

**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 17th day of December 2022

O.S.No.379/2021

Plaintiff/s :

- 1.** Smt. Sarojamma
W/o. Late Shankaranarayana,
Aged about 59 years,
R/at Hebbari village,
Kasaba Hobli,
Chintamani Taluk,
Chikkaballapur District.
- 2.** Smt. Anusuyamma
W/o. Late Prasad,
Aged about 54 years,
R/at Bharamannara Beedi,
Doddapete,
Chintamani Town,
Chikkaballapur District

(By Sri. S.B.R, Advocate)

// Versus //

Defendant/s :

- 1.** Sri. Narayanaswamy
S/o. Late Chikkanareppa,
Aged about 60 years,

2. Sri.N.Manjunatha
S/o. Narayanaswamy
Aged about 40 years,

Both are R/at Imareddihalli village,
Kasaba Hobli,
Chintamani Taluk,
Chikkaballapur District.

(Defendant No.1 – Exparte;

**Defendant No.2 - by Sri. S.E.N.,
Advocate)**

PARTIES TO THE I.A.NO.I

APPLICANTS/ : Smt. Sarojamma and another
Plaintiffs

// Versus //

OPPONENTS/ : Sri. Narayanaswamy and
Defendants another

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

READ WITH SEC.151 OF C.P.C.

The plaintiffs have filed this I.A.No.I under Order XXXIX
Rule 1 & 2 r/w Sec.151 of C.P.C. praying for an ad-interim
order of temporary injunction restraining the defendants and
their agents, servants or anybody claiming on their behalf

from interfering with the plaintiffs' peaceful possession and enjoyment over the suit schedule property in any manner, till the disposal of this suit.

SCHEDULE

Three corners land in Sy.No.43 an extent about 1 acre, out of 24 acres 14 guntas of land assessed for total extent at Rs.8 rupees 70 paise, situated at Imareddihalli village, Kasaba Hobli, Chintamani Taluk, bounded on

<i>North – East by</i>	<i>:</i>	<i>Land in Sy.No.82/1 belongs to plaintiffs</i>
<i>West by</i>	<i>:</i>	<i>Road from on same Sy.No. Running</i>
<i>South by</i>	<i>:</i>	<i>Bengaluru-Cadapa Main Road.</i>

2. The plaintiff No.1 has sworn to an accompanying affidavit stating that they have filed the suit against the defendants for relief of permanent injunction over the suit schedule property. The plaintiffs and their family members are in lawful possession and enjoyment of the suit schedule property. One Vemanna is a Moolapurasha of their family

and during his life time he possessed the suit schedule property much before 1950's and from the date of his possession he is in peaceful possession and enjoyment of the same. After his death his son Shankaranarayana (husband of plaintiff No.1) and his grand son Prasad (husband of defendant No.2) was in possession and enjoyment of the same during their lifetime and after their death, the plaintiffs and their family members are in lawful possession and enjoyment of the suit schedule property and they were continuously possess the suit schedule property from more than 7 decades without anybodies disturbance. On 15/09/2021, the defendant without having any right and interest in any manner tried to destroy boundary fence with the help of JC by trespassing over the suit schedule property and the plaintiff have restrained the illegal acts of the defendants' time being with the help of well wishers. That on 15/09/2021, the plaintiffs were putting boundary fence, which was destroyed by the defendants, with the help of JC against the defendants tried to obstruct the work and to disturb their possession, by that the the plaintiffs have given

complaint to the Chintamani Rural Police to take action against the defendant, the police have not taken any action against them. Again on 03/12/2021 the defendants trying to trespass and put ragi in the suit schedule property, by that time the plaintiffs restrained them and gave complaint to Chintamani Rural police, but they refused to take complaint. 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. *On the other hand, the counsel for the defendant No.2 orally submits that to adopt the written statement as objections to the I.A.No.1. In the written statement the defendant No.2 has denied the entire plaint averments and contended that there is no basis for giving the boundaries to the suit schedule properties. The boundaries are imaginary. The suit schedule property does not belong to the family of the plaintiffs. RTC extracts produced by the plaintiff show the names of defendant No.1 and othes in land bearing Sy.No.43*

and there is no reference to names of the plaintiffs or their ancestors. The pleadings is silent about this aspect. RTC in respect of land bearing Sy.No.82/1 is not subject matter of this suit. There is neither pleadings nor payer in the plaint regarding this property. The same is not included in the schedule. The suit is not maintainable since it does not disclose cause of action. The plaintiffs have no right over the suit schedule property and no document is produced by the plaintiffs pertaining to the suit schedule property. Hence, prayed to dismiss the application.

