

**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C AT
CHINTAMANI**

:: PRESENT ::

**Smt. Shrishylaja H.V, M.A., LL.M
Prl. Civil Judge & JMFC, Chintamani.**

Dated this 3rd day of December 2022

O.S.No.115/2021

Plaintiff/s :

Smt. G.Sowmya
W/o. Kiran Kumar P.
Aged about 38 years,
Residing at # 34/812,
"Mathru Sri Nilaya",
Maruthi Extension,
Booragamakalahalli, oolavadi,
Chintamani Taluk
Chikkaballapur Dist-563125..

(By Sri. R.V.M./G.N.S., Advocates)

// Versus //

Defendant/s :

- 1.** Sri. Srinivasa Bhovi,
S/o. Sri. Late Krishnappa Bhovi,
Aged about 50 years,
R/at Chetlapalli Gadde,
Rampura, Chintamani Taluk,
Chikkaballapur District-563125.
- 2.** Sri. Kadireppa A.K.
S/o. Late Narashimappa,

*Aged about 53 years,
R/at Madikere village,
Kasaba Hobli, Chintamani Taluk,
Chikkaballapur District-563125.*

**(Defendant No.1 - by Sri. T.V.V.,
Advocate;**

Defendant No.2 - Exparte)

PARTIES TO THE I.A.NO.I

APPLICANT/ : Smt. G.Sowmya
Plaintiff

// Versus //

OPPONENTS/ : Sri. Srinivasa Bhovi and another
Defendants

**ORDER ON I.A No.I UNDER ORDER XXXIX RULE 1 AND 2
OF C.P.C.**

*The plaintiff has filed this I.A.No.I under Order XXXIX
Rule 1 & 2 of C.P.C. praying for an ad-interim order of
temporary injunction restraining the defendants and their
agents, servants, workmen, henchmen or anybody claiming
through or under them from interfering the plaintiff's peaceful
possession and enjoyment of the suit schedule properties, till
the disposal of this suit.*

2. The plaintiff has sworn to an accompanying affidavit stating that she is the absolute owner of the suit schedule properties and she acquired same under registered sale deed dated 06/06/2009 from one B.Narayanswamy and others. All the documents i.e. sale deed, khata, tax paid receipts stands in the name of plaintiff and she is in peaceful possession of the suit schedule properties. The defendants have no right, title or interest over the suit schedule properties. That on 04/03/2021 the defendants along with few miscreants tried to forcibly enter upon the suit schedule properties and attempted to dispossess and tried to remove the existing boundary stone marks of site and after come to know the illegal acts, the plaintiff and her supporters resisted the illegal acts of the defendants and at that time they have warned them that they would come with large supports and dispossess the plaintiff from the suit schedule properties. The plaintiff has made out prima-facie case, the balance of convenience lies in her favour. If the application is not allowed the plaintiff will be put to irreparable loss and injury. Hence this application.

3. On the other hand, the defendant No.1 has filed memo to adopt the written statement as objections to the I.A.No.1. In the written statement the defendant No.1 has denied the entire plaint averments and contended that originally the old Sy.No.194 was the gomal government land. One Thirumala Bhovy S/o. Lakshman Bhovy belongs to "Bhovy Caste" which comes under schedule casts as per Government notification. He has applied to the government for grant of land under Darkast. Said land has been granted to him by the government and since 1965 till today the RTC stands in the name of the father of the defendant No.1 with respect to 2 acres of land in old Sy.No. 194 and new Sy.No.194/1. The defendant and his family members are the lawful owners and in lawful possession and enjoyment of said land even till today.

4. It is further stated that the land bearing Sy.No.227 is totally measuring 1 acre 19 guntas out of it 2 guntas kharab land originally belongs to Muni Veerappa S/o. Kadirappa, Narasimhappa S/o. Kadirappa. This properties

has not been granted to them by the government. They have got wrong entires in the RTC extracts with respect to said land in collusion with revenue officials. The previous predecessors of the plaintiff have concocted and created all the revenue documents in collusion with revenue authorities and illegally converted the land for non-agricultural purpose without obtaining necessary permission for purchase of SC/ST granted land other valid permissions from the competent authorities and no objection from the competent local authorities for formation of layout and sites for residential purpose in accordance with law. The revenue authorities have not issued any notice to adjoining land owners at the time of survey and phodi, tippani and akarband sketch produced by the plaintiff are all forged documents. The plaintiff is the lawful owner, in possession and enjoyment of land bearing Sy.No.194/1 and which is different from land bearing Sy.No.227, which is not at all in existence and all the documents pertaining to land bearing Sy.No. 227 are created and concocted by the plaintiff and her predecessors. The land bearing Sy.No.194/1 is the land

attracting PTCL Act and any dispute regarding said lands is to be adjudicated by Special Court and this Court has no jurisdiction to adjudicate the dispute regarding PTCL Act. The government has not permitted to purchase and convert the land granted to SC/ST. The plaintiff and her predecessors have not followed any legal formalities while forming layout and sites, they have not obtained no-objections certificate, clearance certificates from local authorities like Gramapanchayath, planning authority etc. The boundaries as given to land bearing Sy.No.194/P1 and land bearing Sy.No.227 in the conversion order made by the Deputy Commissioner, Chikkaballapur is not tallies and all are false boundaries. Hence, prayed to dismiss the application.

