

IN THE COURT OF CIVIL JUDGE & J.M.F.C.
AT BANAHATTI

:PRESENT:

Miss. Shushma T.C.
B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti.

Dated this, the 05th day of April, 2022.

O.S No.38/2020

1. Habib S/o Ismail Nippani,
Age: 42 years, Occ.: Coolie,
R/o: Killa Bagh, Terdal, Tq: Rabakavi-Banahatti.

.... Plaintiff

(Represented by Sri. A.S.G., Advocate)

-Vs-

1. The Town Municipal Council, Terdal,
Represented by Chief officer, Terdal,
Tq: Rabakavi-Banahatti.

.... Defendant

(Represented by Sri. V.D.P., Advocate)

: PARTIES IN I.A No. II :

1. Habib S/o Ismail Nippani

... Applicant/plaintiff

-Vs-

1. The Town Municipal Council, Terdal
Represented by Chief officer

.... Opponent/defendant

: ORDERS ON I.A No. II :

The plaintiff has filed this application U/o 39 Rule 1 and 2 of CPC seeking an order of temporary injunction against defendant restraining him from causing obstruction for his peaceful possession, enjoyment and vahiwat of the suit property bearing TMC No.2787-A (old No.2787) situated at Terdal till disposal of this suit.

2. In support of this application, plaintiff has sworn to an affidavit stating that, he has filed this suit for declaration and consequential relief of permanent injunction against defendant. It is submitted that, he is the actual owner in peaceful possession and enjoyment of the suit property since time immemorial. Originally, the suit property belonged to one Shankar S/o Laxman Bandiwaddar, who sold the same to the father of this plaintiff named Ismail S/o Muhammadsab Nippani. By virtue of the said sale, he was in peaceful possession and enjoyment over the suit property along with his family members. Meanwhile, the father of this plaintiff died on 08.11.2005 and they obtained succession certificate from Tahsildar. The family

members executed 'Oppige Patra' in favour of plaintiff to get his name entered in the property extracts as owner of the suit property. Thereafter, since then he is the owner in possession of the suit property without any disturbances and paying taxes regularly. But, the defendant caused obstruction to his possession by asking him to vacate the same within two days without any right, title or interest and are trying to dispossess him from the suit property with intention to cause wrongful loss. Hence, he has filed this suit and this application seeking to restrain the illegal acts of defendant. If the application is not allowed, he would be put into greater hardship which cannot be compensated in any terms, whereas, on the other side, no harm would be caused. Further it is submitted that, he has got a prima facie case and balance of convenience lies in his favour. On these grounds prayed to allow the application.

3. On the other hand, defendant has filed written statement and filed a memo to treat the contents of written statement as the objections to this application and

contended that, plaintiff is not the actual owner in possession and enjoyment of the suit property and has got entered his name in the property extracts without producing legal documents. Merely based on the said property extracts he cannot become owner of the suit property and further he needs to adduce evidence to prove his ownership over the suit property. He has filed this suit against defendant only to grab the property by creating illegal documents and has no prima facie case for the grant of temporary injunction. On these grounds, prayed to dismiss the application with compensatory costs.

4. Heard both sides and perused the materials placed on record.
5. On the basis of rival contentions urged by the parties, the points that would arise for my consideration are as follows:
 1. Whether the plaintiff has made out a prima facie case?
 2. In whose favour balance of convenience lies?

3. Who will be put to irreparable loss or injury, if an order of temporary injunction is rejected?
 4. What order ?
6. My answers to the above said points are as under:

Point No.1 : In the **Affirmative**.

Point No.2 : In favour of plaintiff.

Point No.3 : Answered accordingly.

Point No.4 : As per final order,
for the following:

: R E A S O N S :

7. **Point No.1:** Plaintiff has filed this suit against defendant for the relief of declaration and consequential relief of permanent injunction. It is the definite case of plaintiff that, he is the owner in actual possession and enjoyment of the suit property bearing TMC No.2787-A (old No.2787) situated at Terdal. Originally, the suit property belonged to one Shankar S/o Laxman Bandiwaddar, who sold the same to his father and he along with his family members were in peaceful possession and enjoyment of the same. Thereafter, he died on 08.11.2005 and other family members executed 'Oppige Patra'

in favour of plaintiff to get his name entered in the property extracts as owner of the suit property and since then, he is the actual owner in peaceful possession and enjoyment of the suit property without any disturbances till the filing of this suit. They are paying taxes regularly to the municipality and have got electricity and water supply to the said suit property. But on 09.01.2020, the defendant tried to dispossess him from the suit property and asked him to vacate the same within two days without having any right, title or interest over the suit property and is trying to cause obstruction to his peaceful possession and enjoyment of the suit property. It is submitted that, he has got a prima facie case and balance of convenience lies in his favour and if an order of temporary injunction is not granted, he will be put to greater hardship and hence prayed to allow the application.

