

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR

OS 567/ 2008

PLAINTIFF: Smt. Manohara

V/S

DEFENDANT : S. Robert Nelson

WRITTEN STATEMENT FILED BY DEFENDANT UNDER ORDER VIII

RULE 1 & 2 OF CPC:-

1. The para 1 of the plaint is not disputed. At the out-set, the suit filed by the Plaintiffs is prima facie not maintainable either in law or on the facts of the case and the same is liable to be dismissed in-limine.
2. As said in second para of plaint, It is true that “originally the property mentioned in the plaint schedule is originated from Sy No: 9/2c1 of antharasanahalli village Kasaba Hobli, Tumkur taluk, belongs to one G. Shadrack, the father of the plaintiff and the defendant”. *But defendant humbly submits that, plaintiff with ulterior motive has not disclosed the fact that the dimension in respect to above said survey number is only 0 acres -10 guntas still in the name of G. Shadrack with Revenue Khatha Number 333. The certified Extract of above said phani is produced before this Hon’ble court for kind perusal of the same as Annexure-A .*
3. As said in second para of plaint, It is false to say that the father of the plaintiff and defendant have formed residential layout in the said survey number. *But defendant humbly submits that, the father of the plaintiff and defendant have applied to Deputy Commissioner Tumkur for conversion of land in Sy No: 9/2c of antharasanahalli village Kasaba Hobli, Tumkur taluk, measuring 75 feet x 150 feet*

(10 GUNTAS). The said application is approved vide B.dis. No: ALNSR: 136/87-88 DATED 09-10-1987. The Notarised copy of alienation order is produced for kind perusal of the Hon'ble court as Annexure-B. This alienation is not connected with suit schedule property it is the alienation order of defendant's property.

4. As said in second para of plaint, It is false and misleading to say that an extent of 75 x 119+112 feet was applied for alienation and the said extents was taken for the construction of residential house. *But defendant humbly submits that, after alienation of an extent of 75 feet x 150 feet (10 GUNTAS), a separate phodi was made by Revenue authorities and entered such alienated land portion in Survey number 9/2c2 of antharasanahalli village, Kasaba Hobli, Tumkur taluk. But plaintiff with ulterior motive has not disclosed the fact that Town planning approval was given to an extent of 75 x 119+112 / 2 feet, No: NA.YO.PRA: S.NO: 895 : 324 : 1987-88 dated: 28-05-1988. The notarised copy of Town planning approval is produced as annexure – C. The certified copy of Survey number 9/2c2 RTC is produced for kind perusal of the Hon'ble court as Annexure-D.*
5. As said in second para of plaint, it is incomplete and wrong to say that the said extents was taken by the defendant under the registered release deed dated 02-06-1988. *But defendant humbly submits that, The Release or Single partition deed registered on 03-06-1988 vide Book No: 1 in Vol: No: 2866 at page No: 111-114 in the year 1988-89 of Tumkur Subregistrar office with Registration number 875 was executed by defendant, by clearly stating facts in page 2 of the deed regarding alienation, town planning approval, subsequent gifting of property to an extent of 75x28 feet to Tumkur Municipality for road purposes. But plaintiff with an ulterior motive has not disclosed the said facts in her plaint even after accepting such facts in the said release or single partition deed. The notarized copy of such Release or Single partition deed is produced for kind perusal of the Hon'ble court as Annexure- E.*

