

**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 5th day of August 2023

O.S.No.365/2022

Plaintiff/s :

Sri. Venaktarayappa
S/o. Late Kempanna
Aged about 86 years,
R/at Vaijakur village,
Kaiwara Hobli,
Chintamani Taluk,
Chikkaballapura District

(By Sri. V.R., Advocate)

// Versus //

Defendant/s :

- 1.** Sri. Sonnappa
S/o. Late Kurahatti Narayanappa,
Aged about 75 years,
- 2.** Sri. N.Krishnappa
S/o. Late Kurahatti Narayanappa,
Aged about 55 years,

Both are residing at
Vaijakur village,
Kaiwara Hobli,
Chintamani Taluk,
Chikkaballapura District.

(By Sri. N.V.M., Advocate)

PARTIES TO THE I.A.NO.I

APPLICANT/ : Sri. Venkatarayappa
Plaintiff

// Versus //

OPPONENTS/ : Sri. Sonnappa and another
Defendants

ORDER ON I.A No.I UNDER ORDER XXXIX RULE 1 AND 2

READ WITH SECTION 151 OF C.P.C.

The plaintiff has filed this I.A.No.I under Order XXXIX Rule 1 and 2 read with section 151 of C.P.C. praying for an ad-interim order of temporary injunction restraining the defendants, their agents, relatives, heirs, representatives, assignees, coolies or anybody else claiming through them from obstructing to the agricultural operations of the plaintiff in the suit schedule property in any manner, till the disposal of this suit.

2. The plaintiff has sworn to an accompanying affidavit stating that he is the owner, in lawful possession and enjoyment of the suit schedule property and his mother and brother have acquired the same under registered sale

deeds dated 29/03/1948 and 22/12/1964. The vendor of her mother namely Pillappa has applied and got cancelled the Akarband with respect to 15 guntas of kharab land in the said survey number and included the same as cultivable land, thus the total extent of Sy.No.20 comes to 3 acres 21 guntas. As per the RTC for the year 1970-71 the karab land of 15 guntas was removed. Hence, his family was in lawful possession and enjoyment of 3 acres 21 guntas of land in Sy.No.29. As per registered partition deed 10/02/2017 held between plaintiff and his brother Yalappa "A" schedule propertyies including the suit schedule property fallen to the share of plaintiff and "B" schedule properties fallen to the share of his brother. Since the date of partiton, plaintiff is in exclusive lawful possession and enjoyment of the suit schedule property without anybody's interruption. The defendants are totally strangers to the suit schedule property and they are not having any right, title, interest and possession over the suit schedule property whatsoever. But they are uncessarily interfering with his peaceful possession and enjoyment over the suit schedule property and they are

attempted to commit an illegal acts of encroachment and trying to dispossess the plaintiff from the suit schedule property by unlawful means. When the plaintiff was engaged his agricultural operations, they tried to trespass upon the suit schedule property and tried to obstruct his agricultural operations. That the plaintiff has made out prima-facie case, the balance of convenience lies in his 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 and 2 have filed memo prayed to adopt their written statement as objection to the IA No.1. The defendants in their written statement have denied the entire plaint averments and contended that the plaintiff has not come up with true facts and he suppressed the material facts. The suit of the plaintiff is barred by limitation and the cause of action stated in the plaint is created and concocted story. The defendant is the absolute owner of the property bearing Sy.No.20 measuring 1 acre 07 guntas, situated at Vaijakur village, Kaiwara Hobli,*

Chintmanai Taluk, the said property was partitioned the defendants and their family dated 15/02/1993, A and B properties allotted to the defendants, the katha and other documents were stands in the name of defendants and they are in peaceful possession and enjoyment of the suit schedule property. The suit of the plaintiff is not maintainable for mis-joinder and non-joinder of proper and necessary parties. Hence, prayed to dismiss the application.

4. *Heard the arguments of both the sides and they have filed their written arguments 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 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?*

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 plaintiff has knocked the doors of justice through this application for a simple relief of Temporary Injunction restraining defendants from obstructing the agricultural operations of the plaintiff in the suit schedule property. 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 his favour and also he has to show that he 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.

9. The learned counsel for the plaintiff vehemently argued that the plaintiff is absolute owner, in possession and enjoyment of the suit schedule property and he acquired the same under registered partition deed dated 10/02/2019 under 'A' schedule. The defendants without having any manner of right, title, interest or possession over the suit schedule property, they are trying to obstruct his agricultural operations in the suit schedule property and also trying to dispossess the plaintiff from the suit schedule property. Hence,

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

10. On the other hand the learned Counsel for the defendants vehemently argued that the defendants are the absolute owners of the property bearing Sy.No.20 measuring 1 acre 07 guntas, situated at Vaijakur village, Kaiwara Hobli, Chintmanai Taluk, the said property was partition the defendants and their family dated 15/02/1993, A and B properties allotted to the defendants, the katha and other docments were stands in the name of defendants and they are in peaceful possession and enjoyment of the suit schedule property. The suit of the plaintiff is not maintainable for mis-joinder and non-joinder of proper and necessary parties. Hence, prayed to dismiss the application.

