

**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 6th day of April, 2024

O.S.No.515/2023

Plaintiff : Sri. Keshavamurthy

V/s

Defendant: Smt. Lakshamma & Others.

PARTIES IN I.A. NO.I

**Applicant/
Plaintiff** : Sri. Keshavamurthy

-V/s-

**Opponent/
defendants** : Smt. Lakshamma & Others.

ORDER ON I.A. No. I

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 interfere with plaintiff peaceful possession and enjoyment of the suit schedule

property till disposal of suit.

2. In support of applications, plaintiff has duly sworn affidavit and annexed the same along with application and stated that, he is the absolute owner and in possession and enjoyment of the suit schedule property. Originally suit schedule property belongs to grand father of plaintiff namely Doddanarayanappa and he was purchased the same through registered sale deed dated 29-08-1979 from Naraynappa and Mariyappa they are non other than the father and uncle of the defendants and same day delivered the possession of the said property in favour of his grand father. Since from the date of sale deed his grand father was the absolute owner and possession of the suit schedule property. After demise of grand father of plaintiff, he is in peaceful possession and enjoyment of the suit schedule property. When such being the case, the defendants are utter strangers to the suit schedule property, but they are without having any manner of right, title or interest over the suit schedule property, on 21-08-2023 they came near the suit schedule property along

with their henchmen and tried to dispossess him from the suit schedule property. Hence allow the application.

3. On other hand the defendants have filed memo stating that, content of written statement filed by him may be taken into consider as objection to I.A No.1 and they stated that, the suit schedule property is belongs to husband of defendant No.1 by name Sri. G Naryanapa @ B. Naryanappa. After death of said G Naraynappa @ B. Naryanappa, the defendants herein being Class-I legal heirs, they are in possession of the property bearing No.29 of Devanayakanahalli village, Since the defendant No.4 is residing at Koraluru village, Kasba Hobli, Hosakote Taluk ner to the Devanayakanahalli village of the suti schedule property, he is also used to reside in Devanayaknahalli village, in the schedule property and he built the residential house for rent to an extent fo 50x40 feet and there is a remaining 60x25 feet vacant land in which in both the lands the defendant No.4 is in possession on behalf of other joint family i.e., defendant No.1 to 3 and 5

to 7. When things stood thus, the plaintiff by taking advantage of defendants are residing at different places and even though he is having very much knowledge regarding the title of the suit schedule property lays with the defendants ownership by playing fraud with the defendant and by giving misrepresentation to the Panchayah development officer has got khata to his name. Hence prays to dismiss the application.

4. Heard on arguments plaintiff side and perused the materials on record.

5. 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)What order?

06. 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 : As per final order for the
following:**

REASONS

07. Point No.1 : The plaintiff has filed suit against defendant seeking relief of permanent injunction. 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.

08. 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.

09. 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 injection 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.

10. 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.

11. On perusal of the record it appears that, this

plaintiff has been instituted suit bearing OS No.316/2018 against one Sri. Muninarayanappa and Ramachandrappa pertains to the same property. The said suit is pending for adjudication on the file of second Additional Civil Judge, Devanahalli. Wherein the plaintiff has suppressed such material fact in his pleadings about pendency of the another suit bearing No. 316/2018 pertaining to same property. It's shows that, the plaintiff has suppressed material fact for get a relief from this court. Therefore the plaintiff is not knock the door of this court with clean hand.

12. On perusal of the plaint averments, it appears that, grand father of plaintiff namely Doddanaraynappa has got purchased said property from the Naraynappa who is uncle of defendants under the registered sale deed dated 28-09-1979. Thereafter grand father of plaintiff was in peaceful possession and enjoyment of the suit schedule property by mutated his name. Wherein on perusal of the pleadings in the suit bearing OS No. 316/2018, these plaintiff has pleaded that, on the basis of long possession, the Gangavara Chowdapanahalli was issued Form No.9 and

10 in favour of the plaintiff on the basis of long possession. Therefore the plaintiff is absolute owner of the suit schedule property. The pleadings in this suit and suit bearing OS No. 316/2018 are totally contrary to each other. Therefore the plaintiff is knock the door of this court with clean hand. Therefore the plaintiff is failed to prove prima-facie case against defendants.

13. 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 in the 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.**

14.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.***

15.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.***

16. POINT No.4: In view of my answer on point No.1 to 3 I passed the following:

ORDER

**IA No. I filed by the plaintiff
Under Order 39 Rule 1 and 2 R/w
Section 151 of C.P.C is hereby
dismissed.**

No order as to be cost.

(Dictated to Stenographer on computer directly by him, then same is corrected and pronounced by me in the open court on this the 6th day of April, 2024.)

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