

IN THE COURT OF THE ADDL. CIVIL JUDGE AND
J. M. F. C., HOSAKOTE

Present :Sri. Girisha R.B.,
B.A.L., LL.B.,
Addl Civil Judge & JMFC, Hosakote.

Dated: This, the 3rd day of December 2021

O.S. No.275-2021

Plaintiffs : Sri. Anjinappa

-V/s -

Defendants: Mr. Sathish @ Ganja Sathish and
others

IA No. I

Applicant : Sri. Anjinappa

- V/s -

Opponent : Mr. Sathish @ Ganja Sathish and
others

ORDER ON IA NO. I FILED UNDER ORDER
XXXIX RULE 1 AND 2 R/W Sec.151 OF CPC

The present suit is filed by the plaintiff for the
relief of Permanent Injunction restraining the
defendants and their followers, henchmen or agents or

any one acting on their behalf them from interfering or encroaching of the suit schedule property till the disposal of the suit.

2. The brief facts of the plaintiff case is that, the entire suit schedule property belongs to his father after the demise of his father on 11.11.1986 and he has succeeded the entire estate including the other property, the entire documents are enclosed and annexed along with the main plaint, for kind perusal of this Hon'ble court. The defendants who being land grabber have been making serious efforts to knock away the suit schedule property of the plaintiff and accordingly taking advantage of the week end holidays the defendants with their aids of the local lawless elements have jointly try to interfere with suit schedule property and on questioning the defendants and their henchmen and they have stated threatening him with dire consequences of his life and he was constrained to

lodge a police complaint on 19.10.2021 with the jurisdictional police station but the said police have refused to accord any police protection nor they have made any attempt to take any action against the defendants and his henchmen and lawless elements. The defendants have no right, title or interest in any manner in the suit schedule property. The defendants off late are trying to interfere with the peaceful possession of the said suit schedule property with ulterior motive and mala-fide intention with view to knock away the property and to have wrongful gain for themselves. If the accompanying IA. No.1 is allowed, no hardship will be caused to the defendants. On the other hand, if it is denied, he will be put to greater hardship which cannot be compensated in terms of money. Hence, plaintiff prayed to considered I.A. No.1.

3. The defendants have filed memo to adopt the written statement as objection to this application.

4. Considering the applications, plaint averments and on perusal of the records following points arose for my consideration for proper adjudication of the present applications.

1. Whether the plaintiff has made out a prima-facie case in his favor?
2. Whether the balance of convenience lies in favor of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and damage, if the temporary injunction as sought for is not granted?
4. What order?

5. Having heard arguments on the above applications and also after considering the applications, plaint averments and documents available on record, my answer to the above points are as under:

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

Point No.2: In the **Affirmative**

Point No.3: In the **Affirmative**

Point No.4: As per the final order

for the following:

::R E A S O N S::

6. **Point No.1 to 3:** Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

7. The present suit is filed for the relief of Permanent injunction. While dealing with these kinds of the application the court has to consider the following classical ingredients.

1. The prima- facie case
2. Balance of convenience
3. In reparable loss or injury
4. Other factors.

8. It is significant to note that, the court while granting or refusing to grant injunction should exercise

sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that, pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending of the suit. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail.

9. The present suit is came to filed for the relief of permanent injunction along with the suit plaintiff has maintained IA No.1 and sought for interim relief, accordingly, after considering the material available on

record ,this pass the order as sought. Thereafter, defendant have got appeared and filed their written statement and filed memo thereby sought for adaption of their written statement as objections to IA No.I, and sought for vacate the interim order passed earlier on IA No.1.

10. In support of his claim the plaintiff has relied the sale deed dated 16.06.1949. photographs and strongly submitted that as per the alleged sale deed he is peaceful possession and enjoyment of the suit property. But, the defendants without having interest, right over the suit property are trying to interfere over the suit property. On the other hand defendant have strongly disputed the claim of the plaintiff and strongly contended that there is no suit property in Dasarahalli village. It is further contended that sale deeds of the plaintiff has not tally with the suit property. It is further contended that the plaintiff has literally

suppressed the said material fact ,hence prayed to reject the IA No. I.