11. In order to prove the factum of ownership and possession over the suit schedule property the plaintiff has produced the RTC extract for the year 2022-2023 pertaining to suit schedule property, which depicts that the suit schedule property bearing Sy.No.20 measuring 1.30.08.00 guntas

standing in the name of plaintiff by way of MR H36/2017-2018, dated 23/01/2018, RTC extract for the year 2015-2016 pertaining to suit schedule property, which depicts that the property bearing Sy.No.20 measuring 3 acre 18 guntas standing in the name of plaintiff by way of pavathivarasu M No. 78-5/84-85, 0.23.08 guntas each standing in the name of defendant No.1 and 2 and 03 gutnas standing in the name of Kempamma w/o. Kempanna, mutation register extract bearing MR No.H36/2017-2018, which depicts that property bearing Sy.No.20/ /2 measuring 3 acres 18 guntas mutated in the name of plaintiff, mutation register extract bearing MR No.H17/2015-2016, which depicts that property bearing Sy.No.20 measuring 3 guntas mutated in the name of Kempamma w/o. Kempanna, mutation register extract bearing MR No.13/2009-2010 which depicts that Sy.No.20 measuring 3 acres 18 guntas mutated in the name of plaintiff, mutation register extract bearing MR No.78-5/1984-85 which depicts that Sy.No.20 measuring 3 acres 18 guntas out of 4 acres 28 guntas mutated in the name of plaintiff based on pavathivarasu, RTC extracts for the year 1965-66 to 1980-81*

pertaining to Sy.No.20, which depicts that Sy.No.20 total measuring 4 acre 28 guntas out of which 3/4th standing in the name of Kempamma w/o. Kempanna and 1/4th standing in the name of Kurahatti Narayanappa by way of ancestral, RTC extract for the year 1981-82 to 1986-87, which depicts that property bearing Sy.No.20 total measuring 4 acre 28 guntas out of which 1/4th standing in the name of Kurahatti Narayanappa and 3 acre 21 guntas standing in the name of plaintiff by way of pavathivarasu, RTC extract for the year 1987-88 to 1991-92, which depicts that property bearing Sy.No.20 total measuring 4 acre 28 guntas out of which 1 acre 7 guntas standing in the name of Sonnappa s/o Kurahatti Narayanappa and 3 acre 21 guntas standing in the name of plaintiff by way of pavathivarasu. RTC extract for the year 1997-98 to 2001-02, which depicts that property bearing Sy.No.20 total measuring 4 acre 28 guntas standing in the name of plaintiff by way of pavathivarasu and Sonnappa mortgaged the property in favour of Canara Bank on dated 10/02/1981, certified copy of sale deed dated 29/03/1948, which depicts the plaintiff's mother Smt. Kempamma w/o. Late

Kempanna was acquired the suit schedule property, original registered sale deed dated 22/12/1964, which depicts that plaintiff's elder brother Byrappa has also purchased 1 acre 2 guntas in Sy.No.20, original registered partition deed dated 10/02/2017, which depicts that the plaintiff has acquired the suit schedule property measuring 1 acre 13 guntas 8 cents land in Sy.No.20, copy of survey sketch, copy of atlash and copy of 11-e sketch

12. On the other hand defendants have produced copy of survey sketch, copy of settlement akarband, copy of ADLR report dated 24/06/2021, copy of letter to Tahasildar by Assistant Director of Survey and copy of endorsement dated 12/01/2023 and copy of letter dated 10/04/2023

13. 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.

14. 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 his name. The plaintiff has 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 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.

15. The apprehension of the plaintiff is that, the defendants are trying to interfere with the plaintiff's possession over the suit schedule property. 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”.

16. 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.**

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

18. 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.

19. *It is to be noted here that the plaintiff has sought for temporary injunction against the defendants from not to obstruct the agricultural operation of the plaintiff in the suit schedule property till the disposal of this suit. The plaintiff has produced document to show that the suit schedule property standing in his name and he is peaceful possession and enjoyment of the suit schedule property as on the date of filing suit. The plaintiff has also produced sufficient documents to show that he is in possession of the schedule property and that there is an imminent danger to his property 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 plaintiffs would be put to irreparable loss. The decisions relied upon by the counsel for the defendant No.1 is not applicable to the case on*

hand. Hence, **I have answered Point No.2 and 3 in the Affirmative**

20. **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, their agents, relatives, heirs, representatives, assignees, coolies or anybody else claiming through them are hereby restrained from obstructing to the agricultural operations of the plaintiff in the suit schedule property 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 5th day of August 2023)

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