6. As said in second para of plaint, “ Accordingly another son of shadrack by name S. Samson also separated from the family by taking the share Extent East west 92 feet, North South 127+124 feet by executing registered release deed in favour of shadrack on 31-10-2002” is a misleading assertion. It is fully denied by defendant. *Defendant humbly submits that, after this plaintiff took the alienated portion, the remaining extent was 21 guntas out of that 11 guntas was taken by S. Samson and such Khatha is made in revenue register vide Khatha Number 298 as can be seen from Annexure-A. The said land is still agricultural land and no alienation order was made in respect to such land, a release deed fancily quoting extents were executed without any legal basis for it.*
7. As said in second para of plaint, that “the father of the plaintiff retained the extents remaining East-West 88 feet North South, towards Eastern side 121 feet, on western side 116 feet wherein constructed RCC house” is an illegal assertion. It is fully denied by defendant. *Defendant humbly submits that, the extent remained after partition among two son’s is 10 Guntas which was entered in Khatha of Plaintiff’s and this defendant’s fathers name. The father of the plaintiff retained such extent only. The said land even at present is still agricultural land and no alienation order was made in respect to such land, but father of plaintiff in collusion with municipal authorities has created illegal municipal Khatha to an extent of East-West 88 feet North South, towards Eastern side 121 feet, on western side 116 feet without any alienation order or any Town planning approval. Such attitude is violation of Section 95(2) and Section 96 of Karnataka Land Revenue Act 1964, plaintiff is under legal penal provision and seeking this Hon’ble courts process without coming in clean hands before the court.*
8. As said in second para of plaint, that “ Suit schedule property was gifted by him in favour of the plaintiff under registered gift deed dated 16-07-2004 and delivered physical possession to the plaintiff for her bonafide use and occupation” is a misleading assertion. It is fully denied by defendant. *Defendant humbly*

submits that, the father of plaintiff and defendant only had about 10 guntas of land in his name, he has not converted the same or made any effort to have any ADLR order to convert Gunta measurement to Feet measurement, has fancily written wrong measurement of East-West 88 feet North South, towards Eastern side 121 feet, on western side 116 feet, which turns out to an approximate 10428 sq ft and road margin 2464 sq ft which turns out to 11.83 guntas. This title to the extent of 11.83 guntas is not there to the donor Mr G.Shadrack. Taking all these illegal acts Plaintiff in collusion of G.Shadrack seeking courts process to illegally hide their misdeeds.

9. As said in second para of plaint, "he (father) also living with the plaintiff in her mess to eke out his livelihood in his olden days" It is fully denied by defendant. This false fact is purposefully drafted to get the pity of Hon'ble court inspite of the fact that this defendant's father is getting pension from central government as retired Assistant Post Master and well off in his retired life.
10. The averments made in second para of the plaint claiming absolute ownership and possession and enjoyment of the suit schedule property is fully denied. It is put to strict proof of legality of transfer and ownership in the alleged measurement. The averments made in the plaint second para related to khatha in the name of the plaintiff and payment of taxes to it is fully denied, and it is liable to strict proof whether such khatha is made out after alienation and town planning approval. The measurements quoted in plaint itself is illegal and its possession and enjoyment is itself cannot be ascertained at this stage without production of revenue records such as "PAKKA BOOK (HISSA SURVEY) FORM 5", and "Karnataka Revision Settlement AKARBANDH (UTTARU)", to ascertain the boundaries of suit schedule property.
11. The averments in para three of the plaint that this defendant is brother of plaintiff is not denied. The averments in para three of plaint that "defendant has constructed a residential house by

encroaching the western portion measuring 202 sq ft and has constructed illegally without leaving the set back and the said extents herein afterwards called as suit B schedule property” this averments is totally false, It is fully denied by defendant. *But defendant humbly submits that, there is no encroachment or there is no encroachment with respect to set back, the plaintiff is well aware of such fact and hence they have not clearly stated in suit schedule property about ‘B schedule property’ inspite of being referred in para three of the plaint.*

12. *Defendant humbly submits that, The plaintiff has averred in para three of the plaint that she has described more fully the B schedule property in the rough sketch, the rough sketch copy is not supplied to this defendant, the rough sketch is totally disputed by this defendant, hence this defendant reserves his right to file further written statement after copy of rough sketch is provided by plaintiff. The description of rough sketch and consequent allegation in para three of plaint is completely denied. The measurements quoted in para three of plaint are false. There is no encroachment as to alleged measurement of 202 sq ft. The plaintiff property is 6 feet away from defendants building line. The set back of 6 feet actually belongs to defendant and plaintiff is claiming such measurement without any legal basis.*

13. *Defendant humbly submits that, The plaintiff and father of plaintiff due to their old age has not properly maintained their agricultural land and hence it is causing nuisance to both plaintiff and this defendant also. Such nuisance is self created one, and plaintiff falsely alleging such things in her plaint para three. The measurement of rooms and shed are not disputed such constructions are within the boundary of defendant property, plaintiff is not having any right over the same. The said constructions are completed by defendant in 1989 and after that there was no new constructions. There is no encroachment regarding such constructions. The said constructions have not encroached any of the portions of plaintiff property.*

