

KACM210018432023



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

Present: Smt. Amrin Sultana. B.A., L.L.B.,
I Addl. Civil Judge & JMFC, Kadur.

Dated: This th 09th day of January, 2024

OS.No.300/2023

Gangadhara S/o Late. Muniyappa,
Aged about 55n years, Agriculturist,
R/o B. Dasarahatti Village,
Birur Post, Biruru Hobli,
Kadur Town, Chikkamagalur District.

PLAINTIFF

(Reptd by Sri. K.S.A. Advocate)

-versus-

1. Sri. Hanumanthappa S/o Late. Ningappa,
Aged about 50 years, Agriculturist,
2. Sri. Suresha S/o Late. Ningappa,
Aged about 45 years, Agriculturist,
3. Sri. Kumara S/o Late. Ningappa,
Aged about 38 years, Agriculturist,

All are Residing at B. Dasarahatti
Village, Birur post, Birur Hobli,
Kadur Taluk, Chikmagalur District.

DEFENDANT

(Reptd by Sri. T.D.A. Advocate)

**I.A.No.I**

Sri. Gangadhara

Applicants

Vs

Sri. Hanumanthappa and Others

Opponents

1.	Provision under which the application is filed.	U/O.XXXIX Rule 1 & 2 CPC
2	Relief sought for	Restraining the defendant from trespassing into the suit schedule property
3	The date on which the application is filed	29.04.2023
4	Number of applications	I.A.No.II
5	The date on which the objections are filed by opponents	16.08.2023 memo filed by defendant No3 to adopt the written statement contents.
6	The date of order	09.01.2023

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

The Plaintiff has filed Interlocutory application under Order XXXIX Rule 1 and 2 seeking ad interim order of temporary injunction restraining the defendant, their agents, servants, family members or anybody on their



behalf from trespassing the suit schedule property and encroaching the suit schedule property towards the eastern side of the suit schedule property by causing damage to the property and thereby dispossessing the plaintiff from suit schedule property.

2. In the affidavit sworn by the applicant, it has been stated that, the plaintiff is the absolute owner in possession and enjoyment over the arecanut and vacant landed property bearing Sy.No.29 measuring 2 acres 20 guntas situated at Birur Kavalu Village, Birur Hobli, Kadur Taluk. The said property belongs to the Government and the plaintiff has been cultivating the suit schedule property from long time and applied for the grant of the said property. By considering the same, the Hukkum Sakrama Sameethi confirmed the unauthorized cultivation and passed order to grant the suit schedule property in favour of the plaintiff. The Tahshildar, Kadur has issued Grant certificate in favour of the plaintiff vide SC No.49/1994-95 and Katha has been changed vide MR No.42/1994-95 in favour of the plaintiff. Expect this the plaintiff have no other property.

It is further contended that, the defendants are having their property towards the eastern side of suit



schedule property. But the defendants have no manner of right or interest over the suit schedule property. Despite of this fact, the defendants by colluding with each other trying to obstruct and interfere with the peaceful possession and enjoyment of the suit schedule property and also trying to encroach the suit schedule property towards southern side by causing to the suit schedule property and also trying to disposes the plaintiff from the suit schedule property. To restrain the same the plaintiff had approached the Birur police but in went in vain. The act of the defendants are illegal and prayed to allow the application as prayed for.

3. Per contra, the defendant No-3 appeared through their counsel and filed written and also filed memo to consider the contents of written statement as objection to IA. In the written statement the defendant No.3 it is contended that, the property measuring 2 acre 20 guntas bearing Sy.No.4, Block No.290/1 of Birur Kavalu Village, Birur Hobli, Kadur Taluk has been granted into the joint name of the father and mother of the defendants by name Ningappa S/o Rangappa and Honnamma W/o Ningappa and the defendants are in possession of the said property. The plaintiff with an intention to grab the property tried to interfere and abstract with the help of JCB. The defendant



tried to avoid the same. The plaintiff went to the Birur Police Station and given the false complaint. The police after investigating the matter warned the plaintiff and informed him to stop his illegal activities. The defendant never encroached or interfered in to the suit schedule property. There is no cause of action to file the suit and the plaintiff has filed this suit with an intention to harass the defendants and prayed to dismiss the application with costs.

4. The Plaintiff in-spite of giving sufficient opportunities did not addressed his arguments. Hence, the argument of the plaintiff was taken as not addressed. Heard arguments from the defendants and perused the materials placed before this court.