5. *Heard the arguments of both the sides. The counsel for the defendant No.1 filed his written arguments.*

6. *On considering the I.A. and its accompanying affidavits, the points that would arise for my consideration are as under:*

POINTS

1. *Whether the plaintiff/applicant has made out a prima-facie case for the grant of temporary injunction?*
 2. *Whether the balance of convenience/inconvenience lies in favor of the plaintiff/applicant?*
 3. *Whether irreparable loss and injury would be caused to the plaintiff /applicant if the temporary injunction is refused?*
 4. *What order?*
7. *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 final order for the following:*

REASONS

8. **Point No.1:-** *I have carefully gone through the entire pleadings as well as documents relied by both the parties. In order to consider the application under Order XXXIX Rule 1 & 2 of CPC, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and*

irreparable injury to the plaintiff, if injunction is not granted. The existence of a prima-facie goes in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there is no prima-facie 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. But if there was a prima-facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima-facie case or even a very strong prima-facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between. Even granting that the plaintiff has an invincible prima-facie case, he will not be entitled to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted

even though the plaintiff's might have an unbeatable prima-facie case. Keeping these principles I would like to discuss the facts of the present case on hand.

9. *The plaintiff has knocked the doors of justice through this application for a simple relief of Temporary Injunction restraining defendants from interfering in the suit schedule properties. In order to succeed in the application, the plaintiff is bound to prove the prima-facie case and also show the balance of convenience lies in her favour and also she has to show that she will be put into great hardship and injury if this application is rejected. With this prelude let me examine the case of the plaintiff in the light of documentary evident.*

10. *The learned counsel for the plaintiff vehemently argued that the plaintiff is absolute owner, in possession and enjoyment of the suit schedule properties and she acquired the same under registered sale deeds dated 06/06/2009 from her vendor. The defendants without having any manner of right, title, interest or possession over the suit schedule properties, they are trying to interfere the suit schedule properties. Hence,*

the plaintiff prays to grant of an ad-interim Temporary Injunction against the defendants.

11. *On the other hand the learned Counsel for the defendant No.1 vehemently argued and filed written argument by contending that originally the old Sy.No.194 and new Sy.No.194/1 was the gomala government land. Said properties granted to one Thirumala Bhovy under Darkast, since 1965 till today the RTC stands in the name of the father of defendant No.1. The plaintiff is the lawful owner, in possession and enjoyment of land bearing Sy.No.194/1 and which is different from land bearing Sy.No.227, which is not at all in existence and all the documents pertaining to land bearing Sy.No.227 are created and concocted by the plaintiff and her predecessors and the boundaries are not tallies and all are false boundaries. Hence, prayed to dismiss the application.*

12. *In order to prove the factum of ownership and possession over the suit schedule properties the plaintiff has produced the registered sale deed dated 06/06/2009, which depicts that one B.Narayanaswamy and others have executed*

registered sale deed with respect to suit schedule properties in favour of plaintiff, Registered sale deeds dated 27/09/2008, which depicts that one Muniveerappa and Narasimhappa along with all their legal representatives have sold the property bearing Sy.No.194/P18 measuring 1 acres and Sy.No.227 measuring 1 acre 17 guntas in favour of B.Narayanswamy, Veerabhadraswamy and S.Narayanaswamy, sanction layout plan, which depicts that one Munibeerappa and Narasimhappa of Madikere village got conversion orders vide ALNSR 197/2007-8 dated 21/07/2008 and farmed sites as per layout plan, e-katha extracts which depicts that plaintiff is owner and in possession of suit schedule properties, demand register extracts 2008-09 and 2009-2010, which depicts that the suit schedule properties standing in the name of plaintiff, tax paid receipts, encumbrance certificate, which depicts that after purchasing of the suit schedule properties mutated in the name of plaintiff i.e. Katha No.545/36, site No.36 and katha No.545/37, site No.37, acknowledgment and complaint.