14. As alleged in para three of the plaint, It is false to say that defendant wants to knock off valuable property of plaintiff. It is false to say that rain water is flowing towards plaintiff house and creating nuisance and endangering life of plaintiff. It is false to say there is some instigation from ingenious brain behind defendant. It is false to say that defendant has done illegal acts and legal or illegal encroachments. It is false to say that this defendant has caused damages to plaintiff to the tune of Rs 10,000-00 since 2002. It is false to say that plaintiff along with her father requested defendant to demolish the unauthorised structure which was constructed in the land of the plaintiff.
15. As alleged in para three of plaint, It is false to say that this defendant is monied and politically influenced person in the locality and having bad elements in his hand. *Defendant humbly submits that, Contrarily plaintiff and her father with some court birds are filing false cases against some institutions in order to blackmail them and to settle the matter for monetary gain.* As alleged in para three of the plaint, It is false to say that defendant has threatened the plaintiff many time not to question him in this regard.
16. As alleged in para three of the plaint, It is Right to say that land of defendant is valuable land being it is alienated one having 75x28 feet road towards southern side of the property. *But defendant humbly submits that, plaintiff falsely claims right over the municipal road portion exclusively for their ingress and outgress, inspite of the fact that it is public road.*
17. As alleged in para three of the plaint, It is false to say that land of plaintiff is encroached by defendant. It is false to say that land of plaintiff is valuable. It is false to say that defendant has also dugged soak pit in the encroached portion. It is false to say that such soak pit emerges foul smell. It is false to say that it is endangering human life.

18. As alleged in para three of the plaint, It is false to say that due to foul smell father of plaintiff is suffering from various illness. It is false to say that father of plaintiff spending huge money for his recovery at his old age. *Defendant humbly submits that, contrarily defendant humbly submits that plaintiff father has filed impleading application as GPA holder showing different cause in his affidavit. Plaintiff pleads her father as bedridden and impleading applicant swears her daughter as bedridden. It is perfect abuse of process of court.*

19. As alleged in para three of the plaint, It is false to say that defendant has left the waste water pull out from the bathroom towards the land of plaintiff. It is false to say that this defendant is endangering the human life. It is false to say that defendant want to harass the plaintiff. It is false to say that defendant is making and attempting to construct permanent structure towards western side of his house. It is false to say that space towards western side of defendant house belongs to plaintiff. *Contrarily defendant humbly submits that, the 6 feet space towards western side of defendant house belongs to this defendant and it is the legal setback. Plaintiff taking advantage of non alienation of her agricultural property falsely claiming defendants set back.*

20. As alleged in para three of the plaint, It is false to say that defendant is not a law abiding citizen. The fact of notice given by plaintiff counsel and reply of defendant counsel is not denied, but the allegation that reply is evasive is denied. It is false to say that filing of caveat is meant to harass plaintiff.

21. As alleged in para four of the plaint, The documents produced by plaintiff does not testify fact of plaintiff's absolute possession and enjoyment. Plaintiff failed to provide any list of documents as required under rules of practice. This defendant reserves his right to file additional written statement after supplying list of documents by plaintiff. Plaintiff failed to produce important revenue documents which will ascertain boundaries and extent of

suit schedule property. Instead documents produced by this defendant shows that plaintiff has misrepresented to court with fake created documents by violating mandatory Karnataka land revenue laws.

22. The cause of action as shown in the para five of plaint by plaintiff as 16-07-2004 and on 19-06-2008 is false. Defendant has finished his house construction in 1989 itself, there was no additional construction after 1989. Plaintiff and her father after living peacefully without raising any objections from 1989 has created fake cause of action through an illegal allegation. Hence suit is liable to be dismissed for want of cause of action. The alleged cause of action is liable to strict proof of the same.

23. The suit is barred by limitation. The plaintiff and her father residing in neighbouring land is very much aware of the fact of construction and completion of defendant house in 1989 and there was no dispute or objection at that time or unto to the time of notice sent by plaintiff on 19-06-2008. The plaintiff and her father are estopped by "Estoppel of Conduct" also. The other allegations made in para 5 of the plaint is once again repeated by plaintiff all such allegations are false and is denied in toto.

