

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC.,AT DEVANAHALLI**

Present: Sri. PRATHAP KUMAR. N.,B.A. L.L.B.,
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 10th day of June, 2024

O.S.No.18/2024

Plaintiff : Sri. K.M Narayanaswamy

V/s

Defendants: Sri. Narasimhaiah and another.

PARTIES IN I.A. NO.I

**Applicant/
Plaintiff** : Sri. K.M Narayanaswamy

-V/s-

**Opponent/
defendants** : Sri. Narasimhaiah and another

PARTIES IN I.A. NO.II

**Applicant/
Defendants** : Sri. Narasimhaiah and another

-V/s-

**Opponent/
plaintiff** : Sri. K.M Narayanaswamy

ORDER ON I.A. No. I & II

This order arising out of I.A No.I filed by plaintiff U/o 39 Rule 1 and 2 R/w Sec.151 of CPC seeking restraining the defendants, their agents, servants or any body claiming under them from not to put up any further construction in the plaint schedule B property by interfere in suit schedule till disposal of suit.

The order arising out of I.A No.II filed by defendants U/o 39 Rule 4 R/w 151 of CPC seeking vacate interim order passed passed by this Ho'ble court.

2. In support of application, plaintiff has duly sworn affidavit and annexed the same along with application and stated that, he is an absolute owner in peaceful possession and enjoyment of the land bearing Sy. No.18/7 measuring 10 guntas situated at Kondenhalli village, Channaraypatan Hobli, in which acquired through registered sale deed from the defendant on 03-04-2019. The defendant has not manner of right title or interest over the B schedule

property. The B schedule property is part and parcel of A schedule property. When such being the case, the defendants illegally constructed the foundation and erected the pillars of the building in the B schedule property in to the southern side of suit A schedule property measuring approximately about 0.01,08, guntas in the B schedule property in the above Sy. No.18/. The defendants illegally encroached and trying to construct the building in the B schedule property. Thereafter plaintiff has lodged complaint against defendants to jurisdictional police station, but police authority have advised him since the matter is civil in nature. Hence allow the application.

3. On other hand the defendant No.1 has filed memo stating that, content of written statement filed by defendants may be taken into consider as objection to I.A. No.1 and they stated that, he is an absolute owner of the schedule land bearing Sy. NO.18/7 measuring to an extent of 11 $\frac{3}{4}$ guntas including 1 gunta Karab situated at Kondenahalli village and the same was acquired by this

defendant though ancestor. This defendant along with his wife have sold the portion of schedule property measuring 10 guntas of land in favour of plaintiff through registered sale deed dated 03-04-2019. On the very same day plaintiff has purchased 7 guntas of land from his brother Shivakumar in Sy. No.18/6. The plaintiff formed residential layout consisting of 13 sites without obtaining the conversion order from the concerned authorities have sold the sites in favour of various persons. The plaintiff along with his family members has sold site No.9 katha No.18/8/7/9 measuring East to West 30 feet and North to South 40 feet in favour of Manohar Singh and Chelu Singh. The plaintiff admits the execution of various sale deeds by forming 13 sites and sold the same in favour of various person and the plaintiff is not in possessed of A schedule property as such the plaintiff is debarred from filing the present suit and there is no cause of action for filing the suit and on that ground also the suit is liable to be rejected Uo 7 Rule 11 of CPC. The plaintiff is not in possession of the schedule A property and schedule B property

mentioned in the plaint is exclusively belongs to this defendants as such the suit for permanent injunction and mandatory injunction against this defendant is not maintainable. Hence prays to dismiss the application.

4. In support of I.A No.II, the defendants have duly sworn affidavit and annexed the same along with application and stated that, the defendant No.1 is an absolute owner of the schedule land bearing Sy. NO.18/7 measuring to an extent of $1 \frac{3}{4}$ guntas situated at Kondenahalli village. The defendants have sold the portion of schedule property measuring 10 guntas out of $11 \frac{3}{4}$ guntas of land in favour of plaintiff and retained $1 \frac{3}{4}$ guntas in his name. On the very same day plaintiff has purchased 7 guntas of land from his brother Shivakumar in Sy. No.18/6. The plaintiff formed residential layout consisting of 13 sites without obtaining the conversion order from the concerned authorities have sold the sites in favour of various persons by executing sale deeds and there is no existence of the agricultural land in Sy. No.18/7

measuring to an extent of 10 guntas and now plaintiff with an intention to grab our property had also to harass mentally has filed this false and frivolous suit against us and obtained interim order of status quo. Hence pays to allow the I.A No.II

