

KABC170003552023



**IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)**

**Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.**

COM.OS.No.163/2023

Dated on this 15th day of April 2024

Plaintiff

Sri.P.C.Harimahesh.

(By Sri.S.Venkatesh, Advocate)

// versus //

Defendant

Sri.Balaji Enterprises

(By Sri.B.P.Puttasiddaiah, Advocate)

IA No.1 & 3

**Applicant/
Plaintiff**

Sri.P.C.Harimahesh,
S/o late P.M.Chikkagangaiah,
Resident of No.544,
Government Hospital Road,
2nd Block, Peenya,
Bengaluru-560058.

(By Sri.S.Venkatesh, Advocate)

// versus //

**Respondent/
Defendant**

Sri.Balaji Enterprises
By its Proprietor
K.P.Singh S/o late H.K.Singh,
Major, No.114/C, Opposite to

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Peenya Metro Station,
Next to Prabhakar Kore
Convension Hall,
Peenya, N.H.4,
Tumkur Road,
Bengaluru-560058.

(By Sri.B.P.Puttasiddaiah, Advocate)

IA No.2

**Applicant/
Third parties/
Proposed D2&3**

1. Smt. L.Supriya W/o P.C.Harimahesh,
aged about 48 years.
2. Sri.P.H.Shrihari Prasad,
S/o P.C.Harimahesh,
Aged about 27 years,

Both are residing at:
#975, 8th Main, 9th 'A' Cross,
West of Chord Road,
Mahalakshmpuram,
Bengaluru-560086.

(By Sri.B.P.Puttasiddaiah, Advocate)

// versus //

**Respondent/
Plaintiff**

Sri.P.C.Harimahesh,
S/o late P.M.Chikkagangaiah,
Resident of No.544,
Government Hospital Road,
2nd Block, Peenya,
Bengaluru-560058.

(By Sri.S.Venkatesh, Advocate)

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(i)	Provision under which the application is filed and	<p>IA No. 1 is filed by the Plaintiff under Order 39, Rule 1 and 2 of the CPC seeking temporary injunction, to restrain the defendant from subletting or parting with possession of suit schedule property during the pendency of the suit.</p> <p>IA No. 2 is filed by applicants / 3rd parties, Under Order 1, Rule 10 [2] of the CPC, seeking to implead themselves as additional defendants in the present suit.</p> <p>IA No. 3 is filed by the plaintiff, Under Order 11, Rule 1 (5) of the CPC, seeking leave to produce documents</p>
(ii)	relief sought	
(iii)	The date on which the application is filed	<p>IA No. 1 filed on 31-01-2023</p> <p>IA No. 2 filed on 30-05-2023</p> <p>IA No. 3 filed on 21-06-2023</p>
(iv)	Number of the application	IA No. 1 to 3
(v)	The date on which the objections are filed by different opponents	<p>Objection to IA No. 1 filed by Defendant on 21-06-2023</p> <p>Objection of IA No. 2 filed by Plaintiff on 21-06-2023</p> <p>Objection to IA No. 3 filed by Defendant on 17-07-2023</p>
(vi)	The date on which the orders were passed on the said application	15-04-2024

ORDERS ON IA No. 1 to 3

IA No. 1 is filed by the Plaintiff under Order 39, Rule 1 and 2 of the CPC seeking temporary injunction, to restrain the defendant from subletting or parting with possession of suit schedule property during the pendency of the suit. **IA**

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No. 2 is filed by applicants / 3rd parties, Under Order 1, Rule 10 [2] of the CPC, seeking to implead themselves as additional defendants in the present suit. **IA No. 3** is filed by the plaintiff, Under Order 11, Rule 1 (5) of the CPC, seeking leave to produce documents.

2. The stage of the main suit is for inspection of documents and statement of admission and denial of documents.

3. The defendant has filed detailed objections to IA No. 1. The plaintiff has filed objections to IA No. 2. The defendant has filed objections to IA No. 3.

4. I have heard both sides and perused the records of the case.

5. The points that arise for my consideration are as follows;

- 1) Whether the Plaintiff has made out prima facie case, balance of convenience and irreparable loss and injury for grant of temporary injunction as prayed under IA No. 1?**

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2) Whether IA No. 2 filed by the applicants / third parties, Under Order 1, Rule 10 [2] of the CPC deserves to be allowed and the applicants of IA No. 2 should be impleaded as additional defendants in the present suit?