11. In this background, it is better to go through the materials available on record. On careful perusal of pleadings, this court finds the plaintiff has claiming his possession over the suit property on the strength of sale deed dated 16.06.1949. In support of his claim plaintiff has strongly relied up on the photos and copy of the complainant. It should be noted that while considering this application this court is not suppose to go in to the merit of the case. Court needs to consider prima- face case and balance of convenience and other relevant factors.

12. During the course of arguments learned counsel for the defendants has vehemently argued that the plaintiff has sought for only injunction for old house, but he is constructing his house in the vacant site. On careful perusal of the plaint averments this court finds

that plaintiff has pleaded in his para no.16 as old balding as well as vacant site. Thus, the arguments canvased by the learned counsel for the defendants on the point can not be acceptable. On perusal of the averments of the written statement this court finds that the defendant have not claiming any rights over that suit property. Further , they have pleaded that the plaintiff is trying to encroach the property belong the Mujurahe Department and putting up the illegal construction over the same. Thus, it is very clear that the defendants have nothing to do with the suit property, it is the concerned department to take suitable action for the alleged constructions if any. Therefore, the defendants have no rights to interfere over the suit property.

13. Further, during the course of arguments learned counsel of the defendants has drawn the attention of this court to the notices issued by the concerned

panchayat wherein notice dated 22.10.2021 it reads as under

“ ದೊಡ್ಡಹುಲ್ಲೂರು ಗ್ರಾಮ ಪಂಚಾಯ್ತಿ ವ್ಯಾಪ್ತಿಯ ಗ್ರಾಮದ ಶ್ರೀ ನಾಗರಾಜ್ ಬಿನ್. ಆಂಜಿನಪ್ಪ ನಿಮಗೆ ಈ ಮೂಲಕ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ದಾಸರಹಳ್ಳಿ ಗ್ರಾಮದ ಗೌಡರು-ಯಜಮಾನರು ಕಮಿಟಿ ಸದಸ್ಯರು ಗ್ರಾಮಸ್ಥರುಗಳು ಪಂಚಾಯಿತಿಗೆ ದೂರು ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದು, ದಾಸರಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ದೇವಸ್ಥಾನ ನಿರ್ಮಾಣ ಕಾಮಗಾರಿ ನಡೆಯುತ್ತಿದ್ದು, ತಾವು ರಸ್ತೆ ಮಧ್ಯದಲ್ಲಿ ಜಲ್ಲಿ ಮತ್ತು ಡಸ್ಟನ್ನು ಹಾಕಿರುವುದರಿಂದ ದೇವಸ್ಥಾನದ ನಿರ್ಮಾಣ ಕಾರ್ಯಕ್ಕೆ ತೊಂದರೆಯಾಗಿರುವುದಾಗಿ ಅದನ್ನು ತೆರವುಗೊಳಿಸಿ ದೇವಸ್ಥಾನದ ನಿರ್ಮಾಣ ಕಾರ್ಯ ಸುಗಮಗೊಳಿಸಲು ಕೋರಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ತಾವು ಈ ನೋಟೀಸ್ ತಲುಪಿದ ತಕ್ಷಣ ರಸ್ತೆಗೆ ಅಡ್ಡಲಾಗಿ ಹಾಕಿರುವ ಜಲ್ಲಿ ಮತ್ತು ಡಸ್ಟನ್ನು ತೆರವುಗೊಳಿಸಿ ದೇವಸ್ಥಾನ ನಿರ್ಮಾಣ ಕಾರ್ಯ ಸುಗಮವಾಗಿ ಸಾಗಲು ಸಹಕಾರ ನೀಡಬೇಕಾಗಿ ಈ ಮೂಲಕ ತಿಳಿಸಲಾಗಿದೆ.”

