

MFA NO. 806/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[MEERA AJITH VS. JOHN DOE ALIAS ASHOK KUMAR AND
OTHERS]

SHKJ

05.03.2022

(VIDEO CONFERENCING / PHYSICAL HEARING)

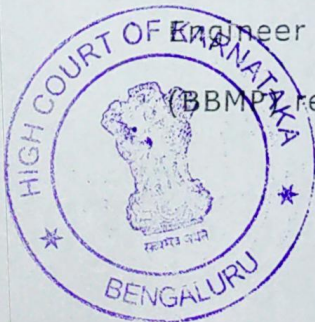
ORDER ON I.A.NO.1/2022

Heard the appellant's counsel.

The appellant has sought an exparte order of temporary injunction against unknown first respondent, which order is popularly called 'John Doe' order. The events giving rise to this appeal are as below:

The appellant has filed a suit, O.S.No.6488/2021, before the XXV Additional City Civil and Sessions Judge, Bengaluru for permanent injunction and mandatory injunction against five defendants, of whom the first defendant is an unknown person. Defendants 2 to 5 are the Commissioner, the Executive Engineer, the Assistant Executive Engineer and the Assistant Engineer of Bruhat Bengaluru Mahanagara Palike

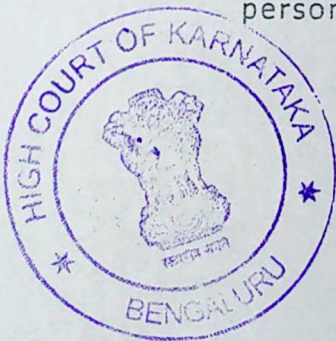
(BBMP) respectively.



The property in respect of which the suit has been filed bears House List No.33, Khatha No.972/33 Thanisandra, 8th Cross, Bhuvaneshwari Nagara, Dasarahalli, Bengaluru. In the suit she filed an application as per IA No.2, for temporary injunction against 'John Doe' first defendant to restrain him from interfering with her peaceful possession of the suit property.

The Trial Court declined to grant exparte order of temporary injunction. Though on facts it has come to conclusion that the plaintiff could not make out a prima-facie case for grant of temporary injunction, it has also held that if exparte temporary injunction against unknown defendant is granted, compliance under Order 39 Rule 3(a) and (b) of CPC cannot be effected and therefore exparte temporary injunction cannot be granted against unknown person/s.

The learned counsel for the appellant submits that, if the plaintiff was aware of the name of the person who constructed a compound wall around



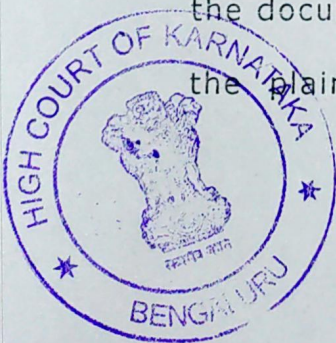
the suit property, she would have definitely made them parties to the suit. All her efforts to ascertain the identity of the interferers failed and in order to protect her interest, she had to file a suit against 'John Doe' first defendant and other defendants who are the officials of BBMP. No relief is sought against BBMP officials in the application for injunction and it is only against 'John Doe' first defendant.

The plaintiff purchased suit property under a registered sale deed 03.07.1995 for valuable consideration and she obtained katha from BBMP. These documents are produced before the Court. The plaintiff also produced photographs showing the construction of compound wall. The property is actually vacant. If injunction is not granted pending disposal of the suit, a building will be constructed and in that event, the plaintiff will lose possession. She made all her best efforts to trade the person who undertook construction of



compound wall and completed it. She also approached the police, but they did not take any action. In these circumstances, the appellant was constrained to approach the Court. The Trial Court could have granted temporary injunction in order to protect the interest of the plaintiff, and for the reason that the Trial Court did not grant injunction and has actually given findings that the plaintiff has failed to make out a prima-facie case, the plaintiff has approached this Court by filing this appeal. He further submits that though the Trial Court has ordered notice on the application to defendants 2 to 5, the appeal is maintainable since the Trial Court has actually expressed its opinion that the plaintiff has failed to make-out a prima-facie case while declining to grant ex parte temporary injunction.

I have perused the plaint, the application and the documents that the appellant has produced. In the plaint it is stated that the plaintiff is the



ordinary resident of Thrisur, Kerala and that she came to know that some unknown persons trespassed over her property and illegally erected compound wall. Then she approached Amruthahalli police station and requested the police to investigate and find out the trespassers. But, the police issued NCR stating that unknown persons might have raised illegal construction. Thus she could not trace the identity of the miscreants.