4. *Heard the arguments of both the sides.*

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/applicants have 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/applicants?*

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

4. *What order?*

6. *My answer to the above points are as under:*

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

7. **POINT NO.1 TO 3:-** *These points are interconnected with each other to avoid the repetition I have taken up these points together for consideration.*

8. *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 plaintiffs have knocked the doors of justice through this application for a simple relief of Temporary Injunction restraining defendants from interfering 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.*

10. *It is the specific assertion of the plaintiffs that themselves and their family members are in lawful possession and enjoyment of the suit schedule properties from much before 1950's. The defendants have no any right and interest in the suit schedule property, they tried to interfere the plaintiffs' peaceful possession and enjoyment over the same, however they have restrained the defendants with the help of villagers, well wishers as well as police pesons from time*

being. Even though they resisting the defendants trespass over the suit schedule properties, the defendants knowingly posing threats and falsely claiming the porton of their property without any manner of right or interest over the suit schedule property by dispossessing the plaintiffs from suit schedule property. Hence, the plaintiff prays to grant of an ad-interim Temporary Injunction against the defendants.

11. On the other hand the defendant No.2 has contended that the plaintiffs have no right over the suit schedule property and no document is produced by them pertaining to the suit schedule property There is no basis for giving the boundaries to the suit schedule properties and the boundaries are imaginary. RTC in respect of land bearing Sy.No.82/1 is not the subject matter of this suit and there is neither pleadings nor prayer in the plaint regarding this property and same is not included in the schedule. Hence prayed to dismiss the application.

12. In order to prove the factum of ownership and possession over the suit schedule property the plaintiffs have

produced RTC extract pertaining to Sy.No.43 and Sy.No.82/1, photos, CD, statement of Chandrashekar, complaint dated 18/09/2021, NCR dated 16/11/2021, complaint dated 03/12/2021, topography of the suit schedule property taken from Dishank App, copy of complaint dated 10/11/2022, copy of endorsement dated 30/11/2022, copy of the complaint given to the Superintendent of police, Chikkaballapur , photos, copies of the acknowledgment given for the applications filed by the son's of plaintiffs.

13. On perusal of the documents produced by the plaintiffs, it does not 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.

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 plaintiffs does not prima-facie disclose that the suit schedule property is standing in their name. The plaintiffs have not 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 it cannot be opined that the plaintiffs have made out an arguable case and therefore, whenever there is no arguable case, it can be said that the plaintiffs have not made out a prima-facie case. For these reasons, I have answered Point No.1 in the **Negative**.

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 plaintiffs have sought for temporary injunction against the defendants, their agents, servants or anybody claiming on their behalf from interfering

with the plaintiffs' peaceful possession and enjoyment of the suit schedule property till the disposal of this suit.

18. *The plaintiffs have not produced any document to show that the suit schedule property standing in their names and they are in peaceful possession and enjoyment of the suit schedule properties as on the date of filing suit . The plaintiff has also not produced any sufficient documents to show that they are is in possession of the schedule property and that there is an imminent danger to their property by the act of the defendants. Therefore, I hold that the balance of convenience/inconvenience does not lie in favor of the plaintiffs and I am of the view that if the I.A is not allowed, the plaintiffs would not be put to irreparable loss. Hence, I have answered Point No.2 and 3 in the **Negative**.*

19. **Point No.4** :- *In view of my findings on Points No.1 to 3, the plaintiff is entitled to the relief of temporary injunction as sought for. Hence, I proceed to pass the following:*

ORDER

*I.A.No.1 filed by the plaintiffs
under Order XXXIX Rule 1 & 2 read
with Section 151 of C.P.C is hereby
dismissed.*

*Cost of this application will follow
the result of this suit.*

*(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 17th day of December 2022)*

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