



IN THE COURT OF II ADDL. CIVIL JUDGE & JMFC, KADUR.

Present: Sri. Ram Prashanth M.N, B.A.L,LL.B.,
II Addl. Civil Judge & JMFC, Kadur.

Dated: This the 1st day of February 2023
OS.NO.422/2020

Karnataka Rajaya Amruta Mahal
Kavalugarra Sangha **Plaintiff**

Vs

Secretary, Government of Karnataka, **Defendant**

IA NO.2

Karnataka Rajaya Amruta Mahal
Kavalugarra Sangha **Applicant**

Vs

Secretary, Government of Karnataka, **Opponent**

**:: ORDERS ON IA.NO.I UNDER RULE 1 & 2 OF ORDER 39 R/W
151 OF CPC ::**

IA.No.2 is filed under Order 39 Rule 1 & 2 of CPC, praying to restrain the defendant No.4 from interfering with the cultivation by the plaintiffs over the suit schedule properties.

2. In the affidavit sworn by the Secretary, the applicant has stated that, the suit properties are allotted to the Kavaludars and are cultivating the lands from their ancestors till today and the department has allotted property to each kavaludars towards their remuneration for living. The plaintiff's Sangha is permitted to cultivate the lands and they have not encroach any land other than the allotted place. However, now the defendant No.4 is interfering, hence has approached the court by maintaining the present application.



3. The defendant submits that, the schedule property is the Government Land and hence notice under 80 of CPC is not issued prior to filing the suit. Further stated that WP 46528/2016 is filed, where Sy.No.1 of Basuru Kavalu is also involved and the same is item No.8 to 14 in the present suit. Also the plaintiffs have encroached various portion and now the possession have been taken back from them and also the grant of 5 acres has been reduced to 2 acres, hence prayed to dismiss the application.

4. Heard arguments.

5. The points that would arise for my consideration are:-

(1) Whether the plaintiff is entitled for the relief of temporary injunction as sought for?

(2) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per final orders

for the following:-

REASONS

7. **Point No.1:** The plaintiff has filed the above suit for the relief of injunction against the defendant and also maintained the present application to restrain from interfering or disturbing or dispossessing. The defendant submits that the suit itself is not maintainable, because prior notice is not issued U/sec.80 of CPC and moreover W.P. is pending in W.P.No.46528/2016 and also the land is reduced to 2 acres. Further states that the plaintiffs have encroached and mahazar is prepared for that taking back the possession.



8. It is a settled law that "a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

9. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the Injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

10. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. Hence keeping the same in mind, I proceed to discuss the materials on record in the below paragraphs.

11. The **Hon'ble Supreme Court of India in "Hindustan Petroleum Corporation Limited Vs Sriman Narayan And Anr. AIR 2002 SC 2598"** has held that object of interlocutory injunction is to protect the plaintiff against injury by violation of



his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end of the trial. It is also held that balance of convenience should also be determined. While exercising the discretion, the Court normally applies the following tests :

- (a) Prima facie case in favour of the plaintiff.
- (b) Balance of convenience lies in favour of the plaintiff.
- (c) Irreparable or injury shall be suffered by the plaintiff, if the application is not allowed.

12. The applicant has stated that the members of the Sangha has grates with 5 acres each of land in Kadur Taluk since they are kavaludar of Amruth mahal and also they are permitted to cultivate for their livelihood. The grant of 5 acres at the initial stage is not disputed and also permission given to cultivate is also not disputed, but they cannot cultivate any commercial in the land.

13. The learned APP has furnished Government orders and proceedings, where land is reduced 2 acres and also a mahazar is furnished, where the members of the Sangha have encroached around 41 acres, where upon the writ petition 46528/2016, the land has been recovered from the members of the plaintiff's sangha. The act of the members of the plaintiffs sangha establishes that they have violated the grant order. Also the photographs establish that they have cultivated commercial crops.

14. The entire matter is seized before Hon'ble High Court of Karnataka in W.P.No.46528/2016. Though the members of the plaintiff's sangha had the knowledge of the pendency of writ petition have mislead the court and obtained the order on 26.07.2022, but the learned Senior Public Prosecutor, who was present on



19.11.2022 was kind enough to inform the court that a W.P. is pending regarding Amruth Mahal Kaval and furnished the documents, hence, the interim order was vacated forthwith.

15. The applicant has not come with clean hands because they have concealed the Writ Petition and also have encroached the property of the Government and also have grown commercial crops, hence, the plaintiff has not made out a prima-facie case, nor there is balance of convenience infavour of plaintiff. Any order will cause hardship to the Government and also the plaintiff may use to overcome the order in W.P.No.46528/2016. Hence, with these observations I answer point No.1 in the negative.

16. Point No.2:- In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.II filed by the plaintiff under
Order 39 Rule 1 & 2 R/w Sec.151 of CPC is
dismissed.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 1st day of February 2023)

Sd/-
(Ram Prashanth M.N.)
II Add.Civil Judge & JMFC,
Kadur.