

IN THE COURT OF V ADDL. CITY CIVIL COURT
AT BENGALURU
(CCH.No.13)

Present: **Sri. C.D. KAROSHI**, B.A., LL.M.
V ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU

Dated this the 30th day of January, 2021.

O.S. No: 4413/2020

PLAINTIFF: Sri. Hemanth.S
(By. Sri. SDM, Advocate.)

V/s

DEFENDANT: Sri. Kantharaj.C. Reddy
(By. Sri. IMM, Advocate)

IA.No.1

Plaintiff/
Applicant: Sri. Hemanth.S
(By. Sri. SDM, Advocate.)
V/s

Defendant/
Opponent: Sri. Kantharaj.C. Reddy
(By. Sri. IMM, Advocate)

: ORDERS ON IA No. 1

The applicant/plaintiff has filed the present application under Order XXXIX Rule 1 and 2 r/w Section 151 of Code of Civil Procedure to restrain the defendant and his henchmen from interfering with plaintiff's lawful possession and enjoyment over the suit schedule premises for the reasons assigned in the affidavit.

2. It is arrayed in the accompanying affidavit that, the defendant claiming to be the owner of the schedule premises had leased it for a monthly rent of Rs.12,000/- by receiving advance amount of Rs.1,20,000/- and executed rental agreement dated 25/05/2011 and kept the original with him. Further it is averred that, when the defendant approached and demanded that he is in need of money, plaintiff agreed and paid Rs.8,00,000/-, accordingly defendant executed mortgage deed dated 13/12/2012 and thereafter again got renewed by virtue of mortgage deed dated 21/01/2016 by receiving additional amount of Rs.4,00,000/- for a period of four years till the end of 2019 and kept the originals with him. Further it is averred that, the plaintiff has under taken maintenance of entire building and paid amount for repairs and replacement as well as for conversion of BESCO meters and continued with the possession of the schedule premises. But, thereafter with dishonest motive the defendant started to address the plaintiff disrespectfully and using tactics to pressurize the plaintiff so as to vacate the schedule premises without repayment of mortgage amount and other expenses, accordingly plaintiff lodged complaint before police authority, but except advise they did not take any action. Further despite several request made by the plaintiff, plaintiff being an advocate by profession as not to trouble during Covid-19 pandemic the defendant had locked the schedule premises and now making all hectic efforts to dispossess the plaintiff from

lawful possession and enjoyment over the suit schedule premises, as such the plaintiff should not be dispossessed without due course of law and without repayment of mortgage amount and other expenses. On these grounds prayed for allowing the application.

3. Per contra, it is contended in the objections filed by the learned counsel for defendant that, mortgage deed dated 21/01/2016 has been expired on 21/12/2019 and the defendant on requesting the plaintiff to vacate the schedule premises has also paid a sum of Rs.7,65,000/- on 11/09/2020 with intimation to the plaintiff that balance amount shall be paid at the time of vacating the premises after deducting charges towards damages if any, plaintiff has suppressed the receipt of said amount and defendant is ready and willing to pay balance amount at the time of vacating the premises as agreed, but the plaintiff has obtained temporary injunction with unclean hands making false representation and misleading the court with ulterior motive and malafide intention to cause harassment to the defendant, as such the relief sought for by the plaintiff is untenable. Further contend that the defendant is true and absolute owner of the property in dispute, when the plaintiff and another person approached for taking the schedule premises on rent, a rental agreement was entered for a period of 11 months on 25/05/2011 for a monthly rent of Rs.12,000/-, but instead of preparing an ordinary lease deed the defendant

prepared mortgage deed dated 13/12/2012 and after completion of three years again plaintiff drafted an extension of mortgage deed dated 21/01/2016 and paid additional amount of Rs.4,00,000/-. The defendant being a lay man was not aware of the distinction between lease deed and mortgage deed. However, though on expiry of the term other tenant has left the premises, but despite several request made by the defendant to the plaintiff to receive the amount and to hand over the vacant possession of the schedule premises he has not turned up. Now the defendant is ready with DD.s towards balance amount as he intended to shift his residence to the schedule premises in order for his daughter to attend a school at Malleshwaram which would be convenient for the defendant. The allegations made by the plaintiff are denied as false and plaintiff be put to strict proof of the same. Therefore, if the suit as prayed by the plaintiff is granted, the defendant will suffer irreparable loss and plaintiff does not have any cause of action for filing the suit. On these grounds prayed for rejecting the application with exemplary cost.

