IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE C M JOSHI

REGULAR FIRST APPEAL NO.949 OF 2009 (INJ)

C/W

REGULAR FIRST APPEAL NO.950 OF 2009 (INJ)

IN RFA No. 949/2009:

BETWEEN:

SMT. M. SHARADA W/O R. RAMACHANDRA,
AGED ABOUT 60 YEARS,
RESIDING AT NO.167, NEHRU ROAD,
3RD CROSS, KAMMANAHALLI,
ST. THOMAS TOWN PAST,
BANGALORE-560 084.

...APPELLANT

(BY SRI M.K. SHIVARAJU, ADVOCATE)

Digitally signed by SHIVALEELA DATTATRAYA UDAGI
Location: HIGH COURT OF KARNATAKA

AND:

1. SRI. SELVARAJ,
   FATHER'S NAME NOT KNOWN,
   AGED ABOUT 56 YEARS,

2. SMT. SAROJA W/O SELVARAJ,
   AGED ABOUT 52 YEARS,

   BOTH ARE RESIDING AT NO.23, NEHRU ROAD,
   NEAR KULLAPPA CIRCLE, KAMMANAHALLI,
   ST. THOMAS TOWN POST, BANGALORE-560 084.

...RESPONDENT

(BY SRI. N. VINAYA KEERTHI, ADVOCATE FOR CR1 & R2)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF CPC ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 08.06.2009 DECREEING THE COUNTER CLAIM OF THE RESPONDENTS IN O.S. NO.1320/1998 ON THE FILE OF THE XXIV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH:6) AND ETC.

IN RFA NO.950/2009:

BETWEEN:
SMT. M. SHARADA W/O R. RAMACHANDRA,
AGED ABOUT 60 YEARS,
RESIDING AT NO.167, NEHRU ROAD,
3RD CROSS, KAMMANAHALLI,
ST. THOMAS TOWN POST,
BANGALORE-560 084.

...APPELLANT

(BY SRI M.K. SHIVARAJU, ADVOCATE)

AND:
1. SRI. SELVARAJ,
   FATHER'S NAME NOT KNOWN,
   AGED ABOUT 56 YEARS,

2. SMT. SAROJA W/O SELVARAJ,
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   NEAR KULLAPPA CIRCLE, KAMMANAHALLI,
   ST. THOMAS TOWN POST, BANGALORE-560 084.

...RESPONDENTS

(BY M/S LINC & CO., ADVOCATE FOR R1 & R2)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF THE CPC ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 08.06.2009 DISMISSING THE SUIT OF THE PLAINTIFF IN O.S. NO.1320/1998 ON THE FILE

OF THE XXIV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH:6) AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THROUGH VIDEO CONFERENCING AT KALABURAGI BENCH, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE C M JOSHI)

These appeals are filed by the plaintiff in O.S.No.1320/1998 assailing the dismissal of the suit filed by her and decreeing the counter claim of the defendants by the 24th Additional City Civil and Sessions Judge, Bengaluru (CCH-6) dated 08.06.2009.

2. The parties would be referred to as per their rank before the trial Court.

3. The facts that are germane for disposal of these appeals are as below:

a) The plaintiff-Sharada happens to be the owner in possession of the sites bearing Nos.24 and 25 situated

at Kammanahalli, Bengaluru North Taluk totally measuring 60 feet East – West and 49.5 feet North – South. The defendant Nos.1 and 2 are the occupants of the site No.23, which is situated on the eastern side of the site of the plaintiff. It also measures 50 feet North –South and 30 feet East – West.

b) Plaintiff contended that she purchased site Nos.24 and 25 under a registered sale deed dated 26.08.1991 and since then, she is in possession and enjoyment of the same. Accordingly, the revenue documents stand in her name and she is paying the property tax to the concerned authorities regularly. She further contended that she has constructed a residential house in a portion of the property and rest of the property is vacant.

c) The plaintiff further contends that defendant Nos.1 and 2 are the husband and wife and they are the adjacent owners of the suit schedule property namely of the site bearing No.23. They do not have any right, title or

interest over site Nos.24 and 25 owned by the plaintiff and they have tried to obstruct the plaintiff from putting up any construction over the vacant space left in her property. It is also stated that the defendants have fully constructed a building in their property, without leaving any space on either side of the property for free flow of light and air.

d) When the plaintiff tried to construct a building on her portion of the land, the defendants obstructed the construction to harass her since she belongs to weaker section of the society. Such obstruction was on 09.02.1998 and therefore, the plaintiff approached the jurisdictional Police at Banasawadi, who advised the plaintiff to approach the Civil Court.

e) The defendants having the support of the rowdy elements, economically sound, are taking advantage of the position of the plaintiff and therefore, the plaintiff prayed for a permanent injunction to restrain the defendants, agents from interfering the peaceful possession and

construction work of the plaintiff in the suit schedule property.

