbrance certificate of Municipal property No.27-138/2D/2, Ex.P5 is the notice of CMC Basavakalyan dated 23.12.2017, Ex.P 6, 7 and 8 are the CD and photos, Ex.P9 is the application to CMC Basavakalyan dated 19.05.2017, Ex.P10 and 11 are the electricity bills with on exploration of documents.

12. On the other hand, Md.Faheemoddin Jr. Engineer CMC B.Kalyan examined as DW1 and filed affidavit in lieu of examination in chief reiterating contents of WS. In support of his case he produced 6 documents. Ex.D1 is the Authorization letter dated 01.04.2016, Ex.D2 is the Certified copy of ROR of govt.land sy.no.154 of Basavakalyan for the year 2017, Ex.D3 is the attested copy of rejection of construction permission application of plaintiff dated

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19.05.2017, Ex.D4 is the attested copy of Govt. circular dated 05.01.2018, Ex.D5 is the Original application of plaintiffs dated 19.05.2017 and Ex.D6 is the Original notice dated 15.02.2017.

13. PW.1 and 2 consistently stated that the plaintiffs have jointly purchased said properties from the Masaji and brothers and another portion from the president Ediga Samaj and constructed the commercial shopping complex. On the basis of the sale deeds plaintiff No.1 and 2 have become the absolute owners and possessors of suit property.

14. Defendant averred in written statement that The plaintiffs' vendors have encroached the Government Parampok land sy.no.154 measuring 3 acres of Basavakalyan without complying the legal formalities of grant of land conversion of the land and sanction of the layout illegally formed the plots and wrongly sold the disputed plots to the plaintiffs. So the plaintiffs cannot derive the valid ownership and title under those sale deeds in favour of the plaintiffs pertaining to the suit plots.

15. During cross-examination DW1 deposed that massagi, Sharnappa, Limbaji have illegally sold suit plots 10 years back. He further deposed he does not know to how many persons and how many plots they have sold. Dw-1 deposed he does not know how many sale transaction and mutations have been taken place in land sy.no.154. These parts of evidence shows that witness is totally ignorant about the sale

(Signature)
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transaction and suit property.

16. Defendant has produced ROR of Government land sy.no. 154 which shows that said land is standing in the name of Government. It is the case of defendant that the suit properties are situated in land sy.no. 154. But defendant has not even mentioned boundaries of land sy.no. 154 to identify the property. Defendant has filed counter claim seeking direction to demolish the suit shops. Therefore it is mandatory on the part of defendant to clearly plead and prove that suit shops are situated in land sy.no. 154. Non mentioning of boundaries of land sy.no. 154 is clearly hit by order VII Rule 3. In the absence of documentary evidence mere allegation that suit shops are situated in land sy.no.154 without proper pleading and cogent evidence does not hold water. Therefore counter claim of defendant falls to the ground.

17. Plaintiffs averred and PW1 and 2 deposed they have submitted an application to the defendant by enclosing required documents for obtaining construction permission. But defendant within one month from the date of above mentioned application had neither passed the order under Sec 187 (3) and served notice thereof in respect of intended work nor issued under sec.187(5) (a) of Karnataka Municipalities Act 1964. Therefore the contention of plaintiffs is that they proceeded with the work of construction. Thereafter plaintiffs have completed their construction work

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and in enjoyment of property.

18. As per the case of defendant the application of plaintiffs was not in accordance with town planning authority rules and it was intimated to the defendant's office on dated 19.05.2017. However there is no acknowledgement whether the order of town planning authority is communicated to plaintiffs or not.

19. Ex.P-9 is application filed by plaintiff seeking permission for construction on 19-05-2017. In the said application boundaries have been mentioned. In the acknowledgement of receipt of application documents furnished by plaintiffs have been shown.

20. Pw-2 voluntarily stated that plaintiffs had applied for permission but for 1 year nothing was communicated to plaintiffs about application. In cross-examination of Pw-2 it is suggested on behalf of defendant that defendant had informed plaintiffs that permission can not be granted because suit properties are situated on Govt. land bearing No.154 measuring 3 acres of Basavakalyan. Therefore onus is on defendant to show that plaintiffs were informed that permission can not be granted because suit properties are situated on Govt. land bearing sy.no.154. On traveling through entire records placed before this court nowhere it is mentioned that application of the plaintiffs is rejected because suit plots are situated in govt. land.