4. Heard and perused the written arguments along with material on record and citations. The learned counsel for the plaintiff has relied on decisions reported in (2020) 6 SCC 438 (Asst. General Manager and others Vs. Radhey Shyam Pandey), AIR 2014 SC 3447 (Singh Ram Vs. Sheo Ram, 1992 Supp. (2) SCC 29 (East India Hotels Ltd., Vs. Syndicate Bank), 2000(3) KCCR 1790 (Meghashyam Bhat Vs. Seetharam Jois), AIR 1986 Kant 194 (Patil Exhibitors (Pvt.,) Ltd, Vs. The Corporation of the

City of Bangalore), AIR 1993 SC 276 (Dalpat Kumar and others Vs. Prahalad Singh and others) and AIR 2006 Kant 83 (Sadashiva Devadiga Vs. Muddu Devadiga).

The learned counsel for the defendant also relied on the decisions/judgment reported in (2010) 2 SCC 114 (Dalip Singh Vs. State of UP) and RSA No.240/2018 (Surat Singh and others Vs. Dhaju Ram and others).

5. The points that arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss if temporary injunction as sought for under I.A. No.1 is not granted?
4. What Order?

6. My answers to the above points are as under:-

Point No.1 to 3: In the affirmative

Point No.4: As per final orders for the following:

REASONS

7. Point No.1 to 3: I take these points altogether for my discussion, as the facts overlap and for the sake of convenience.

8. It is worth to note that, the plaintiff has filed the above numbered suit against the defendant landlord for the relief of permanent injunction stating that, he was inducted into the possession of schedule premises as per rental agreement dated 25/05/2011 on basis of monthly rent and thereafter continued to be in the possession of

the same based on mortgage deed dated 13/12/2012 and extension of mortgage dated 21/01/2016 till the month of December 2019 subject to repayment of security deposit/mortgage amount of Rs.12,00,000/- along with expenses as per the terms of the aforesaid deeds, but without repayment of the said amount the defendant making hectic efforts to dispossess him from the lawful possession and enjoyment over the suit schedule property, as such he cannot be dispossessed without due process of law. The learned counsel for plaintiff relying Section 60 of T.P. Act argued and filed written arguments by reiterating the aforesaid facts.

9. In this regard it has been held in the decisions referred supra by the learned counsel for plaintiff that, no one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. Further observed that, if it is proved by the affidavit or otherwise that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing dispossession of the plaintiff over the property in dispute until disposal of the suit or until further orders.

10. Per contra, it is the case of defendant that the plaintiff has filed false and frivolous suit along with application by concealing and suppressing the material fact before this court regarding payment of Rs.7,65,000/- and obtained ex-parte temporary injunction, as such the application is liable to be dismissed. The learned counsel for defendant argued and filed written arguments by reproducing the aforesaid facts.

11. It has been held in the decisions referred supra by the learned counsel for defendant that if there is no disclosure of relevant and material facts or petitioner/plaintiff is misleading the court, his petition may be dismissed at threshold without considering the merits of the claim.

12. So in the light of the aforesaid facts and principles enunciated in the decisions referred supra if we peruse the 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 we can find that plaintiff has been inducted as lessee of the schedule premises in the year 2011 and thereafter the rental agreement dated 25/05/2011 came to be merged with mortgage by virtue of mortgage deed 13/12/2012 as well as extension of mortgage dated 21/01/2016 and the period of extension of mortgage also came to be ended in the month of December 2019 itself.

13. In this regard, it is the case of the plaintiff that, without repayment of mortgage amount and expenses the defendant is making hectic efforts to dispossess him from the schedule premises, which has been prima facie supported by the copy of complaints and CCTV footages referred supra. Admittedly, there is Clause in the aforesaid lease and mortgage deeds that originals are with the defendant landlord. So, at this stage, it can be said that, copies of rent agreement and mortgage deeds can be considered to show the nature and character of possession of the plaintiff/tenant only. The material on record indicates that, there is a prima-facie case in favour of the plaintiff.

