

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT GOWRIBIDANUR**

Dated this 27th day of May 2022

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

***Prl. Civil Judge & J.M.F.C,
Gowribidanur***

ORIGINAL SUIT NO.115/2022

PLAINTIFF/S:

*Sri. S.Shantharaju
Son of Late. H.Sanjeevappa,
Aged about 47 years,
Residing at Guvvalahalli village,
Bisalahalli Post,
Gowribidanur Taluk,
Chikkaballapura District.*

(Rep. by Sri. B.Lingappa, Advocate)

-Vs-

DEFENDANT/S: 1.

*Sri. Santhosh @ Sandeep
Son of Late. Subbaramanya Rao,
Aged about 26 years,*

2.

*Sri. Lakshminarayananayak
Son of late. Narashimhappa,
Aged about 46 years,*

*Both are residing at BNR
Layout Kote Old Road,
Gowribidanur Town and Taluk,
Chikkaballapura District.*

(Exparte)

PARTIES ON I.A.NO.I

APPLICANT/ : Sri. Shantharaju
Plaintiff

-Vs-

OPPONENT/ : Sri. Santhosh @ Sandeep and
Defendants another

ORDER ON I.A No.I FILED BY PLAINTIFF

UNDER ORDER XXXIX RULE 1 & 2 OF C.P.C.

The plaintiff has filed this I.A under Order XXXIX Rule 1 & 2 read with Section 151 of C.P.C. praying for an ad-interim order of temporary injunction restraining the defendants, their coolies, legal heirs, assignees, supporters or anybody claiming on behalf of the defendants from putting up any construction over the suit schedule property till the disposal of this suit.

2. As per the plaint averments and affidavit annexed to the I.A the case of the plaintiff /applicant in brief is as under:

The plaintiff is the absolute owner in possession and enjoyment of the suit schedule property, having acquired the same under a registered sale deed dated 11-11-2019. That the revenue documents pertaining to the suit schedule

property are standing in the name of the plaintiff and that the plaintiff has paid the requisite taxes to the Government regularly. That although the defendants are strangers to the suit schedule property, the defendants are seriously attempting to encroach and dig trenches in the suit schedule property in order to construct a building and that the defendants are interfering with the peaceful possession and enjoyment of the plaintiff with an intention to knock-off the valuable property of the plaintiff. That the defendants are trying to dispossess the plaintiff from the suit schedule property in order to make wrongful gains. That the defendants are politically and financially powerful and that the plaintiff, being innocent and poor, cannot resist the illegal acts of the defendants without the aid of this Court. Hence this suit for permanent injunction.

3. *The plaintiff has filed this I.A under Order XXXIX Rule 1 and 2 of CPC seeking temporary injunction against the defendants, their coolies, legal heirs, assignees, supporters or anybody claiming on behalf of the defendants from putting up any construction over the suit schedule property till the disposal of this suit.*

4. *The plaintiff has sworn to an accompanying affidavit stating that the plaint averments may be read as the part and parcel of the affidavit to avoid the repetition of contents of the plaint. That the plaintiff has made out a*

prima-facie case and the balance of convenience lies in his favor and that he will be put to greater hardship if the injunction order is not granted. On the other hand, no injustice or hardship will be caused to the defendants. Therefore, the plaintiff has prayed that this Court may be pleased to grant temporary injunction against the defendant No.1.

5. *Emergent notice and suit summons were issued by this Court to the defendants No.1 and 2 and the summons on the defendants No.1 and 2 were returned as refused and hence, the defendants No.1 and 2 were placed ex-parte.*

6. *On considering the I.A No.1 and its accompanying affidavit, 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 already set out in brief as to what the case of the plaintiff is. The learned Counsel for plaintiff has argued that the plaintiff has made out a prima-facie case and the balance of convenience lies in favor of the plaintiff. If temporary injunction is not granted, the plaintiff would be put to hardship as the defendants would succeed in illegally preventing the plaintiff from carrying out construction in the suit schedule property, which is the absolute property of the plaintiff. Therefore, the temporary injunction may be granted in favor of the plaintiff.*

9. *It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction under Order XXXIX Rule 1 and 2 of C.P.C. (1) the plaintiff have to establish a prima facie case, (2) the*

balance of convenience/inconvenience is in favor of the party seeking the relief and that (3) the party seeking the relief will suffer irreparable injury if injunction is refused. 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 should come to court with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima facie case in favor of the party seeking the order.