21. Ex.D-3 is the attested copy of rejection of construction

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permission. At sl.No. 3 of Ex.D-3 it is mentioned that application dated 19-05-2017 is rejected on 23-06-2017. In Ex.D-3 it is not forthcoming whether Ex.D-3 is for office reference or for communication to applicant. On bare perusal of Ex.D-3 it only reflects that status of application as rejected. Ex.D-3 not even remotely reveals that status of application communicated to applicant. There is nothing on record to show that defendant has communicated rejection of application in writing to applicants. In normal course of transaction it is expected to communicate rejection of application in writing in regular mode of communication like serving by hand or through post or atleast by affixing in office notice board. In Ex.D3 it is not even mentioned for what reason application has been rejected.

22. There are two maxims of equity which apply to this case , first that " **Equity looks on that as done which ought to be done** , and " **He who seeks equity must do equity**" . Plaintiffs have filed an application on before the defendant to issue construction permission of suit property to them as per proposed construction plan. But defendant within one month from the date of above mentioned application had neither passed the order under Sec 187 (3) and served notice thereof in respect of intended work nor issued under sec. 187(5) (a) of Karnataka Municipalities Act 1964. Therefore plaintiffs are entitle in law to proceed with the work of construction of building as per the plan. Defendant without performing there

*Rs. 40,000/-
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part of statutory duty can't seek for order of demolition.

23. Thus, on cumulative reading of evidence of PW-1, 2 and Dw1 and documentary evidence, it is clear that, plaintiff is in possession and enjoyment of the Suit Schedule Property as on date of suit and defendant is illegally interfering and obstructing in the possession of plaintiff. Defendant failed to prove that suit plots are existing in Govt. land sy.no.154 by cogent and convincing evidence. **Accordingly, I answer issue no.1 and 2 in the Affirmative and issue no.4 in negative.**

24. Issue No. 3: The contention of the defendant is that this suit for bare perpetual injunction filed by the plaintiffs in respect of two separate and distinct properties in a single suit is not maintainable under law.

25. Order I Rule 1 of Code of Civil Procedure, 1908 states that:

"1. Who may be joined as plaintiffs

All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise."[2]

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26. The provision clearly mentions two grounds upon which a party may be joined in a suit. First, the party must have a right to claim a relief, either arising out of the same act or same transaction or arising out of a series of acts or transactions upon which the suit rests. Second, if a separate suit is filed, there would exist a common question of law or fact.

27. In this case also the common question of law and facts involved between both parties. The cause of action to file this suit has been arisen to the plaintiffs upon the notice and order issued by defendant. Claim of both plaintiffs involves common question of law and fact. Therefore in my view the suit brought by the plaintiffs against defendant squarely fall under order 1 rule 1 of CPC and therefore the suit is maintainable.

28. Defendant averred that bare perpetual injunction filed by plaintiffs is not maintainable. The contention of the defendant is that plaintiffs required to file suit for declaration of ownership and it is obligatory on the part of plaintiff to issue prior statutory notice of 60 days as contemplated under Sec 284.

29. Counsel for defendant relied his argument on **The Licensed Electrical contractors Association of Karnataka Vs. B.P. Devaraj since dead by Lrs. (Kar. Civil and criminal Reporter 2019(1) Page 740**, in which it is held that

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"When there is a cloud over the title of the plaintiff, without declaration relief, mere permanent injunction cannot be granted."

30. In **Mudda sani Venkata Narsaiah (D) through Lrs. vs. Mudda sani Sarojana (2016 AIAR(Civil) 601** the Apex Court held that seeking of necessities of relief of declaration not arises when there were no serious cloud on the title of the plaintiff so as to force into seek the relief of declaration of title when the case was in fact based on sale deed executed by the sole absolute owner of the property in favour of plaintiff.

31. **Antula Sudhakar vs. P Buchi Reddy ((2008) 4 SCC 594).** The Hon'ble Apex Court held that the prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiffs title raises cloud on the title of plaintiff to the suit property. A cloud is said to raise over persons title, when some apparent defect in his title to property. Or when some prima facie right of third party over it is made out or shown On the other hand, where the plaintiff has clear title supported by documents if a trespasser without any claim to title or an interloper without any apparent title denies the plaintiffs title it does not amount to raising cloud over the title of the plaintiff and it will not be necessary for the plaintiffs to sue for declaration.