Further, notice dated 15.01.2021 it reads as under

“ ಹೊಸಕೋಟೆ ತಾಲ್ಲೂಕು, ದೊಡ್ಡಹುಲ್ಲೂರು ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗೆ ಸೇರಿದ ದಾಸರಹಳ್ಳಿ ಗ್ರಾಮ ವಾಸಿಯಾದ ಆಂಜಿನಪ್ಪ ಬಿನ್. ಲೇಟ್. ಮುನಿಯಪ್ಪ ಆದ ನಿಮಗೆ ಈ ಮೂಲಕ ತಿಳಿಯ ಪಡಿಸುವುದೇನೆಂದರೆ ನೀವು ವೆಂಕಟರಮಣಸ್ವಾಮಿ ದೇವಸ್ಥಾನಕ್ಕೆ ಹೋಗುವ ರಸ್ತೆಗೆ ಅಡ್ಡಲಾಗಿ ಮನೆಯ ಸರ್ಜಾ ನಿರ್ಮಿಸುತ್ತಿರುವುದು ತಿಳಿದು ಬಂದಿದ್ದು, ದೇವಸ್ಥಾನದ ಪಲ್ಲಕ್ಕೆ ಉತ್ಸವ ಹಾಗೂ ಧಾರ್ಮಿಕ

ಕಾರ್ಯಕ್ರಮಗಳಿಗೆ ತೊಂದರೆಯಾಗುತ್ತದೆ ಎಂದು ಗ್ರಾಮಸ್ಥರು ದೂರು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಕೂಡಲೇ ಕೆಲಸವನ್ನು ನಿಲ್ಲಿಸತಕ್ಕದ್ದು ಹಾಗೂ ಮನಿಮ್ ಹೆಸರಿಗೆ ಖಾತೆ ದಾಖಲಿಸಿ ಪಂಚಾಯತಿಯಿಂದ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಪಡೆದು ಕೆಲಸವನ್ನು ಮುಂದುವರಿಸುವುದು ಇಲ್ಲವಾದಲ್ಲಿ ನಿಮ್ಮ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಶಿಫಾರಸ್ಸು ಮಾಡಲಾಗುವುದು.”

From the above said recital of the notices it prima-facie appears that suit property is existed and at on stretch panchayt gives notice to produce the documents relating to the suit property, on the other hand it gives to remove the stones and dust dumped on the road. Thus, it appears that panchayat also taken double stand. Therefore, this court is of the opinion that it is concerned authority to take necessary action if plaintiff encroached the public property, not the defendants.

14. Further, defendant have not produced materials to demonstrate the alleged encroachment by the plaintiff. Further, this court observed that expect notices the concerned department has not initiated any

proceedings against the plaintiff. Therefore, in the absence of any such cogent materials this court declined to accept the version of the defendants. On perusal of the entire record it appears that plaintiff is in possession and enjoyment of the suit property. Further, this court finds that plaintiff has made out prima-facie case and other factors to consider IA No I, otherwise it would cause hardship and irreparable loss to him . As such, this court inclined to answer the points no. 1 to 3 in the Affirmative, accordingly points no.1 to 3 are answered in the Affirmative.

15. **Point No.4:** For the above said reasons this court pass the following:

ORDER

I.A.No.I filed by the plaintiff
U/Order 39 Rule 1 and 2 r/w Sec.
151 of CPC is hereby allowed.

It is further order that defendants their henchmen, servants, agents supports or anybody acting on their behalf are hereby restrained from interfering with the suit schedule property, till pending disposal of the suit.

(Directed to the stenographer directly on the computer and after correction pronounced by me in the open court on this the 3rd day of January 2022)

Addl. Civil Judge & JMFC.,
Hosakote.

**Order Pronounced in the open court
vide separate sheet]**

ORDER

I.A.No.I filed by the plaintiff U/Order 39 Rule 1 and 2 r/w Sec. 151 of CPC is hereby allowed.

It is further order that defendants their henchmen, servants, agents supports or anybody acting on their behalf are hereby restrained from interfering with the suit schedule property till pending disposal of the suit.

Addl. Civil Judge & JMFC.,
Hosakote.