8. On the other hand, defendant has contended that, plaintiff is not the owner in possession and enjoyment of the suit property and got entered his name in the property extracts without producing valid documents and merely based on the alleged property extracts, he cannot claim ownership over the

suit property and has filed this suit only to grab the property of defendant and hence prayed to reject the application as he has not made out prima facie case for the grant of temporary injunction.

9. In support of this application, plaintiff has produced property extracts wherein, the names of plaintiff and his father are mentioned in the column meant for entering the name of owner, photograph, electricity bill, death certificate of father of plaintiff, copy of survivorship certificate, unregistered oppige patra executed by his family members in favour of this plaintiff wherein, the subject matter of the said document is the suit property, the copy of resolution passed by municipality.
10. It is a settled law that, while considering an application under Order 39 Rule 1 & 2 of CPC, court has to look into prima facie case and not to examine the case on merits that, whether the plaintiff is likely to succeed in the case or not. Plaintiff has to make out prima facie case for the grant of discretionary relief of temporary injunction. It is a settled position of law that, one who seeks equity, must show equity to others and should

come with clean hands to have a discretionary relief of the Court, such as an order of temporary injunction. It is also a settled law that, a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that, unless the defendant is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The court further has to satisfy that, non-interference by the court would result in irreparable injury to the party seeking relief.

11. In the light of the above principles, when we look into the present case on hand, based on the rival contentions urged by both the parties and after careful consideration of the pleadings of the parties, it is observed that, there is a serious dispute by defendant regarding the ownership of the plaintiff over suit property. The suit is filed by him against defendant for the relief of declaration and consequential relief of injunction. However, the question relating to title is a mixed

question of law and facts which be adjudicated after full-fledged trial. Based on the available materials, without going into the merits of the case, it is necessary to protect the alleged rights of plaintiff over the suit property until conclusion of trial otherwise the very purpose of filing this suit and application will be defeated. The question whether, he is the owner to the suit property or not requires to be decided after the evidence which will take time. At this juncture, protection of rights over the property and protecting the nature of suit property is required to be safeguarded and hence, without going into the merits of the case, it is safe to hold that, plaintiff has made out prima facie case for the grant of temporary injunction. Accordingly, I answer point no.1 in the **Affirmative**.

12. **Point No.2:** The plaintiff has made out prima facie case for the grant of temporary injunction and looking into the available materials on record produced by plaintiff, it would be just and proper to hold that, balance of convenience lies in favour of plaintiff. If an order of temporary injunction is not granted, it would definitely prejudice the rights of the parties

over the suit property who is paying taxes to the municipality and alleges to be in possession over the suit property. Hence, this point is answered accordingly.

13. **Point No.3:** By considering the facts and circumstances of the case and based on my discussion on above points, I hold that, plaintiff has made out prima facie case and has convinced this Court that, balance of convenience lies in his favour and moreover, has shown that, a Judicial intervention is necessary to protect his alleged right over the suit property, failing which, he will be put into greater hardship, which cannot be compensated in any terms. Hence, this point is answered accordingly.
14. **Point No.4 :** In view of my discussions on point No.1 to 3, I proceed to pass the following:

: O R D E R :

I.A No. II filed by plaintiff U/o 39 Rule 1 and 2 of CPC is hereby allowed.

The defendant is hereby restrained from causing obstruction for the plaintiff's peaceful possession, enjoyment and vahiwat over the

suit property bearing TMC No.2787-A (old No.2787) situated at Terdal till further orders.

No order as to costs.

(Dictated to the stenographer, typed by her, transcript corrected and then signed and pronounced by me in the open court on this, the 05th day of April, 2022)

Sd/-

**(Shushma T.C.)
Civil Judge & J.M.F.C., Banahatti.**