

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
AT:JAMKHANDI.**

Present:-

**Sri Ravindrakumar B. Kattimani,
B.A.,LLB (Spl.),**

Addl. Civil Judge and J.M.F.C., JAMKHANDI.

C/c Pril. Civil Judge and J.M.F.C., JAMKHANDI.

O.S.NO.3/2019.

Order Dated : 9th October-2020.

Plaintiff:

- 1 Shri. Timmappa S/o Adivappa Biradar...
(Plaintiff by Sri. R .R.K.,Advocate)

....V/s....

Defendants:

- 1 The State of Karnataka
R/By Deputy Commissioner
Bagalkot and others.
(Defendants by Sri. C.S.B., Advocate)

:: PARTIES IN I.A.No.2::

- 1 Shri. Timmappa S/o Adivappa Biradar ...
....Applicant/Orgl. Plaintiff...
.....V/s.....
 - 1 Smt. Mahadevi W/o Shankar Biradar.
 - 2 Shri. Anand S/o Shankar Biradar.
 - 3 Shri. Nagaraj S/o Shankar Biradar.
 - 4 Shri. Mahadev S/o Shankar Biradar.
 - 5 Shri. Durgappa S/o Hanamant Mang @ Madar.
 - 6 Smt. Satyawwa W/o Ramachandra Kamble.

....Opponents/Defendant No.3 to 8....

:: ORDER ON I.A.NO. 2::

The plaintiff has filed I A No.2 U/o 39 rule 1 and 2 of CPC. In the IA No.2. It is prayed that Hon'ble court may kindly to be issue Temporary Injunction order against the Defendant No.3 to 8, restraining them from storing Kadabi, dumping mud, throwing filthy things tethering cattle and raising any sort of construction in the suit open space bearing VPC No.29 measuring East-West 73 feet and North-South 65 feet situated at Alabal village Tq: Jamkhandi Dist: Bagalkot till disposal of the suit.

2. In the accompanying affidavit, the plaintiff has stated that, he has filed the suit against the defendants for the relief of declaration, possession and mandatory injunction. The defendant No.3 to 8 are trying to through filthy things in the suit property tethering cattle and trying to make construction in the open space. They are trying to hurdle to executing the decree to be passed by this Hon'ble court. The defendants have no interest or title over the suit property. As such being the case the defendant are doing their illegal activities to obstruct the ownership of plaintiff. So plaintiff has approached the Jurisdictional police, but the police have not taken any action against the defendants. The defendants being influenced by politicians. The plaintiff is the owner in possession of the suit property. So plaintiff is in need to get the injunction order, otherwise he will be put to untold hardship and balance of convenience lies in favour of the plaintiff, therefore, prayed to allow the IA No.2.

3. As per contra, defendants No.3 to 7 have filed objection to the

IA No.2 in the objection it is contended that, the contents of the affidavit or false, frivolous and vexatious. The suit of the plaintiff is false. The contents of the suit averment are false and imaginary; they are not admitted by the defendants. The description and measurements of the suit property are not true and correct. The hand sketch map annexed with plaint is not true and correct, mess-guiding and self-serving one, same is not admitted by the opponents- defendants. Hence the plaintiff is not entitled to seek any relief as prayed in the suit. The plaintiff is not owner in actual possession of the suit property. The plaintiff has no right, title and interest in the suit property. The suit property is not belonging to the ancestors of the ancestors of the plaintiff. Hence, such application at this juncture is not permitted under law. The reasons shown in the application are not true and correct. Same is not admitted by the opponents-defendants. Hence, the application is not tenable in law, facts and circumstances. The Defendant No.7 and his family members are owner in actual possession of the suit property since immoral time through their ancestors. The suit property is part and parcel of their house property bearing VPC No.267 of Alabal village and suit property is situated back side of their house property. In the suit property there is family deity by name Shri. Matangi and Shri. Yallamma on Katta where there are two Big mud pots which are called "BANI" Under these pot stored for using treatment of animal lather. Said water is holy water which is used by the villager for curing their skin disease. The said deity have existed since immerial times and they have got so many devotees including Madar

Samaj people. The devotes regularly use to visit the said holy place every Tuesday and Friday. The devotes doing jatra every year on the full-noon by name Banad Hunnime in the month of January since immorial times in the suit property with out any obstruction from any body. This fact is known by every person of the village Alabal. Now the plaintiff falsely stating that the defendant No.7 illegally encroached upon suit property and recently constructed the said Katta etc. When the suit property is exclusively belonging to the defendant No.7 and his family members, then question of encroachment etc does not arise.

4. The defendant No.7 and his family member were and are in actual possession and enjoyment of the suit property since immorial times through their ancestors for family deity, treatment of animal lather works. Tethering of their cattle's and storing fire-woods etc without any objections from anybody. The plaintiff has no right to obstruct the defendant No.7 and his family members for use and enjoyment of the suit property. The plaintiff never in possession and enjoyment of the suit property. The plaintiff being political person and very rich person, so by using his political and money power illegally got created false document and entered his name to the suit property behind back and without knowledge of the defendants in the panchayat record with malafide intention to engulf the suit property and also manage to create false document of survey of the suit property same is rejected by the defendant No.2 panchayat authority by it's order dated 26-12-2016. Said order was challenged by the plaintiff

before the executive officer Taluka Panchayat Jamkhandi which was dismissed on 19-12-2018. There is no any record regarding measurement of the properties situated under village panchayat area Muttur and Alabal village at any time. In spite of it, on the strength of the false and fabricated document the plaintiff is claiming right over suit property by missing poverty and innocence of the defendants.

