

Today is sitting day. Case called out in the morning session. Counsel for plaintiff present and submits that he has also filed e-application along with documents in addition to physical filing. Further heard and perused the material on record.

The applicant/plaintiff has filed I.A. No.1 seeking an ad-interim ex-parte order of injunction restraining the defendant and his henchmen from interfering with the plaintiff's lawful peaceful possession and enjoyment of the suit schedule premises in any manner except due process of law for the reasons assigned in the accompanying affidavit.

On perusal of plaint averments, contents of the affidavit as well as the copy of rental agreement dated 25/05/2011, Mortgage Deed dated 13/12/2012, extension of mortgage dated 21/01/2016, copy of complaints go to show that there is a prima-facie case in favour of the plaintiff.

It is worth to note that plaintiff being an advocate has filed above numbered suit for the relief of permanent injunction in respect of schedule premises stating that the defendant being the owner of the schedule premises had leased it in favour of the plaintiff for a monthly rent of Rs.12,000/- by receiving

advance amount of Rs.1,20,000/- as per rental agreement dated 25/05/2011. Further the defendant has totally received an amount of Rs.12,00,000/- towards mortgage of the schedule premises by executing extension of mortgage dated 21/01/2016 which was extended for four years till the end of year 2019, but the defendant without issuing prior notice or return of mortgage amount has been continuously interfering with illegally and the concerned police have not taken any action in this regard.

It may be noted that though the plaintiff has not produced original documents as per the office objections, but while arguments were being heard the counsel submitted that original rent agreement and mortgage deeds are with the defendant owner itself, accordingly he has filed copy of documents along with certificate under Section 65(B) of Evidence Act and e- application under Section 63 and 65 of Evidence Act to accept the secondary evidence thereof. In this regard there is recital in the copy of said documents and also stated in the accompanying affidavit, as such question of complying office objection at this stage does not arise, accordingly plaintiff is permitted to proceed with the case based on the documents available with him only.

So at this stage, it can be said that, copies of rent agreement and mortgage deeds can be used to show the nature and character of possession of the plaintiff/tenant only.

It is relevant to point out that though there is no clause in the copy of extension of mortgage in respect of issuance of prior notice on expiry of the mortgage period, but it is the case of the plaintiff that the defendant is not ready to return the mortgage amount mentioned in the deed of mortgage and interfering with his day to day profession by entering into his office as appears from the CCTV footage/CD.

This is Covid-19 pandemic period. The counsel for plaintiff submits that, plaintiff is practicing advocate, as such defendant be restrained till repayment of mortgage amount. In such circumstances, if the notice of I.A. 1 is issued to the defendant, then the very purpose of filing of the suit will be defeated by delay and it will cause loss and inconvenience to the plaintiff. Wherefore having regard to facts and circumstances of the case I find that in order to avoid multiplicity of litigation it is just and proper to pass the following:

**ORDER**

The defendant is hereby restrained by an ad-interim ex-parte injunction from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule premises till next date of hearing.

The plaintiff shall comply the proviso under Order 39 rule 3 (a)(b) of C.P.C.

Issue order of ex-parte T.I. granted on I.A. No.1, notice on I.A. No.1 and 2 and S.S. to defendant through court and RPAD if complied the aforesaid proviso and paid DPF if any.

Call on 27/10/2020.

**(C.D. Karoshi)**  
**V ADDL.CITY CIVIL JUDGE**  
**BANGALORE**