13. *The defendant No.1 raised point that originally the old Sy.No.194 was the gomal government land and the government granted the same to one Thirumala Bhovy S/o. Lakshman Bhovy belongs to "Bhovy Caste" which comes under schedule casts. Since 1965 till today the RTC stands in the name of the father of the defendant No.1 with respect to 2 acres of land in old Sy.No. 194 and new Sy.No.194/1. The defendant and his family members are the lawful owners and in lawful possession and enjoyment of said land even till today. The revenue authorities have not issued any notice to adjoining land owners at the time of survey and phodi, tippani and akarband sketch produced by the plaintiff are all forged documents. In order to prove the same he has not produced any documents.*

14. *On perusal of the documents produced by the plaintiff, it disclose that the plaintiff is in possession and enjoyment of the suit schedule property as claimed by him. It is necessary to observe here that the Court cannot conduct a mini trail at the time of adjudicating the application of this nature. As such, the questions whether the plaintiff or defendant is in*

possession and enjoyment of the suit schedule property as on the date of suit cannot be answered at this stage as these questions can be answered only after a full-fledged trial.

15. *While dealing with the application of this nature, the only function of the Court is to see whether the applicant has made out a prima-facie case and in whose favor the balance of convenience/inconvenience lies and in case of refusal of granting temporary injunction, to which side would loss and hardship be caused. At this stage, the documents produced by the plaintiff, prima-facie disclose that the suit schedule property is standing in her name. The plaintiff has placed sufficient materials before the Court in order for this Court to ascertain the prima-facie possession of the schedule properties. This Court cannot dive into answering complicated questions of facts which require elaborate evidence. Such being the case this court opined that the plaintiff has made out an arguable case. Therefore, whenever there is a arguable case, it can be said that the plaintiff has made out a prima-facie case.*

16. The apprehension of the plaintiff is that, the defendants are trying to interfere with the plaintiff's possession over the suit schedule properties. The mental apprehension has to be met out by this court. In this regard I rely upon the judgment reported **in 1991(1) K.L.J. 536 between Laxman V/s. M.P. Krishnappa**, wherein it is specifically stated that

“ SRA 1963 - S.36 Injunctory decree - Basis for grant of – Threatened invasion of it can be basis no need for binding whether threat is real or not - where party seeking preventive relief of injunction on the basis of possession has established fact of his possession, he is entitled to relief ” and it is further held in Para 3 of the aforesaid decision is that “An aggrieved person comes to the court complaining of interference of the defendant may be at a particular point of time has not caused interference, but once the fear stores heavily in the mind of the aggrieved person there shall be no difficulties for court to grant injunction especially when it is found that particular person is in possession”.

17. The principles reiterated in the above decision squarely applicable to the case on hand. The plaintiff has

proved prima facie case in his favour. Hence, I answered point No.1 in the Affirmative.

18. **Point No.2 and 3** :- *Both these points are taken up together for common discussion to avoid repetition of facts.*

19. *The Court has to see whether the applicant will sustain such injuries or loss which cannot possibly and adequately remedied by way of damage and the said damage would be inadequate in case of the success of the applicant. As far as the question of balance of convenience/inconvenience is concerned, the Court has to see the mischief or inconvenience which may be caused to either of the parties and see whether it is necessary or proper to maintain status quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in his favor. The grant of injunction is a discretionary relief and the party who claims such a relief should come to the court with clean hands and place all the materials before the court so that*

Court will satisfy about the case in favor of the party seeking the order.

20. It is to be noted here that the plaintiff has sought for temporary injunction against the defendants and their agents, servants, workmen, henchmen or anybody claiming through them or under them from interfering the plaintiff's peaceful possession and enjoyment suit schedule properties till the disposal of this suit.

21. The plaintiff has produced document to show that the suit schedule properties standing in her name and she is peaceful possession and enjoyment of the suit schedule properties as on the date of filing suit. The plaintiff has also produced sufficient documents to show that she is in possession of the schedule properties and that there is an imminent danger to her properties by the act of the defendants. Therefore, I hold that the balance of convenience/inconvenience lie in favor of the plaintiff and I am of the view that if the I.A is not allowed, the plaintiff would be

put to irreparable loss. Hence, **I have answered Point No.2 and 3 in the Affirmative**

22. **Point No.4** : In view of my findings on Point Nos.1 to 3, I proceed to pass the following:

ORDER

The I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants and their agents, servants, workmen, henchmen or anybody claiming through or under them are hereby restrained from interfering the plaintiff's peaceful possession and enjoyment of the suit schedule properties in any manner till disposal of the suit.

Cost of this application will follow the result of this case.

(Dictated to the Stenographer directly on to the computer, computerized by her, corrected, signed and then pronounced by me in the open Court on this the 3rd day of December 2022)

Sd/-
(Shrishylaja H.V)
Prl. Civil Judge & JMFC,
Chintamani.