5. The defendants are not doing any illegal things and activities in the suit property. The defendants have no intention to construct illegally in the suit property. The defendants have not intention to alter position of suit property illegally and high handedly as alleged by the plaintiff. The plaintiff tired to influence of his political power before police, but police have visited suit site and realize the correct things and stated that both party abide the decision of the court. There is no any danger to suit property and person as alleged by the plaintiff. In case the application is allowed as prayed, the feeling all devotes of the said god are affected for offering Pooja and etc and also suffer the defendant No.7 family.

6. The plaintiff has not made out any prema-facie case, there is no balance of convenience in favour of the plaintiff and there is no any irreparable loss cause to the plaintiff. On the contrary the defendants have got prema-facie case and balance of convenience. In case application is allowed the defendants will suffer heavy and irreparable loss which cannot be capacitated in terms money and suffer hardship. The opponents-Defendants b reserving their right to urge their defendants at appropriate times, this objection is filed. The application is allowed as prayed, it

results into miscarriage of justice, because there are no genuine and proper grounds to allow the application. In case the application is allowed as prayed the opponents will suffer heavy and irreparable loss.

7. I have heard the arguments of Sri. R.R.K. Advocate for plaintiff and Sri. C.S.B., Advocate for defendant No.3 to 7 and perused the materials available on records.

8. The following points arises for my consideration are as under;

1. Whether the plaintiff has made out prima facie case to grant temporary injunction in his favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will suffer irreparable loss if the temporary injunction order is not granted?
4. What order?

9. My answers to the above points are as under: -

Point No.1 - **In the Negative.**

Point No.2 - **In the Negative.**

Point No.3 - **In the Negative.**

Point No.4- **As per final order for the following;**

:: R E A S O N S ::

10. **Point No.1 and 2:-** These two points are inter-linked with each other, hence they have been taken for discussion at a time.

11. The present application is filed by plaintiff for the relief of equitable and discretionary relief of temporary injunction restraining the defendants No.3 to 8 and their from obstructing to the plaintiff to the

peaceful possession of the suit property bearing VPC No.29 measuring East-West 73 feet and North-South 65 feet situated at Alabal village Tq: Jamkhandi, Dist: Bagalkot. The present suit is filed by the plaintiff for seeking the relief of Declaration, possession and Mandatory Injunction, that defendants No. 3 to 8 have obstructing and disturbing use of the suit property. Therefore, the plaintiff who is appeared to the court, for the relief sought by him in the present I.A. has to make out a prima facie case for grant of temporary injunction. The plaintiff has to satisfied the court. Dispute raise by him, is bonafide, it need and to decide on merits and that, there is probabilities of applicant being entitle relief claimed in the suit and also in the present I.A. The plaintiff is unburdened to prove that there exist a prima facie case, the plaintiff has to make out that on the bases of the materials placed on the record and on the basis of statement made on oath he had got a right for the relief claimed by him under law.

12. Further it is settled position of law that factors of prima facie has to be consider in touch stones of maintainability of the suit of its nature, it is also settled position of law that the interim order can be grant in the aid of main relief claimed by the parties to the suit.

13. By applying the above settled possession of law , let me discuss present I A in hand. It is the specific case of the plaintiff is that, the plaintiff is the owner in possession of the suit schedule property situated at Alabal village Tq: Jamkhandi, its bearing VPC No.29 measuring East-West 73 feet and North-South 65 feet. Further it is stated that, in the month of November-2016 the plaintiff has filed an application before the

Grampanchayath, Muttur requesting them to measure the suit property and prepared computerized extract as per new rules showing the measurement of suit property as 73 X 65 feet. On 14-11-2016 the defendant No.2 and its members visited the suit property and measured the property and arrived at conclusion that, the suit property is measuring 73X65 feet. On 14-11-2016 a meeting was held and resolution was passed that the plaintiff is owned and possessed the property and he is in lawful possession and enjoyment of the suit property. On 14-11-2016, all the 16 members were present and among them 10 members exercise their votes in favour of the plaintiff and 10 members have opposed the prayer of the plaintiff.

14. The plaintiff clearly admitted in the plaint para No.5 and 6 that the defendant No.7 and 8 had been encroached the suit property by constructing Katta in the suit property. As admitted by the plaintiff in the plaint, it is clear that, defendant No.7 and 8 are in the possession of the suit property. Whether the defendant No.7 and 8 are in possession legally or illegally it yet to be decide. In this suit issues have been framed and case had been posted for plaintiff evidence, at this stage plaintiff has filed present IA. In this case ownership and possession of the plaintiff over the suit property yet to be decided, that required full pledged trial. On perusal of the documents produced by the plaintiff I am of the considered opinion that, plaintiff has failed to made out prema-facie case and balance of convenience not lies in favour of the plaintiff. Hence, I answered point No.1 and 2 in the **Negative.**

15. Point No. 3:- The plaintiff has not made out prima-facie case and balance of convenience not lies in favour of the plaintiff admittedly defendant No.7 and 8 are in possession of the suit property. If temporary injunction is granted in favour of the plaintiff definitely defendants No.3 to 8 will suffer irreparable loss which cannot be compensate in terms of money. Therefore, I answered **point No. 3 in the Negative.**

16. Point No.4 :- In view above discussions and reasons stated to the Point No.1 to 3, I proceed to pass the following:

:: O R D E R ::

The I.A.No.2 filed by the plaintiff U/O.39

Rule 1 & 2 of CPC, is hereby **Dismissed.**

(Dictated to the Stenographer transcribed and typed by his script on laptop, corrected by me and then pronounced in the open court on this **9th day of October-2020**).

(Ravindrakumar B. Kattimani)

ADDL. Civil Judge, JMFC, Jamkhandi.
C/c Prl. Civil Judge, JMFC, Jamkhandi.