24. The suit schedule property for the purposes of payment of court fee in respect to relief sought in plaint prayer and relief column is purposefully under valued, the present market value of the surrounding place is about Rs 400 to Rs 600 per sq ft, inspite of the claims that it is residential property as mentioned in suit averments and schedule, and relief claimed is in respect to declaration of title, plaintiff has to pay court fee on market value of the property, if the market value is taken at Rs 400-00 per sq feet then market value of suit schedule property comes to Rs 41,71,200-00, which crosses the pecuniary jurisdiction of this Hon'ble court. Hence suit is liable to be dismissed on that ground also.

25. The plaintiff has also sought mandatory injunction un-connected to main relief which has to be valued separately by paying court fee for the relief no: (c) as sought in the plaint prayer and relief column. Hence suit is improperly valued and liable to be dismissed unless proper court fee is paid, with proper valuation slip.

26. Suit is bad for non-joinder of necessary party that is commissioner CMC Tumkur. Road of 75x28 feet towards southern side of defendants property exclusively belongs to CMC for public use but plaintiff contends in para three of plaint that it is meant for ingress and egress of both parties including S. Samson. By such assertion plaintiff wants to establish private right over such public road.

27. The Schedule property in respect to its measurement is fully denied by this defendant. Plaintiff is put to strict proof of the same.

28. Without prejudice to the above contentions, this Defendant humbly submits, that, the Plaintiffs have deliberately made certain false averments to suit their case against this Defendant. This Defendant further submits, that, the averments which are not specifically denied or traversed hereby are deemed to be denied as false and Plaintiffs will be put to the strict proof of the same. This Defendant craves for kind indulgence of this Hon'ble Court and this Hon'ble Court may be pleased to allow this Defendant to raise additional grounds, if any, at the time of hearing the suit.

WHEREFORE, in the above facts and circumstances of the case, it is most respectfully prayed, that, this Hon'ble Court may be pleased to dismiss the suit filed by the Plaintiffs against this Defendant along with exemplary costs in the interest of justice and equity.

ADVOCATE FOR DEFENDANT

DEFENDANT

VERIFICATION

I, .S. ROBERT NELSON., the Defendant herein, do hereby verify and declare that, what is stated above is true and correct to the best of my knowledge, information and belief.

Place: Tumkur
Date: 19-08-08

DEFENDANT

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR
OS 567/ 2008

PLAINTIFF: Smt. Manohara
V/S
DEFENDANT : S. Robert Nelson

LIST & DOCUMENTS PRODUCED BY DEFENDANT

NO	DOCUMENT PARTICULARS	PAGES	NATURE
A	RTC- PHANI OF Sy No: 9/2c1 of antharasanahalli village	1	CERTIFIED EXTRACT
B	The alienation order of Deputy commissioner B.dis. No: ALNSR: 136/87-88 DATED 09-10-1987.	2	NOTARISED COPY
C	Town planning approval copy NA.YO.PRA: S.NO: 895 : 324 : 1987-88 dated: 28-05-1988.	1	NOTARISED COPY
D	RTC- PHANI OF Sy No: 9/2c2 of antharasanahalli village	1	CERTIFIED EXTRACT
E	Release or Single partition deed	5	NOTARISED COPY

Place: Tumkur

Date: 19-08-08

Defendant

Advocate for defendant

VERIFICATION

The contents of documents produced as annexure A to E are true and correct to the best of my knowledge, information and belief.

Place: Tumkur

Date: 19-08-08

Defendant

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR

OS 567/ 2008

PLAINTIFF: Smt. Manohara

V/S

DEFENDANT: S. Robert Nelson

OBJECTIONS TO THE REASONS SWORNED IN ADVANCEMENT APPLICATION OF PLAINTIFF:-

1. The applicant Mr G.Shadrack has filed application to advance the case from 19-08-2008. The applicant has no locus standi to file such application unless he is permitted under Order 3 Rule 2 of CPC. Hence the application and its accompanying affidavit is liable to be rejected in limine in the interest of Justice.
2. The applicant has sworned to false affidavit of facts, the alleged incidents have not happened at the alleged time. The scenario existing as on or before filing of the above suit either in my

premises or towards any of my neighbourers, the same scenario is continuing and no event or change has occurred as alleged or in any other way.