4. On being served with the summons, the defendants appeared and filed their written statement setting up a counter claim.

a) They admitted that they are husband and wife and defendant No.2 is the owner in possession of Site No.23 situated on the eastern side of the sites belonging to the plaintiff.

b) They denied that they have constructed building in the entire site No.23 without leaving any set back. They stated that on the eastern side of their building, they have left a 03 feet set back and have erected a compound wall. They denied that they had objected the plaintiff to construct any building in her property. They denied all other averments made by the plaintiff in her plaint.

c) It is the contention of the defendants that the plaintiff started digging adjacent to the compound wall on

the eastern side of her property without leaving any set back. Therefore, they approached the concerned Police and the Police have issued notice to the plaintiff and also the Police informed the authorities of Bengaluru City Corporation. As a result, due to the pressure by the Police as well as City Corporation, the construction was stopped, which prompted the plaintiff to file a suit.

d) It is alleged that on the basis of the status-quo order of the trial Court, the plaintiff completed construction of the illegal wall abutting the defendants compound wall and grills and thereby, obstructed the free flow of air and light to the defendants house. The plaintiff also constructed a shed like structure abutting the property of the defendants, which prompted the defendants to file a Police Complaint.

e) In their counter claim, they contended that the defendant No.2 purchased the site No.23 in 1989 and constructed the ground floor building in the year 1990 and are paying the tax to the concerned authorities regularly.

They constructed the first floor in the year 1994 by leaving 03 feet set back towards the property of the plaintiff. To safeguard their house, since 1991, they have put up a grill on their compound wall with the consent of the plaintiff. The plaintiff had never objected to the said grills and also the staircase for the first floor.

f) In the year 1990 and 1994, when the defendants constructed the building, the premises was not within the jurisdiction of Bengaluru City Corporation and as such, the building bye-laws were not applicable and no building plans were being approved by the Panchayat. As such, there is no such sanctioned plan.

g) The sites came in the limits of the Corporation in the year 1995 and building licences were issued from 1997. Therefore, it was necessary for the plaintiff to obtain the building plan approved by the Corporation when she started the construction on 03.01.1998. It is alleged that the plaintiff first constructed a 10 feet high wall to seal all the means of air and light to the defendants' house and

caused injury to them. This prompted the defendants to lodge complaint to the Corporation as well as to the Police.

h) The defendants lodged a complaint to the Corporation under Section 321 of the KMC Act on 17.02.1998 requesting to stop illegal construction of the plaintiff. Despite all these efforts, the plaintiff has proceeded to construct a structure with a sheet roof abutting the compound wall of the defendants.

i) It is alleged that the plaintiff is trying to construct building along the periphery of her site leaving open space at the centre as may be found from the photographs. Therefore, the defendants prayed that apart from dismissing the suit of the plaintiff, the illegal constructions abutting the compound wall of the defendants, without leaving a set back, be ordered to be demolished. They also seek permanent injunction, interfering with the defendants' right to air and light on the eastern side of their property.

5. On the basis of the above pleadings, the following issues were framed by the trial Court:

1. *Whether plaintiff proves that she has put up wall on the South-Western corner of her property legally by leaving proper set back?*

2. *Whether the plaintiffs further prove the alleged interference by the defendants?*

3. *What order or decree?*

Issues on counter claim:

1. *Whether the defendants prove that the plaintiff interfered with their possession in the property described in the schedule to the written statement?*

2. *Whether they further prove that the plaintiff has put up wall on the eastern side of their property illegally and thereby free flow of air and light to their property is diminished?*

3. *Whether the defendants entitled to the relief of permanent and mandatory injunction as prayed for in the counter claim?*

6. The husband of the plaintiff as her power of attorney holder was examined as PW.1 and Exs.P1 to 14 were marked. The defendant No.2 was examined as DW.1 and Exs.D1 to 36 were marked. During trial, the Assistant Executive Engineer of Bengaluru Municipal Corporation was appointed as Court Commissioner and his report was

marked as Ex.C1 and C2 while he was subjected to cross-examination before the trial Court.

7. After hearing the arguments of both the sides, all the issues were answered in favour of the defendants and while dismissing the suit, the counter claim was decreed.

8. Being aggrieved by the same, the plaintiff has filed these appeals. (One against the dismissal of the suit and the other against the decree in the counter claim.)

9. On appeals being admitted, the trial Court records have been secured. The arguments by learned counsel appearing for the appellant and the learned counsel appearing for the respondents are heard. An effort was made by this Court to convince the parties to go for a settlement. However, the parties could not arrive at a settlement.

