

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

**MFA NO.7006 OF 2021(CPC) C/W MFA NO.6986 OF
2021(CPC) AND 6988 OF 2021(CPC)**

MFA NO.7006 OF 2021(CPC)

BETWEEN:

Shri B.S Venkataswamy Naidu
S/o Late Subbaiah Naidu
Aged about 66 years
R/at No.21, Sy.No.60/2
Behind Vinayaka Temple
KSRTC Layout
Uttarahalli Main Road
Chikkalasandra
Bengaluru-560 061.

...Appellant

(By Sri Zulfikir Kumar Shafi, Advocate)

AND:

M/s Varshini Developers
A Registered Partnership Firm
Having its office at
Sy. No.20/2E, Arehalli Village
Uttarahalli Hobli
Bengaluru South Taluk
Bengaluru-560 061
Represented by its
Managing Partners

a) Sri V. Shashikumar
S/o V. Veerabrahma Naidu

b) Sri C. Subramani
S/o Late Chinnaswamy Naidu

...Respondents

(By Sri M.R Rajagopal, Senior Advocate for
Sri B.C. Avinash, Advocate for C/R)

This MFA is filed under Order 43 Rule 1(r) r/w Section 151 of CPC, against the order dated 05.10.2021 passed on I.A No.1/2021 in O.S No.4327/2021 on the file of the XVII Additional Civil and Sessions Judge, Bengaluru, dismissing the petition filed under Order 39 Rule 1 and 2 r/w Section 151 of CPC.

MFA NO.6986 OF 2021(CPC)

BETWEEN:

Shri B.S Venkataswamy Naidu
S/o Late Subbaiah Naidu
Aged about 66 years
R/at No.21, Sy.No.60/2
Behind Vinayaka Temple
KSRTC Layout
Uttarahalli Main Road
Chikkalasandra
Bengaluru-560 061.

...Appellant

(By Sri Zulfikir Kumar Shafi, Advocate)

AND:

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- a) Sri V. Shashikumar
S/o V. Veerabrahma Naidu
- b) Sri C. Subramani
S/o Late Chinnaswamy Naidu

...Respondents

(By Sri M.R Rajagopal, Senior Advocate for
Sri B.C. Avinash, Advocate for C/R)

This MFA is filed under Order 43 Rule 1(r) of CPC, against the order dated 05.10.2021 passed on I.A No.2 in O.S No.4327/2021 on the file of the XVII Additional Civil and Sessions Judge, Bengaluru (CCH-16), dismissing the I.A No.2 filed under order 39 Rule 1 and 2 of CPC.

MFA NO.6988 OF 2021(CPC)

BETWEEN:

Shri B.S Venkataswamy Naidu
S/o Late Subbaiah Naidu
Aged about 66 years
R/at No.21, Sy.No.60/2
Behind Vinayaka Temple
KSRTC Layout
Uttarahalli Main Road
Chikkalasandra
Bengaluru-560 061.

...Appellant

(By Sri Zulfikir Kumar Shafi, Advocate)

AND:

M/s Varshini Developers
A Registered Partnership Firm
Having its office at
Sy. No.20/2E, Arehalli Village
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Bengaluru South Taluk
Bengaluru-560 061

Represented by its
Managing Partners

a) Sri V. Shashikumar
S/o V. Veerabrahma Naidu

b) Sri C. Subramani
S/o Late Chinnaswamy Naidu

...Respondents

(By Sri M.R Rajagopal, Senior Advocate for
Sri B.C. Avinash, Advocate for C/R)

This MFA is filed under Order 43 Rule 1(r) r/w
Section 151 of CPC, against the order dated
05.10.2021 passed on I.A No.4/2021 in O.S
No.4327/2021 on the file of the XVII Additional Civil
and Sessions Judge, Bengaluru CCH-16, allowing the
I.A No.4 filed under Order 39 Rule 1 of CPC.

These MFAs coming on for **admission** this day,
the Court delivered the following:

JUDGMENT

All these appeals are disposed of by a
common order.

2. Heard Sri Zulfikir Kumar Shafi, learned
counsel for the appellant and Sri M.R.Rajagopal,
senior counsel for the respondent.

3. Appellant is the plaintiff in the suit O.S.4327/2021 on the file of XVII Additional City Civil and Sessions Judge, Bengaluru. Alleging encroachment on his property to an extent of 0.2½ guntas in Sy. No. 21/1 and 0.1¼ guntas in Sy. No. 20/2E2 situated at Arehalli Village, Bengaluru South Taluk, the plaintiff instituted a suit for declaration of his title, mandatory injunction, possession and permanent injunction. In the suit he filed two applications for temporary injunction, one for restraining the defendant from putting up construction and the other for preventing alienation of the property. The defendant set up a counter claim in the written statement and also filed an application for temporary injunction against the plaintiff.

4. The trial court dismissed the plaintiff's two applications and allowed the defendant's application. Hence, these three appeals.

5. It is the argument of the appellant's counsel that there is no dispute that the plaintiff is the absolute owner of Sy. No. 21/1 and 20/2E2 of Arehalli Village. The defendant being the owner of the neighbouring land bearing Sy. No. 20/2E1 has encroached upon 2 ½ guntas in Sy. 21/1 and 1¼ guntas in Sy. No. 20/2E2. He submits that survey was conducted in the year 1989 and land in Sy. No. 20/2E was divided into two parcels, namely 20/2E1 and 20/2E2. The property belonging to the defendant is situated in Sy. No. 20/2E1, but in all the records the number has remained as 20/2E1 only. The survey also shows clear encroachment on the plaintiff's property by the defendant. The trial court has given a finding that according to the survey sketch, the encroachment is by the owner of the land in Sy. No. 20/2E1. But in the plaint it is stated that the encroachment is by the owner of land in Sy. No. 20/2E. Therefore, there is no encroachment by the defendant. It is the

argument of the appellant's counsel that this finding of the trial court is wrong as the survey clearly shows that the defendant is the owner of next adjacent land, 20/2E1.

6. If para 6 of the plaint is perused, what the appellant has pleaded is that the defendant is the owner of Sy. No. 20/2E. Schedule 'B' of the plaint is described as piece and parcel of Sy.No.20/2E1 measuring 0.01¼ guntas of land. Therefore, when the plaint recites that the defendant is the owner of Sy. No. 20/2E and the survey sketch shows that the encroachment is by the owner of Sy. No. 20/2E1, the trial court is justified in giving a finding that the defendant might not have encroached. I do not find any infirmity in the said finding.

7. The appellant's counsel now submits that there is a mistake in mentioning the survey number and that the plaintiff wants to rectify the

survey number. The plaintiff can amend the plaint if he supplies proper reasons in support of the application for amendment, but as of now the findings of the trial court cannot be disturbed. Therefore all the appeals deserve to be dismissed. Accordingly, the appeals are dismissed. Liberty is given to the appellant to apply for amendment of the plaint. The trial court may decide the application for amendment on its merits without being influenced by any of the observations made hereinabove. Liberty is also reserved to the appellant/plaintiff to make one more application for temporary injunction if the trial court grants amendment. Needless to say that the respondent has got the right to contest the application for amendment as also application for temporary injunction if they are filed by the appellant.

**Sd/-
JUDGE**

ckl/-