

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26th DAY OF MARCH, 2009

BEFORE

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

WRIT PETITION NO.7334/2007 (GM-CPC)

BETWEEN:

1 SHRI M C NARAYANA
SON OF LATE CHIAKKAIAH
AGED ABOUT 39 YEARS
AGRICULTURIST
R/AT SOME Gowda's STREET
MADDUR TOWN
MANDYA DISTRICT

... PETITIONER

(By Smt : SUMITHRA FOR M P ASSOCIATES FOR
PETITIONER)

AND :

1 SMT G SARVAMANGALAMMA
WIFE OF DR.SIDDALINGAMURTHY
AGED ABOUT 55 YEARS
R/AT 2ND CROSS
LEELAVATHI EXTENSION
MADDUR TOWN

2 TOWN MUNICIPAL COUNCIL
MADDUR TOWN
MADDUR
REPRESENTED BY ITS CHIEF ENGINEER

... RESPONDENTS

(By Sri : A GOPALAIAH FOR R1; R-2 (SD))

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO: QUASH THE ORDER DT.12.4.2007 IN M.A.NO.41 OF 2006 ON THE FILE OF THE CIVIL JUDGE (SR.DVN) AT MADDUR SETTING ASIDE ORDER OF TEMPORARY INJUNCTION S PER ANNEXURE-J.

This Petition coming on for preliminary hearing this day, the Court made the following:

ORDER

The petitioner has instituted a suit in O.S.No.172/2006 before the Civil Judge, (Jr.Dn.), Maddur, against the respondent herein to direct the 1st defendant to demolish the illegal construction made on B schedule property and to restrain the 1st defendant from putting up any construction over B schedule property without leaving any set back as per the Town Planning and Municipal rules. In the suit, the plaintiff had also obtained an ad-interim order of injunction to restrain the defendant-1 from putting up any

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construction over the plaint B schedule property without leaving the set back. The exparte ad-interim order of injunction granted earlier was made absolute after hearing the parties. Being aggrieved by the same, the 1st defendant had filed an appeal before the Civil Judge, (Sr.Dn.), Maddur, in M.A.No.41/2006 which appeal came to be allowed on 12th April 2007. Challenging the divergent findings the present petition is filed.

2. On 26.4.2007 this Court has directed the 1st respondent from putting up any construction on the property bearing No.1073/1013 measuring 10805 sq.ft. till further orders. The said order is continued. The original suit is instituted in the year 2006. Considering the actual dispute between the parties, this Court is of the opinion that instead of keeping this matter pending, it would be in the interest of both the parties

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to direct the Civil Judge, (Jr.Dn.), Maddur, to dispose of the suit on merits.

3. Accordingly, this Writ Petition is disposed of directing the Civil Judge, (Jr.Dn.), Maddur, to dispose of the suit on merits and in accordance with law within a period of four months from today. Till the disposal of the suit, the order passed by this Court on 26.4.2007 shall be in force. If the respondent-1 has already constructed any building, the same would be subject to the result of the suit and he shall not further proceed with the construction.

**Sd/-
Judge**

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