10. The points that arise are:

i) Whether the plaintiff proved that despite she leaving a set back while constructing a building in her property towards the property of the defendants, the defendants are obstructing her construction?

ii) Whether construction of the plaintiff impairs the free flow of light and air to the property of the defendants?

iii) Whether the impugned judgment calls for any interference?

The Arguments:

11. The learned counsel appearing for the appellant/plaintiff contend that the defendants in para No.10 of the written statement admit that they have constructed a building in their property and in the year 1991, to safeguard their house, have put up the grills over the set back area, covering the building and the compound wall. It is admitted that they have also constructed a staircase in the set back area to go to the 1st floor.

Therefore, when the defendants contend that such construction by them was with the consent of the plaintiffs, it was incumbent upon them to prove the same. Under these circumstances, the finding of the trial Court is erroneous.

12. The second prong of the argument is that the nature of the construction of the plaintiff is in the form of sheds and it being a temporary construction, it is not necessary for the plaintiff to obtain any building permission. The defendants admitted that they do not have any building permission, they could have not have insisted to leave a set back by the plaintiff. The photographs produced by the defendants themselves show that there is no compound wall but it is a pakka wall over which the 1st floor is constructed. Therefore, the trial Court erred in dismissing the suit of the plaintiff. It is contended that there being no prayer regarding any easementary right of light and air, the counter claim could not have been decreed. It is submitted that the report of the Court

Commissioner show that notice was not issued to the plaintiff while the commission work was carried out, therefore, it could not have been relied by the trial Court. He also relied on the judgment of the Supreme Court in the Case of ***MUNI SUVRAT SWAMI JAIN SMP SANGH VS. ARUN NATHURAM GAIKWAD & OTHERS***[1] to contend that a mandamus cannot be issued for demolition.

13. *Per contra,* learned counsel appearing for the respondents/defendants submits that the photographs clearly show that the plaintiff is using her property as a scrap yard and she has constructed sheds adjoining the periphery. The photographs clearly show that there is no set back left by the plaintiff. Even the Corporation records, which initiated proceeding under Section 321 of Municipal Corporations Act, show the violations of the plaintiff.

14. Learned counsel for the respondents advert to the admissions of PW.1 and points out that PW.1 is

[1] 2006 AIR SCW 5192

adamant in answering the questions. It is also contended that the plaintiff has filed a suit against the Corporation in OS.No.2601/1998 and PW.1 admit that no licence was obtained for constructing the shed. It is pointed out that the trial Court has rightly assessed the evidence on record, including the report of the Court Commissioner and as such, the appeals are bereft of any merits.

Analysis and Conclusions on Point No.1 and 2:

15. The fact that the properties of the plaintiff and defendants are adjoining each other is not in dispute. The cross-examination of PW.1 shows that the construction of a shed in the property of the plaintiff adjoining the property of the defendants is admitted. He admits that the shed measures 10 feet East-West and 23 feet North-South. When it was suggested to PW.1 that building was constructed abutting the defendants' wall and closed the window of the defendants, it is replied that he has constructed the wall in his property, thereby, the photograph at Ex.D2 is admitted by him. This shows that

the wall constructed by the plaintiff, which is the western wall of the shed closes the entire opening above the compound wall of the defendants. The cross-examination discloses that no set back was left by the plaintiff while constructing the shed. When it was suggested to PW.1 that on account of the construction of the said shed by the plaintiff, there is obstruction to free flow of light and air, he replies adamantly 'what can I do for that?' Evidently, the plaintiff has not left any set back while constructing the building in her property. When we examine the testimony of DW.1, they rely on the photographs and the plaint of the plaintiff in O.S.No.2601/1998 filed against the Corporation. The plaint at Ex.D5, show that the plaintiff had sought an injunction against the Corporation. The outcome of the said suit is not known. The cross-examination of DW.1 do not show anything which would be of any help to the plaintiff. It is worth to note that the say of the defendant that she constructed the building much prior to the property came within the limits of the Municipal Corporation is not rebutted.

16. The Ex.D36, which is the order passed by the Municipal Corporation, shows that its official had visited the suit schedule property and they had come to the conclusion that the plaintiff had constructed a shed recently and whereas, the building constructed by the defendants was more than 8-10 years old. Therefore, they concluded that the shed constructed by the plaintiff in the suit schedule property being without sanction of the plan, action has to be taken against the plaintiff. It is this order of the Corporation which made the plaintiff to file a suit for injunction against the Corporation.

