

**IN THE COURT OF III ADDL.CIVIL JUDGE & JMFC,
BELAGAVI**

Present: Smt. Sujatha A.B.
B.A.L, LL.B.
III Addl. Civil Judge & JMFC,
Belagavi.

Dated: This the 17th day of January, 2018

O.S. NO.1101/2017

1. Sou. Eliza W/o Augustin D'mello

... **Plaintiff**

-Versus-

1. Smt. Kashavva Basavaraj Halannavar

... **Defendant**

ORDER ON I.A.No.I

This application filed by the applicant/plaintiff under Order XXXIX Rules 1 and 2 R/w section 151 of CPC, to grant interim injunction restraining the opponent/defendant, her agents, servants, legal heirs from disturbing the lawful possession of the plaintiff over the VPC No.4187 of Kala

Nagar, Hunchenatti village, Macche Gram Panchayat, till the disposal of the suit.

2. In the affidavit filed in support of the I.A., the plaintiff Eliza W/o Augustin D'mello contends that, she has purchased the plot with shed plot No.82 measuring 30' X 55' of Kalanagar, Hunchenatti, Macche Gram Panchayat from its erstwhile owner in possession namely Smt. Presila Fernandes on 17/5/2008 under unregistered sale deed and has acquired valid title and possession in 2008. Further plaintiff contended that thereafter she demolished the old shed and constructed the building and taken the electricity from HESCOM. The defendant without having any sort of title or interest on 10/9/2017 with the help of goonda people tried to disturb the plaintiff's possession and also on 25/9/2017 has gave a threat of dispossess from the suit property. Hence, the plaintiff filed the present suit along with this application and prays to allow the application.

3. The defendant filed her written statement and objections to the present application and denied the entire allegations made in the application except the location of R.S.No.550/1A/3. The defendant submits that, as per the sale deed executed by Vithal Devappa Dhakluche on 21/4/1997, she was in actual possession, use and enjoyment till today of the plots bearing No.86 and 87 in R.S.No.550/137/1 VPC No.3528/A measuring 58-59 X 30 = 3510 sq.ft. Situated at Macche village. Further contended that she is the lawful owner and bonafide purchaser of the said property. The plaintiff is no way concerned to the said property bearing plot No.86 and 87. Accordingly prays for rejection of the application.

4. Heard arguments from both sides. In order to support the plaintiff claim, she relied upon following decisions,

1) KLJ 2015 (1) 68

2) KLJ 1988 (3) 436

3) ILR 1986 Kar. 171

5. The points that would arise for my consideration are:-

- (1) Whether the plaintiffs have made out a prima facie case to grant temporary injunction as sought?*
- (2) Is the balance of convenience lies in favour of plaintiffs?*
- (3) Whether the plaintiffs will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?*
- (4) What order?*

6. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

*Point No.4 : As per final orders
For the following:*

REASONS

7. **POINTS No.1 to 3:-** Since these points involve common discussion, to avoid repetition of facts, they are taken together for consideration.

8. The plaintiff has filed this suit for permanent injunction. It is contended by the plaintiff that the suit property bearing VPC No.4187, plot NO.82 was earlier owned by Smt. Presila Fernandes. Then she offered to sale the suit property to the plaintiff and same was purchased by the plaintiff on 17/5/2008 through unregistered sale deed. Plaintiff further contended that after purchasing of suit property, she has constructed RCC building. Plaintiff further submits that the defendant is no way concerned to suit property. But, defendant putting false claim and trying to disturb her possession. Plaintiff submits that after purchasing the suit property her name was appearing in VPC extract as owner, after obtaining valid permission, she had constructed the RCC building over the suit property. Further she states that on 10/9/2017 when defendant tried to disturb her possession, she was approached jurisdictional police with this regard. But, they are not taken any action against defendant.

9. Perused materials placed before me and it is noted that the plaintiff to support her contention, she has produced VPC extract bearing VPC No.4187 which is pertaining to 2017-2018 in which it is observed that plaintiff name is appearing in it. Similarly she also produced VPC extract pertaining to 2008-2009 where in plaintiff name is appearing. Further plaintiff also produced Tax paid receipts from 2008 to till day with respect of suit property. It is also observed that plaintiff also produced electricity bills in which plaintiff name was appearing in it and on perusal of other documents produced by the plaintiff with regard to interference, she had filed complaint before Deputy Commissioner of Police, Belagavi. For the above said documents it appears that the plaintiff is in possession of suit property. Moreover, the defendant contended that she is no way concerned to suit property and further contended that her property are situating in same survey number, but her property number is plot No.86 and 87 i.e. VPC No.3528. So it is observed that both the properties i.e. plot number as well VPC number's

mentioned by plaintiff & defendant is different. Hence whether plaintiff has valid title or not over the suit property has to be considered during the full fledged trial but as of now with the help of available documents and photos she established her prima facie case and possession over suit property. Under these circumstances considering the contentions taken by both the parties, I am of the opinion that the plaintiff has made out prima facie case in her favour. If the temporary injunction is not granted, certainly plaintiff will be put irreparable loss and injury. No any hardship will cause to the defendant, because the very object of granting temporary injunction is to protect and to preserve the plaintiff's properties till disposal of the suit, so that if ultimately, the applicant/plaintiff who is the initiator of the suit, succeeds in the suit, would not be put to irreparable and un-compensatable loss and further the provisions under Order 39 Rule 1 and 2 is very specific that it says temporary injunction will be granted only where in any suit it is proved by affidavit or otherwise:

- a) That any property in dispute to the suit, or wrongfully sold in execution of a decree, or*
- b) That the defendant threaten or intends to remove or dispose of his property with a view to his creditors,*
- c) 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 a temporary injunction to restrain such act.*

10. Keeping in mind above provision, I am of the opinion that the present application filed by the plaintiff is deserves to be allowed. **Hence with these observations, I answer points No.1 to 3 in the Affirmative.**

11. **POINT NO.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 & 2 of CPC, is hereby allowed with costs.

Further the defendant, her agents, servants or anybody claiming under her are hereby restrained from disturbing the possession of

the plaintiff over the suit property i.e. VPC No.4187 of Kala Nagar, Hunchenatti village, Macche Gram Panchayat, Belagavi, till disposal of this suit.

(Dictated to the Stenographer directly on the computer, revised & corrected by me and then pronounced in the open Court on this the 17th day of January, 2018)

Sd/-

(Smt. Sujatha A.B.)
III Addl. C.J. & JMFC, Belagavi