3. The stone laying by neighbouring land owners was stopped by applicant that is G.Shadrack with some vengeance somewhere in 1994. The stone compound belongs to neighbouring land owner that is G. Shantharaju in survey number 9/2d of Antharasanahalli Grama, Kasaba Hobli, Tumkur taluk. The said neighbourer is a close relative of both G. Shadrack and also of this defendant.
4. Defendant or Applicant has nothing to do with eastern portion of defendants land only person who can question any grievance as to eastern portion of defendant land is Mr G. Shantharaju. The applicant clandestinely out of ill-will and grudge has filed advancement application just to harass this defendant when he was out of town to earn his bread.
5. There is no cause to advance the case and the alleged cause is fabricated one just to harass this defendant. The applicant alleges that he has laid the stone slabs. In actuality it is the stone slabs of neighbourer. It amounts to non-joinder of necessary party and also prosecution of new cause of action not related to the suit cause.
6. As alleged in the application this defendant is not powerful than his father none other than the applicant. The applicant in the age of 81 years showing his impatient arrogance and vengeance by forgetting his past experience of life. In no way this defendant has shown any arrogance towards his father. In no way defendant is defacing the structure in order to disprove the plaint rough sketch. Plaint rough sketch is not a legally authenticated document.

7. The suit schedule property is still an agricultural land, not converted to non-agricultural use, only revenue documents can ascertain true boundaries of suit schedule property. The khatha and its measurements in municipal records are not made in a legal way. Such illegal documents cannot form the basis for any claims of either plaintiff or her applicant.
8. The measurements quoted in plaint itself is illegal and its possession and enjoyment is itself cannot be ascertained at this stage without production of revenue records such as “PAKKA BOOK (HISSA SURVEY) FORM 5”, and “Karnataka Revision Settlement AKARBANDH (UTTARU)”, to ascertain the boundaries of suit schedule property.
9. In this age listening to bad economically greedy voices the applicant and plaintiff are prosecuting false complaints and cases.

Plaintiff and applicant may be advised by this Hon’ble court to approach conciliation and counselling forum to settle the matter in a peaceful way in order to avoid un-necessary litigation and waste of time from wrong advises.

Advocate for Defendant

Defendant

VERIFICATION

I do affirm above contents as true and correct to the best of my knowledge and belief.

Place: Tumkur

Date: 08-08-08

Defendant

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR

OS 567/ 2008

PLAINTIFF: Smt. Manohara

V/S

DEFENDANT : S. Robert Nelson

OBJECTIONS TO THE APPLICATION OF PLAINTIFF UNDER ORDER 3
RULE 2 :-

1. The applicant Mr G.Shadrack has filed application to seek permission to prosecute the case. The facts sworn in the affidavit are false.
2. There is no supporting document to prove the reasons sworn in the affidavit.
3. The plaintiff is very much hale and healthy and present on 30-07-2008 before the court.
4. The reason sworn is false, plaintiff is not aged, only the applicant is aged. The applicant has not shown proper cause to file such application.
5. The application is not maintainable either in law or on facts.
6. Hence the application and its accompanying affidavit is liable to be rejected in limine in the interest of Justice.
7. Plaintiff has alleged encroachment in western side of defendant property in the plaint, which is disputed by this defendant but now applicant has filed application as an agent to put forward his own cause claiming his title to stone compound, which is in no way related to present suit. The applicant has to file separate suit impleading neighbouring land owner in order to claim neighbourers stone compound.
8. There is no cause to advance the case or to file the application appointing agent and the alleged cause is fabricated one just to harass this defendant.
9. In this age listening to bad economically greedy voices the applicant and plaintiff are prosecuting false complaints and cases.
10. It is humbly submitted that, Plaintiff and applicant may be advised by this Hon'ble court to approach conciliation and counselling forum to settle the matter in a peaceful way in order to avoid unnecessary litigation and waste of time from wrong advises. No harm or injury will be caused to applicant/plaintiff if this IA is dismissed. On the other hand this defendant will be put to great hardship by the illegal acts of applicant/plaintiff who may take advantage of any interim orders and encroach upon property of neighbourer creating tension before defendant house.