17. The report of the Court Commissioner shows that the defendants have left a setback partially, to the extent of 03 feet 03 inches, whereas, the Commissioner has made it clear that the plaintiff has constructed the shed without leaving any setback. It is pertinent to note that the Court Commissioner had not given any notice to the plaintiff, but he had carried out the commission work in accordance with the memo of instructions filed. The fact

that he had not issued any notice to the plaintiff cannot be a ground to brush aside the report of the Court Commissioner. This aspect has been rightly considered by the trial Court in its judgment.

18. Coming to the evidence placed on record on behalf of the defendants, it is relevant to note that the photographs produced by defendants at Ex.D26 show that the entire portion of the building of the defendants, which has a staircase and open windows, has been closed with a wall. Similarly, the other photographs which can be seen from Exs.D28 to D30 also establish that absolutely no setback had been left by the plaintiff while constructing the shed. It is not the case of the plaintiff that shed is temporary and after construction of a pakka building, the shed would be removed.

19. The Ex.D36, the notice issued by the Corporation show that the plaintiff had constructed the shed without following the building bylaws. The

conclusions of the Standing Committee of the Corporation is clear in this regard.

20. From the above evidence on record, it is clear that when the plaintiff tried to construct a shed, abutting the compound wall and the building of the defendant, which was objected by the defendants and it led to filing of the present suit. There are no such admissions in the cross-examination of DW.1. It is pertinent to note that the suggestions made to the DW.1 in the cross-examination show that the plaintiff had purchased the site even prior to the purchase of the site of the defendants, whereas, the sale deed of the plaintiff show that she had purchased it on 26.08.1991; but defendant No.2 as per her testimony, which is not denied, had purchased her site No. 23 in 1989.

21. Thus, the evidence clearly establish that the plaintiff without following the building bylaws tried to construct a shed in her property i.e., in Site No.24 and the same was objected by the defendants which led to filing of

the present suit. Evidently, the plaintiff has approached the Court without following the building bylaws. She has not approached the Court with clean hands, whereas the defendants had constructed the building much earlier. Of course, their construction is partially violating the building bylaws as observed by the Court Commissioner. It is for the plaintiff to take suitable action in respect of the same.

22. Under these circumstances, the admissions of the plaintiff coupled with the report of the Court Commissioner and the finding of the Standing Committee of the Corporation show that the plaintiff is not entitled for any relief. The rule of preponderance of probability leans in favour of the defendants.

23. Coming to the counter claim of the defendants, they have sought for an injunction against the plaintiffs and have sought for demolition of illegal construction. The illegal construction has been established by way of the admission of the plaintiff that she had not obtained any

building permission to construct the shed. The resolution passed by this Standing Committee of the Corporation as per Ex.D36, which show that the construction of the plaintiff is illegal and without following the building bylaws also comes to their aid. Therefore, I do not find any reason to find fault with the conclusions reached by the trial Court. Learned counsel appearing for the appellant has placed reliance on the judgment in the case of ***MUNI SUVRAT SWAMI JAIN SMP SANGH*** (referred supra) to contend that the High Court cannot issue a mandamus for demolition. Obviously, the said decision is in respect of a mandamus to be issued in a Writ Petition. In the case on hand, evidence has been led by the parties and the plaintiff has not produced any documentary evidence to show that she had obtained a building permission to construct the shed in her property. Therefore, the above decision cannot be made applicable to the case on hand.

24. The above discussion shows that the plaintiff has approached the Court seeking injunctory relief without

following the building bylaws. She has tried to construct a shed without obtaining the building permission from the Municipal Corporation so as to prevent free light and air to the property of the defendants. She seeks to prevent the defendants from objecting to her illegal construction. Obviously, she has not left any setback. Therefore, Point No.1 is answered in the 'Negative'.

25. On the other hand the defendants have constructed their building leaving the setback for some distance in their property and their property was included in the Municipal Corporation limits later to construction. Thus, the construction of the plaintiff obstructs the free flow of air and light to the property of the defendants. Hence, the Point No.2 is answered in the 'Affirmative'.

Point No. 3:

26. The trial Court has considered all the relevant facts and has rightly come to the conclusion that the suit of the plaintiff fails and the counter claim succeeds. This

conclusion cannot be termed to be perverse or illegal. Hence, the Point No.3 is answered in the 'Negative'.

27. In the light of the above discussions, the appeals are bereft of any merits. If at all the defendants have also violated the building bylaws, the plaintiff is at liberty to invoke the provisions of Section 321 of the Municipal Corporations Act, 1976 and seek suitable remedy before appropriate forum. Hence, the following:

ORDER

The appeals are dismissed with costs.

The judgment of the trial Court in O.S.No.1320/1998 dated 08.06.2009, is hereby confirmed.

Sd/-
(C M JOSHI)
JUDGE

List No.: 19 Sl No.: 1
CT: AK