5. On the other hand plaintiff has contended that application filed by the defendants by filing written objection and stated that, application filed by defendant is not maintainable either in law or on fact, the defendants retained property measuring only $1\frac{3}{4}$ guntas, the defendant taken advantage of his $1\frac{3}{4}$ guntas and illegally encroached and illegally constructed the foundation of the building in the B schedule property of suit, which is belongs to plaintiff property measuring 10 guntas of land in schedule A property. The defendant not produced any documents to show that which extant of land thy construction is made in the Sy. No.18/7. The defendants wrongfully claims by suppressing the true facts by claiming to be in possession, but on perusal of the entire written

statement of defendants, it clearly reveals that the defendants sold the measuring 10 guntas and defendants never been in possession the plaintiff described in the schedule boundaries. Hence prays to dismissal of I.A No.II

6. Heard on arguments both side and perused the materials on record.

7. Upon perusal of the records and documents, the following points are arisen for my consideration.

:POINTS:

1)Whether the prima facie case lies in favor of plaintiff?

2)Whether balance of convenience lies in favor of plaintiff?

3)Whether any irreparable injury or hardship which cannot be compensated in terms of money would be caused to the plaintiffs in the event of refusal of temporary injunction sought?

4) **Whether the defendant shows that, plaintiff has not shown prima facie case in his favor ?**

5) **What order?**

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

Point No. 1 : In the Negative

Point No. 2 : In the Negative

Point No. 3 : In the Negative

Point No. 4 : In the Affirmative

Point No. 5 : As per final order for the following:

REASONS

09. Point No.1 : The plaintiff has filed suit against defendant seeking relief of permanent injunction. Before going to discussion on the case, it is worth note argued advanced by both parties. I have already narrated the case of plaintiff and defence of the defendant in the above. Therefore once again it is not necessary to re produced case of the plaintiff and defence of the defendant.

10. At this stage, without going to the merits of the case and holding mini trial, this court has considered the aspect prima-facie case. At this stage, this court makes it clear that, this court is looking towards prima-facie case and not prima-facie title. It is settled principal law that, at the time dispose the temporary injunction application, the court cannot go into prima-facie case title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.

11. The primarily purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if

the relief is refused and injury and prejudice likely to be caused to the defendants, if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status-quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injuries.

12. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The 1st rule is that, the applicant must make out a prima-facie in support of the right claimed by him. The court must be satisfied that, there is a bonafide dispute raised by the applicant that, there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the

relief claimed by the him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of temporary injunction.

13. On going through the pleadings and documents it appears that, the plaintiff has made A and B schedule in his plaint. The A schedule property is pertains to 10 guntas of land and B schedule property pertains to encroachment made by the defendants measuring to the extent of 1.08 guntas. On perusal of the sale deed dated 03-04-2019 which was executed by the defendant No.1 and 2 in faovur of the plaintiff. It appears that, the defendants have been executed registered sale deed in favour of plaintiff in Sy. No.18/7 only 10 guntas out of 11.12 guntas. Further the defendants have been retain 1.12 guntas in their name and which was reflected in the RTC produced by the plaintiff pertains to in the year 2023-24.

14. On perusal of the documents placed by the defendants which are clearly depict that, on 30-12-2021

the plaintiff has been sold site bearing No.7 measuring East to West 30 feet and North to South 35 feet in favour of Ramesh and Harish in Sy. No.18/7. On 04-05-2020 the plaintiff has sold site No.8 measuring East to west 30 feet and North to South 40 feet in Sy. No.18/7 in favour of one Sri. Thamanna. On 11-02-2020 the plaintiff has been sold site measuring East to West 40 feet and North to South 17 feet in Sy. No.18/7 in favour of one Sri. Narayanappa. On 06-06-2019 the plaintiff and his family members have been sold site No.5 measuring East to West 40 feet and North to South 30 feet in Sy. No. 18/7 in favour of one Sri. Sunil Prasad.

15. On 03-07-2019 the plaintiff and his family members have been sold site No.9 East to West 30 feet and North to South 40 feet in Sy. No.18/7 in favour of one Sri. Manohar Singh and Chelu Singh. On 06-06-2019 the plaintiff and his family members have been executed confirmation deed pertains to Site No.4 East to West 40 feet and North to South 30 feet in Sy. No.18/7 in favour of

Ravindra Kuamr Parihar. Those registrable documents clearly shows that, the plaintiff and his family members have been sold sites which were formed in the Sy. No.18/7 in favour of various purchasers. However, the plaintiff has filed this suit against defendants entire 10 gutnas of land in Sy. No.18/7 which was purchased by him on 03-04-2019 from defendants.

16. The plaintiff is not in possession of 10 guntas of land as per the sale deed dated 03-04-2019. Therefore the plaintiff has suppressed material fact pertains to he was sold some of the property in Sy. No.18/7 in favour of various purchasers. These shows that, the plaintiff is not knock the door of this court with the clean hand.

