

**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 31st day of May 2023

O.S.No.295/2018

Plaintiff/s : Smt. Muninarasamma and another

(By Sri. V.V.R., Advocate)

// Versus //

Defendant/s : Sri. Eshwar Reddy and others

**(Defendant No.1 to 8, 10 and 11 - by
Sri. N.V.R., Advocate;**

Defendant No.9 - Exparte)

PARTIES TO THE I.A.NO.6

APPLICANTS/ : Smt. Muninarasamma and
Plaintiffs another

// Versus //

OPPONENT/ : Sri. D.M.Venkatareddy
Defendant No.7

ORDER ON I.A No.6 UNDER ORDER XXXIX RULE 1 AND 2
OF C.P.C.

The SPA holder of plaintiff No.1 and 2 has filed this I.A.No.6 under Order XXXIX Rule 1 & 2 of C.P.C. praying for an ad-interim order of temporary injunction restraining the defendant No.7 to maintain status quo in the suit schedule property, till the disposal of this suit.

2. *The PA holder of plaintiff No.1 and 2 has sworn to an accompanying affidavit stating that the plaintiffs have filed this suit against the defendants for the relief of declaration of title and consequential relief of injunction in respect of the suit schedule property. One Dodda Venkatarayappa s/o. Muneppa is the propositus of the family of plaintiffs and he is the absolute owner, in possession and enjoyment of the suit schedule property till his death. During his lifetime he has bequeathed the suit schedule property in favour of plaintiffs under registered Will dated 27/05/1974. After death, the will came into force and the plaintiffs also changed the katha in their names on Pavathivarasu basis. The plaintiffs continued to be in possession and enjoyment of*

the suit schedule property. During the pendency of the suit, the defendant No.7 trying to build up permanent structure over the suit schedule property by digging trenches and trying to laid down foundation without any manner or right, title or interest over the same. That the plaintiffs have made out prima-facie case, the balance of convenience lies in their favour. If the application is not allowed the plaintiffs will be put to irreparable loss and injury. Hence this application.

3. *The defendant No.7 has not filed objection to the IA No.6.*

4. *Heard the Learned counsel for the plaintiff and perused the materials available on record.*

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

POINTS

- 1. Whether the plaintiffs/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 plaintiffs/applicant?

3. Whether irreparable loss and injury would be caused to the plaintiffs /applicant if the temporary injunction is refused?

4. What order?

6. 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

7. **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.

8. *The PA holder of the plaintiffs has knocked the doors of justice through this application for maintain status-quo in respect of the suit schedule property against the defendant No.7. In order to succeed in the application, the plaintiffs are bound to prove the prima-facie case and also show the balance of convenience lies in their favour and also they have to show that they will be put into great hardship and injury if this application is rejected. With this prelude let me examine the case of the plaintiffs in the light of documentary evident.*

9. *The learned counsel for the plaintiffs vehemently argued that One Dodda Venkatarayappa s/o. Muneppa is the absolute owner, in possession and enjoyment of the suit schedule property till his death. During his lifetime he has bequeathed the suit schedule property in favour of plaintiff under registered Will dated 27/05/1974. After death, the will came into force and the plaintiffs also changed the katha in their names on Pavathivarasu basis. The plaintiffs continued to be in possession and enjoyment of the suit schedule property. During the pendency of the suit, the defendant No.7 trying to*

build up permanent structure over the suit schedule property by digging trenches and trying to laid down foundation without any manner or right, title or interest over the same. Hence, the plaintiff prays to grant of an ad-interim Temporary Injunction against the defendant No.7.

10. *The defendant No.7 has not filed written statement nor filed objection to this application.*

11. *In order to prove the factum of ownership and possession over the suit schedule property the plaintiffs have produced original registered sale deed dated 11/02/1958, which depicts that one Dodda Venkatarayappa s/o. Muneppa purchased the suit schedule property along with other properties from one Munnekka D/o. Pollappa for sale consideration of Rs.1,000/-, original registered Will dated 27/05/1974, which depicts that said Dodda Venkatarayappa during his life time made a Will in favour of the plaintiffs with respect the suit schedule property and other properties. RTC extract for the year 1998-99, which depicts that after the death of Dodda Venaktarayappa the plaintiffs have changed their*

names in the RTC extract on the basis of pavathivarasu vide MR No.270-11/94-95 with respect to suit schedule property, two photos, CD and bill.

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

13. *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 plaintiffs, prima-facie disclose that the suit schedule property is standing in the name of plaintiffs. The plaintiffs have placed sufficient materials before the Court in order for this Court to ascertain the prima-facie possession of the schedule property. This Court cannot dive into answering complicated questions of facts which require elaborate evidence. Such being the case this court opined that the plaintiffs have made out an arguable case. Therefore, whenever there is a arguable case, it can be said that the plaintiffs have made out a prima-facie case.

14. *The apprehension of the plaintiffs is that, the defendant No.7 is trying to build up permanent structure over the suit schedule property by digging trenches and trying to laid down foundation. The plaintiffs have produced photos, it shows that during the pendency of the suit the defendant No.7 trying to digging trenches and trying to laid down foundation. In order to disprove the same he has not filed objection to the application nor produced any document to disprove the same.*

The plaintiffs have proved prima facie case in their favour.

*Hence, **I answered point No.1 in the Affirmative.***

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

16. *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.

17. *It is to be noted here that the plaintiff has sought for temporary injunction against the defendant No.7 to maintain status quo in respect of the suit schedule property till the disposal of this suit. In order to disprove the same the defendant No.7 has not filed objection to the application nor produced any document to disprove the same. It shows that there is an imminent danger to plaintiffs' property by the act of the defendant No.7. 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 plaintiffs would be put to irreparable loss. Hence, **I have answered Point No.2 and 3 in the Affirmative***

18. 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.6 filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant No.7 is directed to maintain status-quo with respect to the suit schedule property, 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 31st day of May 2023)

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