14. It is to be noticed that, while getting an ad interim ex-parte injunction the plaintiff has concealed the material fact i.e. he has suppressed receipt of Rs.7,65,000/- which was being paid by the defendant on 11/09/2020 as per entries made in document No.9 copy of passbook issued by the Andhra Bank, R.T. Nagar branch, Bengaluru alleging that, defendant is trying to dispossess him without paying mortgage amount with expenses, but it is equally evident that the possession of the plaintiff over the schedule premises based on alleged lease agreement as well as mortgage deeds referred supra as tenant has not been disputed by the defendant, which shows that, there is merger of earlier lease with mortgage deeds.

15. It is also worth to note that though the defendant would contend that he kept ready with demand drafts towards balance amount to be paid in favour of plaintiff/tenant, but no further efforts has been made by the defendant to transfer the same through NEFT or to deposit the balance amount with expenses in the court as on today. So the aforesaid facts indicates that balance of convenience also lies in favour of the plaintiff.

16. It is evident that I.A. No.3 filed under Order 8 Rule 9 CPC by the learned counsel for plaintiff seeking permission to file replication to the written statement came to be dismissed as the same is not maintainable. However, it is the specific contention of the plaintiff that, without repayment of entire mortgage amount and expenses he cannot be dispossessed from the schedule premises without due course of law. As observed supra though the defendant would contend that, he is ready to pay balance amount by disputing expenses made by the plaintiff, but the learned counsel for plaintiff also argued that, the defendant has to pay balance mortgage amount with expenses made and amount paid towards BESCO. In this regard, the defendant has neither deposited balance mortgage amount with expenses as alleged by the plaintiff nor filed a suit for redemption of mortgage.

17. In this connection our Hon'ble High Court has held in the case of Smt.Ratnama V/s Gupta reported in KLJ-1999 (1) Head Note Point C Page.578 that grant of primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of the parties are settled and further it is observed that prima-facie case is not to be confused with prima-facie title.

18. Therefore having regard to the facts and circumstances of the case, I am of the opinion that, the material on record requires regular trial, as such if ex-parte ad-interim injunction granted by this court is vacated by dismissing I.A. No.1 then it is the plaintiff being an advocate by profession will be put into hardship and inconvenience than the defendant. For these reasons arguments/written arguments filed by the learned counsel for plaintiff holds good. On the other hand arguments/written arguments filed by the learned counsel for defendant cannot be accepted at this stage. Consequently I.A. No.1 deserves to be allowed without cost. Hence, I answer Point No.1 to 3 in the affirmative.

19. **Point No.4:-** For the foregoing reasons I proceed to pass the following:

:ORDER:

I.A. No.1 filed under order XXXIX rule 1 and 2 r/w Section 151 of C.P.C by the learned counsel for plaintiff is hereby allowed.

Consequently, the ex-parte order of temporary injunction granted by this court on I.A. No.1 dated 24/09/2020 is made absolute till disposal of the suit.

No order as to costs.

In view of the facts and circumstances of the case suit be expedited.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me, signed and then pronounced in the office on this the 30th Day of January 2021)

(C.D.KAROSHI)
V ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU

Operative portion of the orders pronounced in open court vide separate order:-

ORDER

I.A. No.3 filed under order 8 rule 9 r/w Section 151 of C.P.C by the learned counsel for plaintiff is hereby dismissed on cost of Rs.500/-.

I.A. No.1 filed under order XXXIX rule 1 and 2 r/w Section 151 of C.P.C by the learned counsel for plaintiff is hereby allowed.

Consequently, the ex-parte order of temporary injunction granted by this court on I.A. No.1 dated 24/09/2020 is made absolute till disposal of the suit.

No order as to costs.

In view of the facts and circumstances of the case suit be expedited.

Accordingly, issues framed and pronounced in the open court.

To hear on I.A. No.2 and plaintiff's evidence call on 25/02/2021.