17. Hon'ble Apex court held that, while applying discretion Court should verified three test which is prima facie case, balance of in convenience, irreparable loss if decline to granting injunction. *In case reported in **1995(5) SCC 545 between (Gujarat Bottling Co. Ltd. and***

others V/s. Coca Cola Co. and others). Held that;

B. Civil Procedure Code, 1908 - Or.39 - Interlocutory injunction - Grant - discretion of court - Factors to be considered in exercise of discretion - Balance of convenience to be seen - Being an equitable relief, conduct of party seeking the injunction or the party seeking court's interference with the order of injunction must be fair - Undertaking can be obtained from the party in whose favour injunction is granted to compensate the other party in case of decision in favour of that party - Equity.

C. Specific Relief Act, 1963 - S. 42 - Injunction enforcing negative stipulation in contract - Discretion of court - When can injunction be refused

Held: The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to

grant an interlocutory injunction has to be taken at a time when the existence of legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately

compensated if the uncertainty were resolved in his favour at the trial.

Under Order 39 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. Those considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

Another decision of Hon'ble Apex court reported in 2006 (5) SCC 282 between (Seema Arshad Zaheer and others V/s. Municipal Corpn. of Greater Mumbai and others) Held that;

Civil Procedure Code, 1908 - Or. 39 R.1 and Or. 43 R.1(r) - Temporary injunction - When to be granted - Interference by appellate court with the discretion of the trial court when justified - Law in general and law in cases of orders for demolition of buildings, restated - In cases of demolition of buildings where the plaintiff fails to make out a prima facie case for grant of an injunction may not be granted merely on the ground of sympathy or hardship - Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere - Granting temporary injunction on the basis of "no material" or refusal to grant temporary injunction are instances of such exercise of discretion - The expression "no material" for the said purpose, held, includes cases where there is not relevant material or where the material, taken as a whole, is not reasonable capable of supporting the exercise of discretion - On facts, held, there was no material int he present case to make out a prima facie case for the grant of temporary

injunction against the order of the Commissioner of the Municipal Corporation for the removal/pulling down of the structures he had found to be unauthorized and illegal -Hence, High Court rightly interfered and vacated the temporary injunction granted by the trial court - Practice and Procedure - Interim/Interlocutory orders - Temporary injunction - Town Planning - Unauthorized construction - Municipal Corporation's order for removal/pulling down of - Grant of temporary injunction against, by court - When permissible - Municipalities - Bombay Municipal Corporation Act, 1888 (3 of 1888), S. 351 - Words and phrases - "no material"

Held: The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff; (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's right is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being cause to the plaintiff if the

temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

The principal laid down by Hon'ble Apex court in above referred decision, plaintiff is fail to established three test. On this grounds, he is not entitled any interim injunction against defendant. It is too pre-matured to disbelieve the contention taken by learned counsel by plaintiff. Therefore, in my opinion the plaintiff has failed to prove prima-facia case in his favour. **Hence, my answer to point No.1 in the Negative.**

18.POINT No.2 The existence of prima-facia case in these matters of granting injunction is really harbinger to investigate other points as per principal cited in the decision of *Gourishankar Swamigalu has reported in ILR 1989 Karnataka 1701* and it has been further held that if

there is no prima-facia case at all or the case put forward is so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. The relief of injunction is remedy in equity hence such relief must be bestowed only on whose reputation and hands are both spotlessly clean. In the light of discussion made about I am of the opinion that balance of convenience does not lies in favour of plaintiff. **Hence, my answer to the point No.2 in the Negative.**

19.POINT No.3 If any temporary injunction is granted the plaintiffs should be irreparable injury or hardship which cannot be compensated in terms of money. Therefore, the plaintiff is not loss or any hardship compensated by in terms of money. **Hence, my answer to point No.3 in the Negative.**

20.POINT No.4: in view of answered point No-1 to 3 in the negative, my answer to **point No.4 in the Affirmative.**

21. POINT No.5: In view of my answer on point No.1 to 4 I passed the following:

ORDER

IA No.I filed by the plaintiff Under Order 39 Rule 1 and 2 of C.P.C., is hereby dismissed, in result of IA No-1, IA No.II filed by defendants U/O. 39 rule 4 R/w Sec.151 of CPC is hereby allowed.

No order as to be cost.

(Dictated to Stenographer directly on computer by him, then same is corrected and pronounced by me in the open court on this the 10th day of June,2024.)

(Sri. Prathap Kumar. N)
Prl. Civil Judge and JMFC.,
Devanahalli.

