

KABG040043602023



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

Dated this 2nd day of April, 2024

PRESENT

**Smt. Geeta. B.A.LLB (Hons) LL.M.,
III Addl. Civil Judge and JMFC, Belagavi.**

ORIGINAL SUIT NO: 1256/2023

BETWEEN:

Shri. Prakash S/o. Mukund Vernekar,
Age: 65 years, Occ: Business,
R/o: H.No.4803/B, III Lane,
Shivaji Nagar, Belagavi.

.....Plaintiff

(By Shri. A. A. Sunalkar, Advocate for Plaintiff)

AND:

Smt. Upasana Wd/o. Ullas Vernekar,
Age: 54 years, Occ: Household work,
R/o. H.No.4803/173B, III Lane,
Shivaji Nagar, Belagavi and others.

..Defendant

(By Shri. S. V. Ganachari, Advocate for defendant no.4 and 5)
(Defendants NO.1 to 3 exparte)

I.A.No.III & IV

Applicant/Plaintiff : Shri. Prakash S/o. Mukund Vernekar

-Vs.-

Opponent/Defendant : Smt. Upasana Wd/o. Ullas Vernekar,

ORDERS ON I.A.NO.III AND IV

The plaintiff filed I.A.No.III under Section 151 of C.P.C. praying to provide police protection to defendant no.4 and 5 to open the lock of property bearing C.T.S.No.4803/173, 3rd Main, Shivaji Nagar, Belagavi and I.A.No.IV under Order XXXIX Rule 2A of C.P.C. praying to restrain the detain the plaintiff in civil prison for willful disobedience of the order of the court.

2. In the affidavit of I.A.No.III, the defendant no.4 stated that on 17.03.2024 an application is filed under Order XXXIX Rule 1 and 2 by him and his brother restraining the plaintiff from the changing the nature of the suit property. After taking into consideration the circumstances, the court has passed an order directing both the parties to maintain status-quo. This fact is withing the knowledge of plaintiff and his counsel. In spite of it, plaintiff has will fully put locks to the various doors of the schedule properties. The plaintiff has done said act, with an intention to cause to harassment to the defendant no.4 and 5 and prevented them from entering the premises and carryout their day to day work. The defendant no.4 and 5 requested the plaintiff to remove the lock to facilitate them to enter premises. The plaintiff flatly refused to co-operate. Therefore, the defendants have approached jurisdictional

police station for assistant. The police did not intimate in the matter and direct to the bring the order of court. Therefore, they have filed this application to provide police protection to assist him and his brother to open the lock of property bearing C.T.S.No.4803/173A. The plaintiff has also violated the order of the trial of court with an intention to harass the defendants. With these contentions the defendant no.4 prayed to allow the applications.

3. On the other hand, Plaintiff filed objection to the applications contending that application in the present form is not maintainable. The court has not passed any such interim orders regarding injunction or to restrain the plaintiff to not to change the nature of the suit properties on I.A.No.II. Hence, I.A.No.III and IV cannot be considered without passing any orders or disobedience on I.A.No.II. Said I.A.s are still pending for hearing. Therefore, applications filed by the defendants for willful disobedience of the order cannot be considered. The Plaintiff contended that he has not changed the nature of the suit properties, therefore, allowing or considering I.A.No.III and IV does not arise for consideration. The defendants have filed these applications without any breach or disobedience of injunction order and defendants have suppressing true and material facts. Hence, contempt of order does not arise. In support of his contentions he relied on ***Kanwarsingh Saini Vs. High Court of Delhi, (2012) 4 SCC 307***, wherein, the Hon'ble Supreme Court held that application under Order XXXIX Rule 2A lies only

where disobedience/breach of an order of injunction granted or order complained of was one that is granted by the court under Order XXXIX Rule 1 and 2 of C.P.C. An application is maintainable only during pendency of suit in case the interim order passed by the court or undertaking given by the party is violated. The defendants have no *locus-standi* to file this type of applications. With these contentions, the plaintiff prays to reject the application.

4. Heard both side counsel.

5. Now the following points arise for consideration.

1. ***Whether the Defendant no.4 and 5 have made out grounds to allow I.A.No.III and IV?***

2. ***What order?***

6. Answers to the above points are as follows:

Point no.1 : In the Negative

Point no.2 : As per the final order for the following:

REASONS

7. **POINT NO.1:** The plaintiff has fled this suit for partition along with I.A.No.I. The defendant no.4 and 5 have filed I.A.No.II praying to restrain the plaintiff from changing the nature of C.T.S.No.

4803/173A, 4803/173B and the said application is still pending for consideration. Order is not yet passed on said I.A.No.II. The defendant no.4 and 5 have filed these I.A.No.III and IV to provide police protection to defendant no.4 and 5 to open the lock of property bearing C.T.S.No.4803/173, 3rd Main, Shivaji Nagar, Belagavi and I.A.No.IV under Order XXXIX Rule 2A of C.P.C. praying to restrain the detain the plaintiff in civil prison for willful disobedience of the order of the court. When the the order is not passed, no question of disobedience and providing of police protection. The police protection cannot be given in favour of defendant no.4 and 5 without any specific order. When there is no order under Order XXXIX Rule 1 and 2, no question of disobedience. Therefore, the I.A.No.III and IV are premature applications. Hence, these applications are not maintainable at this stage. If plaintiff change the nature of suit properties after passing orders on I.A.No.II, then the defendant no.4 and 5 are at liberty to file necessary applications. At this stage, these applications are not maintainable. ***Hence, I Answer Point no.1 in Negative.***

8. POINT No.4:- In view of the discussion on point no.1 , for the reasons stated therein, I proceed to pass the following;

ORDER

The I.A.No.III Under Section 151 of C.P.C and I.A.No.IV under Order XXXIX Rule 2A of C.P.C are hereby rejected.

*(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open Court on **2nd day of April, 2024**).*

III Addl. Civil Judge & JMFC.,
Belagavi.