32. In this present case plaintiff claiming to be owner and

*Ramesh
26.4.18*

possessor of suit property through registered sale deeds. Defendant alleging that sellers of plaintiffs had no title over the suit property. But has not produced any document to show that suit property is in the Government Parampok land sy.no.154 measuring 3 acres of Basavakalyan colony. Dw-1 deposed that they have not challenged the sale transactions till today. Mere refusal does not create cloud on the title, ownership of plaintiff. Under these circumstances the observations made by Hon'ble Apex Court Aptly applicable to this case.

33. Under Sec 34 of the Specific Relief Act a mere suit for declaration does not lie when the consequential relief like injunction is available. But under Sec 38 the relief of injunction can be granted even if no declaratory relief is expressly prayed for. Therefore on reading of these two sections and the position of law held by Hon'ble Apex Court it is clear that suit for bare injunction is maintainable without prayer for declaration of title.

34. As stated by defendant as per Sec 283 and 284 of Karnataka Municipalities Act no suit shall lie in respect of anything in good faith or intended to be done under the act against Municipal Council or any committee constituted under the act or against any officer or servant of Municipal council or against any person acting under and in accordance with directions of Municipal council, committee, officer or servant or of a Magistrate until the expiration of 60

*Rajendra K
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days next after notice in writing.

35. However as per Sec 284 (2) nothing in Sec 284 shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by giving the notice or the postponement of institution of the suit. Therefore the present suit for mere perpetual injunction is maintainable without previous notice. **Hence I answer Issue no.3 Negative .**

36. **Issue NO.5 and 6 :** The suit filed by plaintiff is injunction simplicitor without seeking declaration. It is already held that, plaintiffs have proved their possession over the suit schedule property as well as interference thereon by the defendant . Therefore, in order to protect the possessory right of the plaintiffs over the suit schedule property, it is necessary to extend the discretionary power to meet the ends of justice. Accordingly, plaintiff is entitled to the relief of perpetual injunction. Since defendant has failed to prove his case, defendant is not entitled to the reliefs claimed. **Accordingly, Issue No. 5 answered in affirmative and issue No. 6 is answered in the negative.**

37. **Issue No.7:** In view of my finding on the above issue No. 1 to 6 I proceed to pass the following ;

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ORDER

The suit of the plaintiff is hereby decreed.

Defendant restrained perpetually from demolishing the existing building in municipal property No.27-138/2-D & 2738/2D/2 situated in block No. 6 at Basavakalyan.

Counter claim of the defendant is hereby dismissed.

Draw decree accordingly.

(Judgment is Dictated to the stenographer directly on computer, typed by him corrected and then pronounced by me in the open court on this this 26th day of April 2019)

R. Upadhye

(RAGHAVENDRA UPADHYE)

Civil Judge, & J.M.F.C.
Basavakalyan.

ANNEXURE

- I. List of witnesses got examined for plaintiff.
PW1 Zahinabee w/o Haji Noorukhan Toti.
PW2 Md. Madar s/o Pashamiyan.
- II. List of witnesses Got examined for defendants :
DW1 Md.Faheemoddin
 Jr. Engineer CMC B.Kalyan.
- III List of documents got marked for plaintiff.
Ex.P 1 Certified copy of sale deed.
Ex.P 2 Certified copy of sale deed.
Ex.P3 Encumbrance certificate.

- Ex.P4 Encumbrance certificate.
Ex.P5 Notice of CMC Basavakalyan.
Ex.P6
& Ex.P7 2 photos
Ex.P8 C.D
Ex.P9 Application to CMC Basavakalyan.
Ex.P10 Electricity bill.
Ex.P11 Electricity bill.

IV List of documents got marked for defendants :

- Ex.D1 Authorization letter.
Ex.D2 Certified copy of ROR.
Ex.D3 Attested copy of rejection of construction
 permission.
Ex.D4 Arrested copy of Govt. circular .
Ex.D5 Original application of plaintiff.
Ex.D6 Original notice.

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CIVIL JUDGE & JMFC,
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