10. *I have considered the documentary evidence produced by the plaintiffs. The plaintiff has produced the original sale deed dated 11/11/2019, a computerized R.T.C of the suit schedule property of the year 2021-22, a mutation register extract, certified copies of survey sketches, copy of the complaint given to the C.M.C copy of the application seeking hadhbasth, copy of the notice issued by C.M.C Gowribidanur to the defendant No.1, dated 27/04/2022 and a computer extract of a photograph depicting a notice affixed on a brick wall. The original sale deed dated 11/11/2019 and a recent computerized R.T.C of the suit schedule property produced by the plaintiff prima-facie discloses that the plaintiff appears to have purchased the suit schedule property from his vendor and that the revenue documents pertaining to the suit schedule property prima-facie appears to be standing in the name of the plaintiff. The mutation register extract produced by the plaintiff*

also prima-facie acknowledges that the right and title over the suit schedule property was transferred to the name of the plaintiff. The plaintiff has alleged that the defendants No.1 and 2 are trying to encroach upon the suit schedule property and dig trenches for the construction of a building over a portion of the suit schedule property. The plaintiff has further produced three photographs showing construction work being carried out. The plaintiff has also produced a photocopy of the notice issued by C.M.C Gowribidanur to the defendant No.1, dated 27/04/2022 directing the defendant No.1 to stop the illegal construction immediately and obtain a construction license.

11. It is necessary to observe here that the Court cannot conduct a mini trial at the time of adjudicating the applications of this nature. As such, the question whether the plaintiff is in possession and enjoyment of the suit schedule property and whether the plaintiff is entitled to the relief sought for in the plaint cannot be answered at this stage as these questions can be answered only after a full-fledged trial.

12. While dealing with the applications of this nature, the only function of the Court is to see whether the applicant have 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 revenue documents pertaining to the suit schedule property appear to

*be standing in the name of the plaintiff and the notice dated 27/04/2022 prima-facie discloses a construction work being carried out by the defendant No.1 without proper license. Based upon the sale deed dated 11/11/2019 and the revenue documents, the plaintiff appears to be well within his right to protect his property from any encroachment and there are prima-facie materials for the grant of injunction in favor the plaintiff. Such being the case it can be opined that the plaintiff has made out an arguable case and therefore, whenever there is an arguable case, it can be said that the plaintiff has made out a prima-facie case. For these reasons, I have answered Point No.1 in the **Affirmative**.*

13. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. 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 parties who seek injunction in their favor. The grant of injunction is a discretionary relief and the

parties who claim 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.

14. *It is to be noted here that the plaintiff has sought for temporary injunction against the defendants restraining them, their coolies, legal heirs, assignees, supporters or anybody claiming on behalf of the defendants from putting up any construction over the suit schedule property till the disposal of this suit.*

15. *The revenue documents of the suit schedule property appears to be standing in the name of the plaintiff. If adequate protection is not given to the plaintiff, the chances of the defendants encroaching upon the suit schedule property and constructing an illegal structure to dispossess the plaintiff cannot be ruled out and it would invariably cause loss and damage to the plaintiff. Therefore, if an injunction order is granted, the defendants will not be put to any loss or damage as they are at liberty to prove that they are not encroaching upon the suit schedule property or that the plaintiff is not in possession and enjoyment of the suit schedule property. Therefore, I hold that the balance of convenience/inconvenience lies in favor of the plaintiff and not in favor of the defendants as the plaintiff would be constrained to file multiple suits or resort to other procedures*

*under law if the defendants succeed in encroaching upon and constructing in the suit schedule property and I am of the view that if the I.A is not allowed, the plaintiff would be put to irreparable loss and on the other hand, the defendants will not be put to any hardship. Hence, I have answered Point No.2 and 3 in the **Affirmative**.*

16. **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 filed by the plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 of C.P.C is hereby allowed.

The defendants, their coolies, legal heirs, assignees, supporters or anybody claiming on behalf of the defendants are hereby restrained by an order of temporary injunction from putting up any construction over the suit schedule property till the disposal of this suit.

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

*(Typed by me, corrected and then pronounced by me in
the Open Court on this 27th day of May, 2022).*

Sd/-
(SACHIN P.M.)
Prl. Civil Judge & JMFC,
Gowribidanur.