3) Whether IA No. 3 deserves to be allowed and the plaintiff should be permitted to produce the documents as prayed for in IA No. 3?

6. My answer to the above points are in the **affirmative** for the following :-

REASONS

Point No. 1 :-

7. The facts in brief are that, the plaintiff has filed the present suit against defendant which is proprietorship concern represented by its proprietor for ejectment, arrears of rent and damages. The plaint averments are that, the plaintiff is absolute owner of suit schedule property having acquired the same under partition deed dated 21-03-2005 and the defendant is the tenant under the plaintiff and the plaintiff has terminated the tenancy of the defendant by legal notice dated 14-09-2022 and therefore, defendant has no

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right to continue in possession. With these pleadings, plaintiff firstly seeks relief of ejectment of defendant from suit schedule property. The plaintiff also contends that the defendant is in arrears of rent for 36 months and seeks recovery of Rs. 18 lakhs as arrears of rent. Further the plaintiff is seeking mesne profits / damages for unlawful occupation of the suit schedule property by the defendant subsequent to termination of tenancy. The suit schedule property is described as Peenya Industrial Site 114/C, Site No. 2, Yeshwanthpur Hobli, Bangalore North Taluk measuring 5300 square feet having three floors RCC building.

8. The defendant has filed detailed written statement firstly contending that the defendant is the tenant of suit schedule property not under the plaintiff but under one Supriya and Srihari Prasad under rental agreement dated 22-09-2022, thereby, the jural relationship of landlord and tenant between the plaintiff and defendant is denied. It is contended that without seeking declaration of his title by Plaintiff, suit is not maintainable. It is contended that, the

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lessors of defendant namely Supriya and Srihari Prasad are the necessary parties and without them the suit is liable to be dismissed for non-joinder of necessary parties. It is contended that, court fee paid is insufficient. It is contended that, there is no proper PIM and hence suit is liable to be dismissed under section 12A of the Commercial Courts Act. It is contended that the suit does not involve commercial dispute and there is no averment in the Plaint as to how the suit is maintainable before the commercial court. With these pleadings and denying termination of tenancy since plaintiff is not the landlord and contending that defendant is paying the rent regularly to his lessors namely Supriya and Srihari Prasad and therefore, the plaintiff is not entitled to any arrears of rent or damages, the defendant has prayed for dismissal of the suit.

9. Under I.A. No. 1 the plaintiff is seeking temporary injunction to restrain the defendant from subletting or parting with possession of suit schedule property during the

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pendency of the suit. In the objections to I.A. No. 1 defendant has reiterated the contentions taken in written statement.

10. Among the various defenses raised in the written statement, at this stage, it is only necessary to take note of the contention that there is no plaint averments as to how suit is maintainable before commercial court. In this regard, at this stage, on perusal of the Plaint schedule, it is noted that, Suit Schedule Property is an industrial site with three floors RCC building. At this stage there is no contention in the written statement that the suit schedule premises which is industrial site is being used for residential purpose or for non-commercial purpose. Therefore, at this stage it prima facie appears that the property involved in the present suit is being used for commercial purpose since it is an industrial site and therefore, the court can record prima facie finding that suit is maintainable before this court since suit is in respect of seeking relief in respect of property used exclusively for commercial purpose.

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11. In so far as the other defenses raised in the written statement that there is non-compliance of section 12A, the court fee paid is insufficient etc., they are all matters for trial and need not detain the court at this stage.

12. The principle defense raised by the defendant is denial of jural relationship and contention that, it is in fact Supriya and Srihari Prasad who are the owners of suit schedule property and defendant is a tenant under them. At this stage from the description of the said Supriya and Srihari Prasad it appears that they are none but the wife and son of plaintiff herein. It appears that there are certain disputes between the plaintiff and his own family members i.e. his wife and son and they have executed lease deed in favor of the defendant and on that basis the defendant is contending that he is in fact the tenant under the wife and son of plaintiff and therefore, plaintiff has no right to terminate the tenancy. As against this, it is to be noted that, the plaintiff claims to have derived title to the suit schedule property under a registered partition deed dated 21-03-2005 and certified copy of the said