5. After carefully analysing the averments in affidavit accompanying the applications and the objections put forth by the other side this court raises following points for consideration:

POINTS

1. Whether the Plaintiff is made out prima-facie case to grant the relief sought for in I.A.No. I?



2. Whether the plaintiff proves the balance of convenience lies in their favour?
 3. Who will be put to irreparable loss and injury if the I.A.No. I is granted or rejected?
 4. What Order?
6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2: Does not arise for consideration.

Point No.3: Does not arise for consideration.

Point No.4: As per final orders for the following:-

REASONS

7. **POINTS NO.1:-** IA.No.1 is filed under Order 39 Rule 1 & 2 of CPC, praying to restraining the defendant from trespassing into the suit schedule property and from dispossessing the plaintiff from suit schedule property. either by themselves, their agents, servants or anybody on their behalf pending disposal of the suit.

8. In supporting of the contention of the plaintiff, the plaintiff has produced the MR-H14 Extract, RTC Extract,



Affidavit, Grant Certificate, Patta Book, Possession certificate, Tax Paid Receipts, Two photos, Licence copy issued by TMC Kadur and property Tax register Extract with respect to suit schedule property.

9. The defendant in support of his contention has not produced any documents along with written statement.

10. On perusal of the entire records, documents produced by the plaintiff as well as the defendant it can be seen from the prayer column in the plaint is read in conjunction with the prayer sought by the plaintiff in I.A.No.I are one and the same though worded differently.

11. Main relief and the interim relief are the same can the court grant the interim relief while disposing an interim application. In this regard the Hon'ble Apex court in Devaraj Vs/. State of Maharashtra and others has held as under;

"Situations emerge, where the granting of an interim relief would tantamount to granting the final relief itself and then there may be converts cases, where withholding of an interim relief tantamount to dismissal of main petition itself, by that time the main matter comes up for hearing there would nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such



cases the availability of strong prima-facie case is a standard much higher than just prima-facie case, the consideration of balance of convenience and irreparable loss and injury forcefully tilting the balance of the case a totally infavour of the applicant may pursuant to court to grant an interim relief though amounts to grant of the final relief itself. Of-course there would rare and exceptional case. The court would grant such interim relief, only if satisfied that withholding it would prick the conscience of the court and to violence to the sense of justice, resulting in injustice being perpetuated through out the hearing and at the end the court would not be able to indicate the cause of justice. Obviously such would be rare case accompanied by compelling circumstances, where the injury complained of it immediately pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen."

12. On perusal of the relief sought by the plaintiffs, in plaint as well as in the interim application, it is categorically clear that, the relief sought is the same in either of them. As such at this stage of the suit it is the firm opinion of the court that, the plaintiff have failed to make out prima-facie case in their favour. Wherefore, this court finds no hesitation on holding the point for consideration No.1 in the **Negative**.

13. **Point No.2 & 3:-** This court has already discussed on the above point and deems to hold on merits that, the plaintiff has failed to prove the existence of prima-facie case in his favour. Under such circumstances, this court need not be looked into the other aspects i.e.,



balance of convenience and also irreparable loss and this view of the court is further supported by the decision passed by Hon'ble Apex Court in Kashinath Samsthan and Anr.,Vs. Srimad Sudhindra Thirtha Swamy and Anr, reported in AIR 2010 SC 296, wherein it is held that;

“In order to obtain an order of injunction the party, who seeks for granting of such injunction has to prove that, he has made out prima-facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunctioin is granted. But it is equally well settled that, when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, i.e., to say, if that party fails to prove prima-facie case to go for trial it is not open to the court to grant injunctioin in his favour even if he made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury, if no injunctioin order is granted”.

14. However, in the present case on hand the plaintiff has to prove his case at full fledged trial. Moreover, without looking in to the deep discussion on point No.2 and 3, on primafacie by looking into the documents it is noticed that, the defendant denied the his interference over the suit schedule property. Therefore if the injunctioin order sought by the plaintiff is rejected, no hardship or irreparable loss will be caused to the plaintiff.

15. Therefore, this court upon discussion on point No.1 come to the conclusion that, this court need not



proceed to consider the point No.2 and 3. Hence, on the above said findings and discussions and abiding by the legal principles this court holds point No.2 and 3 **do not survive for consideration of this court.**

16. **Point No.4:** For the above discussion on point No.1 to 3 this court proceeds to pass the following :-

ORDER

I.A. No.1 filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby dismissed.

The discussion made above on the said IA will not affect the merits of the case.

Parties shall bear own costs.

(Typed by me directly on laptop, corrected and then pronounced in the open Court, this the 09th day of January, 2024)

Sd/-
(SMT. AMRIN SULTANA)
I Addl. Civil Judge & JMFC,
Kadur.

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