

Orders on IA No.I, U/o 39 Rule 1 and 2 of CPC

The appellant has filed an application U/O 39 Rule 1 and 2 of CPC praying to grant an ad-interim order of Temporary Injunction against the respondent restraining him and his men from causing interference for the enjoyment of suit property till disposal of the appeal by allowing this application in the interest of justice and equity.

2. In support of this application the appellant has sworn in his affidavit stating that she has preferred this appeal against the judgment and decree passed by the Adl. Civil Judge and JMFC Holalkere in OS No.230/2018 Dated 11/03/2024, the learned trial court had dismissed the suit of the plaintiff which is for mere injunction. so, she has preferred this appeal by challenging the legality and correctness of the judgment.

3. It is submitted, that she is being the lawful owner and in possession of the suit schedule property, and the respondent who did not dispute the ownership and possession of the plaintiff over the suit property as described in the plaint schedule, that the trial Court had come to conclusion that there was no interference as alleged by the plaintiff for the peaceful possession

and enjoyment over the suit property. So, it is her apprehension is that based on the result of the suit before the trial Court, the defendant and his henchmen may disposes her from the suit property by causing interference, and its own time may require for the disposal of the appeal, so, if no order restraining them from doing so, as such the appellant will be put irreparable loss and on the other hand, the respondent admits the ownership and possession of the plaintiff will never be put to any hardship, Hence, prays for granting of the temporary injunction restraining the respondent and his men from causing interference with her peaceful possession and enjoyment over the suit property in any manner till disposal of this appeal. Hence, prays to allow the application.

4. Having heard the learned counsel appearing for the appellant, the following facts which needs to be considered in an appeal which is preferred against judgment and decree passed by the trial Court in a suit for mere injunction in respect of the suit property bearing Holalkere Town Panchayath Assessment No.699/48 B measuring 11 ½ x 20 ft vacant site consisting of RCC complex and vacant portion as more fully described in the IA and plaint schedule.

5. That the plaintiff has admittedly not sought any stay of operation of judgment and decree of the trial Court since the suit of the plaintiff come to be dismissed holding that even though possession and ownership of the plaintiff over the suit property is admitted by the defendant, there is no interference from the defendants, so, it is not executable decree. So, the present IA has been filed.

6. The appellant has filed this appeal against the respondent by challenging the judgment and decree of the lower court in OS No.230/2018. The appellant has produced the certified copy of the said judgment and decree. That the appellant herein has filed present appeal U/O 41 Rule 1 of CPC.

7. Further the learned counsel for appellant submitted that till disposal of this appeal it takes time, then respondent will cause interference by virtue of the judgment and decree of the trial Court, he may do all pin pricks for the peaceful possession and enjoyment of the plaintiff over the suit property , and if ex parte order of temporary injunction is granted, she can prevent such an act of the defendants and his men, otherwise, the very purpose of the filing of this

appeal will be infractious. Hence, prays to grant the ex parte temporary injunction.

8. After going through the materials available on record and the contents of the affidavit and also the argument of the learned counsel appearing for the appellant, having regard to the peculiar facts and circumstances of the case on hand, that hat till disposal of this appeal he could not construct further. Therefore, it appears that there is a dispute in between the appellant and respondent in respect of suit schedule property only regarding the alleged interference with plaintiff's peaceful possession and enjoyment over the suit schedule property, and who challenged the judgment and decree of trial Court and at this stage the Court cannot go with the merit of the appeal, to consider the prima-facie case and where the balance of convenience is lies and whom irreparable loss would be caused to dispense with the issuance with the notice before granting any such relief.

9. That having regard to the facts and circumstances, as such granting of status quo order in respect of the suit property till for some reasonable period, and then no hardship will be caused to him. Therefore, it is not proper to grant an ad-interim

exparte order of temporary injunction without issuing notice to other side. So, both appellant and the respondent are to maintain status quo till disposal of this appeal. Hence, direct them to maintain status quo is just and suffice in order to meet out the ends of justice. Hence, I proceed to pass the following:

ORDER

That the appellant and respondent are hereby directed to maintain in respect of the suit till further order.

Issue appeal notice and order to the respondent.

Call on: 30-05-2024.

(Sri. Saravanan .S.)
Senior Civil Judge and JMFC.,
Holalkere.