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partition deed is produced along with IA No. 3. At this stage no document is produced by the defendant to show that it is the wife and son of plaintiff who are the actual owners of suit schedule premises and entitled to lease out the same in favor of the defendant. No doubt no document is also produced by the plaintiff to show that he inducted the defendant into suit schedule property, as tenant. Therefore, at this stage there are serious questions to be considered in the trial as to whether plaintiff can prove that he is not only the owner of suit schedule property but also whether plaintiff can prove the jural relationship of landlord and tenant between the plaintiff and defendant. Anyhow, at this stage since plaintiff has produced registered partition deed dated 21-03-2005, plaintiff has made out prima facie case that he is the owner of suit schedule property. This being the case, if defendant whose status in the property is admittedly that of a tenant is permitted to sublease or part with possession in favor of third party, it will create multiplicity of litigation. Further, it is to be noted that even as per the rental agreement produced by the defendant, which is said to be executed by the wife and son of

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plaintiff in favor of defendant dated 22-09-2022, even in the said lease date, there is a restriction on defendant not to sublet or underlet the premises. Such being the case, in my view, firstly, plaintiff has made out prima facie case to show that he is the owner of suit schedule property by producing the registered partition deed under which he has acquired suit schedule property. Per contra, the defendant has not produced any document to show that it is the wife and son of the plaintiff who are the owners and entitled to lease out the property to the defendant. On this basis, I hold that plaintiff has made out prima facie case for grant of temporary injunction to restrain the defendant whose status in the suit schedule property is admittedly that of a tenant from subletting or parting with possession of suit schedule property. The balance of convenience and irreparable loss and injury factors are also in favor of the plaintiff because if defendant succeeds in subletting or parting with possession of the property during the pendency of the suit, it will lead to multiplicity of litigation. **Accordingly, I hold that IA No. 1**

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deserves to be allowed and plaintiff is entitled to grant of temporary injunction as prayed for in IA No. 1.

Point No. 2 :-

13. In so far as IA No. 2 is concerned, it is filed by Supriya and Srihari Prasad who are none but the wife and son of the plaintiff to implead themselves as additional defendants in the present suit. As already noted supra, the principal defense raised by the original defendant is that he is the tenant not under the plaintiff but under said aforestated wife and son of the plaintiff and Defendant has also produced rental agreement in this regard. Therefore, since the proposed defendants / applicants in IA No. 2 claim to be the owners of suit schedule property and claim to have let out the suit schedule property to the defendant and this stand is also supported by the defendant, at this stage, it is clear that the proposed defendants claim a direct interest in the subject matter of the present suit. Once this conclusion is reached, it follows that although no relief is being claimed against the proposed defendants, their presence is necessary to decide all

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matters in controversy between the parties. Therefore, I hold that the applicants in IA No. 2 are the proper parties and accordingly they are entitled to be impleaded as additional defendant No. 2 and 3 in the present suit under order 1, rule 10 [2] of the CPC and accordingly IA No. 2 deserves to be allowed and I answer point No. 2 in the **affirmative**.

Point No. 3 :-

14. IA No. 3 is filed with the plaintiff under order 11, rule 1 [5] of the CPC for production of documents. At this stage, these documents which include the certified copy of Partition deed Dated 21-3-2005 appear to be relevant. In any event, the main objection raised by the defendant is that these documents ought to have been disclosed along with the plaint and having not disclosed the same, the plaintiff cannot be permitted to rely upon the said documents. However, in my view, since these documents appear to be relevant for the purpose of the present suit, mere delay in disclosing the documents should not stand in the way, since the law is settled that no relevant evidence should be kept out of court.

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Accordingly, keeping open question of admissibility and relevancy of the said documents, it is appropriate to permit plaintiff to produce the same in the present suit and accordingly IA No. 3 deserves to be allowed and I proceed to pass the following :-

ORDER

IA No. 1 filed by the plaintiff under order 39, rule 1 and 2 of the CPC is allowed and temporary injunction is granted restraining the defendant from subletting or parting with possession of suit schedule property during the pendency of the suit.

IA No. 2 filed by the applicants / Supriya and Srihari Prasad under order 1, rule 10 [2] of the CPC is allowed and the applicants in IA No. 2 are impleaded as additional defendant No. 2 and 3 in the present suit.

IA No. 3 filed by the plaintiff under order 11, rule 1 [5] of the CPC is also allowed and

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plaintiff is permitted to produce the documents, produced along with IA No. 3 keeping open question of admissibility and relevancy of the documents.

[Dictated using Dragon Professional Speech Recognition Software Version 15.3, transcript revised, corrected, signed and then pronounced by me in open court on this **the 15th day of April, 2024**]

**(Sri. S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT; BANGALORE.**

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