Wherefore the Hon'ble court may be pleased to dismiss application in the interest of justice.

Advocate for Defendant

Defendant

VERIFICATION

I do affirm above contents as true and correct to the best of my knowledge and belief.

Place: Tumkur

Date: 08-08-08

Defendant

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR

OS 567/ 2008

PLAINTIFF: Smt. Manohara

V/S

DEFENDANT : S. Robert Nelson

OBJECTIONS TO THE APPLICATION OF PLAINTIFF UNDER ORDER 39
RULE 1 & 2 :-

1. The IA is not maintainable either on facts or on law.

2. The facts sworn in the affidavit are false and misleading without giving clear picture as to what applicant wants to convey to the Hon'ble court.
3. This defendant has not dismantled the stone slabs compound towards eastern side of the defendant's property. Plaintiff has alleged encroachment in western side of defendant property in the plaint, which is disputed by this defendant but now applicant has filed application as an agent to put forward his own cause claiming his title to stone compound, which is in no way related to present suit. The applicant has to file separate suit impleading neighbouring land owner in order to claim neighbourers stone compound.
4. The applicant alleges that he has laid the stone slabs. In actuality it is the stone slabs of neighbourer. It amounts to non-joinder of necessary party and also prosecution of new cause of action not related to the suit cause.
5. The neighbouring land Owner is Mrs Hemalatha G. Shantharaju and that land is also an agricultural land, there was verbal dispute between G. Shadrack and G. Shantharaju over the laying of stone compound by G. Shantharaju in 1994.
6. The stone laying by neighbouring land owners was stopped by applicant that is G.Shadrack with some vengeance in 1994. The stone compound belongs to neighbouring land owner that is Late G. Shantharaju in survey number 9/2d of Antharasanahalli Grama, Kasaba Hobli, Tumkur taluk. The said neighbourer is a close relative of both G. Shadrack and also of this defendant.
7. Plaintiff or Applicant has nothing to do with eastern portion of defendants land only person who can question any grievance as to eastern portion of defendant land is Mrs Hemalatha G. Shantharaju. The applicant clandestinely out of ill-will and grudge

has filed advancement application just to harass this defendant when he was out of town to earn his bread.

8. The suit schedule property is still an agricultural land, not converted to non-agricultural use, only revenue documents from Tahsildar office can ascertain true boundaries of suit schedule property. The khatha and its measurements in municipal records are not made in a legal way. Such illegal documents cannot form the basis for any claims of either plaintiff or her applicant.
9. The measurements quoted in plaint itself is illegal and its possession and enjoyment is itself cannot be ascertained at this stage without production of revenue records such as “PAKKA BOOK (HISSA SURVEY) FORM 5”, and “Karnataka Revision Settlement AKARBANDH (UTTARU)”, to ascertain the boundaries of suit schedule property.
10. Either plaintiff or Applicant have produced relevant documents to show the exact boundary mark of suit schedule property. The rough sketch is an illegal document.
11. This defendant has not encroached upon either plaintiff's property or applicant's rights.
12. This defendant has not removed hadbust stone or any stone slabs. This defendant has no rights over the adjoining lands which is others property.
13. The applicant wants to confuse this defendant by filing an affidavit without having comma or pulstop. The sentence formed does not give any clear meaning. The applicant wants to illegally interpret and gain out of such dual meaning words.
14. The plaintiff has not sought any relief towards eastern side of defendant's property. The plaintiff's allegation in plaint is towards western side of defendant's property.