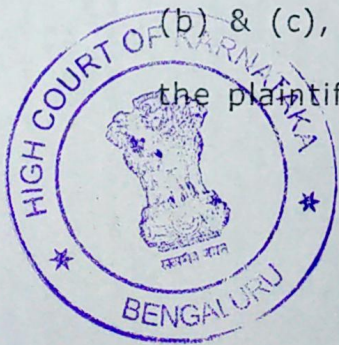
The impugned order shows that the Trial Court has expressed its opinion that plaintiff has not made out prima-facie case. The application for temporary injunction was made against unknown first defendant, and since a clear opinion has been expressed by the Trial Court, the impugned order amounts to disposing of application for temporary injunction and therefore appeal is maintainable.

The documents that the appellant has produced show that she purchased the suit property under a registered sale deed dated



03.07.1995 from one Erappa and Narayanamma, represented by their GPA holder Nageshwara Verma. She has produced katha extract issued in her name in respect of the suit property and also photographs showing various stages of construction of the compound. She has also produced the NCR endorsement dated 11.11.2021 issued by Amruthahalli police. If all these documents are perused, prima-facie conclusion can be formed that she could be having right over the suit property. And the photographs show compound walls having been constructed on two sides of a vacant site. It appears that adjacent property owners have constructed compound walls on other two sides.

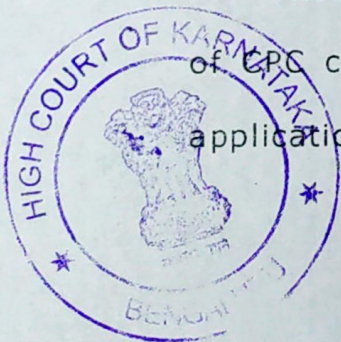
Order XXXIX Rule 1(a) CPC states that an order of temporary injunction may be granted against any party to the suit. According to Clauses (b) & (c), injunction may be granted in favour of the plaintiff and against the defendant. The plaint



must disclose the names and identity of the parties. But in a situation as has been made out in this case, if there is a threat to the possession of the plaintiff by unknown person/s, is it possible to say that injunction cannot be granted.

I do not think that injunction can be denied if circumstances are as such that there is a serious threat to the possession of the plaintiff by unknown persons. Temporary injunction can certainly be granted to safeguard the interest of the plaintiff. But before granting an order of temporary injunction in a situation like this, the Court must be convinced that the plaintiff has made out a case of extreme urgency, that he is not misusing the situation and that he has tried his level best to trace the interferers. The Court must examine the case very scrupulously.

Though compliance under Order XXXIX Rule 3 of CPC cannot be made by sending copies of the application for injunction, the affidavit, the plaint



and the documents because the defendant is unknown person, yet it can be complied by taking out publication in news papers and affixing the order of grant of injunction on the conspicuous part of the suit property. If the appellant files an affidavit to this effect, it will be due compliance of Order XXXIX Rule 3 of CPC. Compliance can be made by sending copies through registered post if the name of the defendant is known, but in a circumstance like this, compliance can be made in the other modes. The Court must show ingenuity and think innovatively in a circumstance like this and then only ends of justice will be met.

Responding to the paper publication or the notice affixed on the wall, if the person, against whom injunction operates, comes to Court, the application may be decided by hearing all the parties once again. Therefore I find that there is a case for granting '*John Doe*' order against unknown first respondent. In this view the following:



ORDER

An order of temporary injunction is issued restraining the first 'John Doe' respondent/s from interfering with the appellant's peaceful possession of the property bearing House List No.33, Khatha No.972/33 Thanisandra, 8th Cross, Bhuvaneshwari Nagara, Dasarahalli, Bengaluru.

The appellant is hereby directed to comply with Order XXXIX Rule 3 in the following manner:

- a) *She shall take out paper publication of this order in widely circulated Kannada and English Dailies of Bengaluru Edition; and*
- b) *Copy of the order and the appeal memo shall also be affixed on the outer part of the compound wall facing the road.*

This order must be complied within 24 hours and compliance affidavit shall be filed before



closure of office hours of the Registry of this Court on 07.03.2022. If compliance affidavit is not filed, this order will not come into effect.

The Registry of this Court shall issue the operative portion of this order with the schedule of the property to the appellant or her counsel for the purpose of publication in the newspapers and affixture to be effected.

Amruthahalli police is hereby directed to find out the name of the person/s who have constructed the compound on two sides of the suit property and report the same to this Court so that the appellant can implead them as respondents. The Registry is directed to send copy of this order to Amruthahalli police, Bengaluru City.

Issue notice to respondents 2 to 5.

**Sd/-
JUDGE**

//COPY//

ASSISTANT REGISTRAR

..Contd..

