

OS 26/22

Perused the plaint averments, I.A.No.I along with affidavit and documents produced by the plaintiff. On perusal of the check slip there is no caveat filed in this case. The suit is for declaration and injunction.

This is an application filed under Order XXXIX Rules 1 & 2 R/w Sec 151 of CPC praying to issue ad-interim, ex-parte temporary injunction against the defendants, their men, agents, servants or anybody acting on their behalf from interfering with the peaceful possession & enjoyment of the plaintiffs over the suit property.

It is the case of the plaintiffs that, originally the suit property was belonging to one Tammanna Appanna Kyatanavar. Subsequently the name of the father of the plaintiffs came to be mutated to the suit property, the name of the father of the plaintiffs is appearing in the VPC extract of the suit property since long time. However, on 31.05.2019 the father of the plaintiffs was expired leaving behind the plaintiffs as his legal heirs.

The defendants are the owners of the property bearing VPC No.347. It is totally measuring 160 sq. yards and the same is situated on the eastern side of the suit property.

This being the case, the defendant Nos.2 & 3 and their brother one Channappa Kallappa Kyatanavar had filed one original suit bearing OS No.121/1996 for the relief of bare injunction before the Hon'ble Civil Judge and JMFC, Bailhongal against the father of the present plaintiffs. In the said suit the present defendant No.1 was arrayed as defendant No.2. In OS No.121/1996 the father of the present plaintiff had appeared and filed the written statement by taking the specific contention that the property bearing VPC No.347 owned by the present defendant No.1 to 4 is measuring only 160 sq. yards and not 320 sq. yards. The Hon'ble Civil Judge, Bailhongal was pleased to dismiss the suit on 30.03.1999, which was later challenged before the Hon'ble Senior Civil Judge, Bailhongal as per RA No.20/1999, however the same came to be dismissed by confirming the judgment passed by the Hon'ble trial Court, that decree was not challenged as such it has attained its finality.

In the first week of January 2022 all of a sudden the defendants came to the suit property along with the JCB and labors and have attempted trespass over the suit property contending that the suit property belongs to them. However, the plaintiffs protested the high handed activities of

the defendants and their henchmen. Thereafter the defendants went away stating that they will come within 2-3 days along with their henchmen and they will put up construction and no force on earth can stop them from putting up construction over the suit property.

I have carefully perused the documents furnished by the plaintiffs. More specifically in OS No.121/1996 which was referred in RA No.20/1999 at page No.8 the present defendant No.4 who was the plaintiff No.3 in OS No.121/1996 has given the admission in his cross examination as hereunder :-

“ದಾವಾದ ಆಸ್ತಿಯ ಪಶ್ಚಿಮಕ್ಕೆ ಇರುವ ಪ್ರತಿವಾದಿಯ ಮನೆಯ ಈಗಿನ ಪಂಚಾಯತ್ ನಂ.347 ಇರುತ್ತದೆ ಅನ್ನುವುದು ನಿಜ. ಪ್ರತಿವಾದಿಯ ಪಂಚಾಯತ್ ನಂ.348 ರಲ್ಲಿ 320 ಸ. ಯಾರ್ಡ್ ಇರುತ್ತದೆ ಅನ್ನುವುದು ನಿಜ. ಪ್ರತಿವಾದಿಯ 348 ಆಸ್ತಿಯ ನಂಬರಗೆ ಮೊದಲು 334 ಎಂದು ಹಳೆಯ ನಂಬರ ಇತ್ತು ಅನ್ನುವುದು ನಿಜ. ಪಂಚಾಯತ್ ನಂ.348 ಪ್ರತಿವಾದಿಯ ಅಜ್ಜನ ಕಾಲದಿಂದಲೂ ಪ್ರತಿವಾದಿಯ ಕಬ್ಬಾಡ್ಡಲ್ಲಿದೆ ಅನ್ನುವುದು ನಿಜ. ಪ್ರತಿವಾದಿಯ ಪಂಚಾಯತ್ ನಂ.348 ರ ಪಶ್ಚಿಮಕ್ಕೆ ಖುಲ್ಲಾ ಜಾಗೆ 349 ಇದೆ ಅನ್ನುವುದು ನಿಜ. ಅದು ಒಟ್ಟು ಕೂಡಿ 320 ಸ.ಯಾರ್ಡ್ ಆಗುತ್ತದೆ ಅನ್ನುವುದು ನಿಜ.

ದಾವಾ ಮಾಡುವುದಕ್ಕಿಂತ ಮುಂಚೆ ದಾವಾದ ಆಸ್ತಿಯ ಅಗಲ - ಉದ್ದದ ಅಳತೆಯನ್ನು ನಾನು ಅಳತೆ

ಮಾಡಿಲ್ಲ ದಾವಾದ ಆಸ್ತಿ ಸುಮಾರು ಉತ್ತರ - ದಕ್ಷಿಣಕ್ಕೆ 100
ಪೂಟ ಮತ್ತು ಪೂರ್ವ-ಪಶ್ಚಿಮಕ್ಕೆ 28 ಪೂಟ ಇರುತ್ತದೆ.”

From this it prima facie appears that the suit property is measuring 320 sq. yards and it belong to the plaintiffs, therefore I can safely hold that the plaintiffs have made out an arguable case which is nothing but a prima facie case.

This Court is very much conscious that, granting of injunction after issuing the notice is a rule and granting of an ex parte injunction is an exception. In the present case on hand, if ex parte injunction is not granted and if the defendants succeed in ousting the plaintiff from the suit property and construct the building during the pendency of this IA, the very purpose of granting the injunction would be defeated by delay. With these observations, I proceed to pass the following;

ORDER

The defendants, their men, agents, servants or anybody acting on their behalf are hereby restrained from interfering with the possession of plaintiffs over suit property until this IA No.1 is decided on merits.

Since ex parte injunction is granted, the plaintiffs shall comply the following conditions as per Order XXXIX Rule 3 (a) of CPC.

The plaintiffs shall send

- 1) The copy of the interlocutory application along with affidavit to the defendant.
- 2) The copy of the plaint.
- 3) The copies of the documents on which the plaintiff had relied to get this injunction.
- 4) Sl. No.1 to 3 documents shall be sent by registered post.
- 5) The plaintiff shall file an affidavit to the office regarding the compliance of all the conditions from Sl. No.1 to 4 on this very same day or on the day immediately following this day.

Needless to say, non compliance of any of the aforesaid 5 conditions, the exparte injunction granted will be vacated.

Issue suit summons to all the defendants if the PF and necessary copies of the plaint are furnished.

Call on : 09.03.2022

Civil Judge & JMFC., Kittur.