15. The applicant raises a new cause unrelated to alleged cause in plaintiff averments. The properties are very much there it is not eatable thing to swallow.
16. If plaintiff proves her legally valid title to dimensions of suit schedule property she is having very much liberty to take action in the above suit. This defendant cannot destroy the boundary marks or neighbouring land owners rights. If such thing has happened it is neighbourer who may have complained at first instance.
17. With an illegal intention applicant wants to take some interim order from the court by showing neighbouring land owner as my agent and wants to prosecute neighbouring land owner by depriving their rights to their land. This cannot be allowed in the interest of Justice.
18. There is no prima facie case or balance of convenience in favour of plaintiff or applicant. No injury will be caused to plaintiff or applicant. If the IA is allowed, taking advantage of court order plaintiff or applicant may file case against neighbouring land owner in order to settle applicant's past grievances.
19. The photographs produced do not reflect any cause. The rough sketch is not a proper document for an agricultural land.
20. In order to keep peace and amity defendant is ready to file affidavit stating he does not interfere in the present state of affairs in the plaint schedule property. Let the plaintiff and applicant also undertake with such affidavit stating that they are not having any intention to interfere with defendants property. This does not mean defendant has accepted plaintiff's claims over the falsified measurements of suit schedule property. Plaintiff is put to strict proof of the same and not at liberty to withdraw the suit without paying any damages to the defendant.

21. The applicant has no locus standi to file this application unless he was permitted to act as an agent of plaintiff. The application is premature. The interim application has not clearly shown schedule for which injunction is sought. The plaintiff has confused this defendant by filing plaint averments in para three of the plaint stating about 'B schedule property' but plaint does not have any B schedule property. Plaintiff has not provided any Rough Sketch copy or list of documents in order to mislead this defendant and court by filing false suit claim. No harm or injury will be caused to applicant/plaintiff if this IA is dismissed. On the other hand this defendant will be put to great hardship by the illegal acts of applicant/plaintiff who may take advantage of any interim orders and encroach upon property of neighbourer creating tension before defendant house.

Wherefore the Hon'ble court may be pleased to dismiss application in the interest of justice.

Advocate for Defendant

Defendant

VERIFICATION

I do affirm above contents as true and correct to the best of my knowledge and belief.

Place: Tumkur

Date: 08-08-08

Defendant

IN THE COURT OF 3rd ADDL CIVIL JUDGE (JD) AT TUMKUR

OS 567/ 2008

PLAINTIFF: Smt. Manohara

V/S

DEFENDANT : S. Robert Nelson

AFFIDAVIT

I Robert Nelson S/O G.Shadrack aged about 50 years resident of Tumkur, the defendant in the above case do solemnly affirm and state on oath as follows:-

1. The plaintiff has filed above case against me, iam swearing on affidavit about the real facts of the case.
2. The suit schedule property is still an agricultural land, not converted to non-agricultural use, only revenue documents from Tahsildar office can ascertain true boundaries of suit schedule property. The khatha and its measurements of suit schedule property in municipal records are not made in a legal way after alienation and town planning. Such illegal documents cannot form the basis for any claims of either plaintiff or her applicant.
3. In order to keep amity among my neighbourhood, "I do swear in the name of god that iam in no way construct over the suit schedule property until disposal of this suit". This does not mean I have accepted the ownership of suit schedule property. This does not mean I won't construct in my vacant land laying towards eastern side of my house, after taking due licence from the municipal and TUDA authorities. If I take any permission for construction in my land, I will bring to the knowledge of this Hon'ble court during the pendency of suit after producing all relevant papers related to sanction.

4. Plaintiff has alleged encroachment in western side of defendant property in the plaint, which is disputed by this defendant but now applicant has filed application as an agent to put forward his own cause claiming his title to stone compound, which is in no way related to present suit. The applicant has to file separate suit impleading neighbouring land owner in order to claim neighbourers stone compound.
5. If plaintiff is able to prove her alleged measurement of suit schedule property and alleged encroachment after due measurement from revenue survey authorities by measuring all the neighbourhood lands, iam ready to pay damages to plaintiff and ready to destroy any of my proved encroachments at my peril.
6. No harm or injury will be caused to applicant/plaintiff if this IA is dismissed. On the other hand this defendant will be put to great hardship by the illegal acts of applicant/plaintiff who may take advantage of any interim orders and encroach upon property of neighbourer creating tension before defendant house.

Wherefore the Hon'ble court may be pleased to dismiss applications of applicant in the interest of justice.

I do swear and affirm above contents as true and correct and sign as below.

Place: Tumkur

Date: 08-08-08

Defendant