

KACM210019962021



**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 14th day of June 2022

OS.NO.332/2021

Lakkappa and another

Plaintiffs

Vs

Shivamurthy & Others

Defendants

IA NO.2

Lakkappa and another

Applicant

Vs

Shivamurthy & Others

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 R/w Sec.151
CPC, praying to restrain the defendants from interfering with
the suit schedule properties.

2. In the affidavit sworn, the plaintiff No.1 has stated that, he is the absolute owner of the suit schedule, where he has entered into joint development agreement with the defendants on 02.07.2014 for formation of sites, with sharing of 38% and 62% between them. The joint development agreement could not be registered due to the non payment of stamp duty by the defendants and also there is no development taken place, but now the defendants are trying to alienate. The G.P.A is also canceled by the plaintiff, hence, the plaintiff has come before the court and maintained the present application.

3. The defendants denying the averments of the plaintiff filed written statement, stating that the defendants followed the joint development terms and conditions and also have converted the land and have developed the same. The defendants contended that that the plaintiff does not have absolute right but only have limited right to an extent of their share as per the development agreement, hence prayed to dismiss the application.

4. Heard arguments. Perused citations.

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

(1) Whether the plaintiffs are 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 Plaintiffs have filed the above suit for the relief of Permanent Injunction against the defendants to restrain from interfering and also maintained the present applications to not to interfere. The defendants have detailed their objection and stated that they are in possession as per the joint development agreement.

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. The purpose of temporary injunction is, thus, to **maintain the status quo**. The court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima-facie case has been made out by the plaintiffs including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

10. Further the court should be always willing to extend its hand to protect a citizen, who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court.

11. The phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused.

12. The existence of prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party

except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession.

13. 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.

14. 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.

15. 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.

16. It is well known that there are two classic ingredients has to be looked into to decide the injunction, they are (1) lawful possession and (2) interference, and to decide the application u/s. 39 Rule 1 and 2, the court should consider the prima facie case, balance of convenience and irreparable loss. The court should primarily look into, as to who is in possession and enjoyment of the suit schedule property. When the title is disputed, then the court needs to look, as to who has the better title. The dispute of title, shall not be vague but there must be serious cloud on the title.

17. The plaintiffs and the defendants are claiming possession, but as per the records the plaintiff and defendants have jointly entered into a joint development agreement dt.02.07.2014. Also as per the joint development agreement there is sharing clause, where 38% will go to plaintiff's and 62% will go to defendants.

18. The contention of the plaintiffs is that the defendants have not completed the development work within time. Also the stamp duty was not paid by the defendants.

The G.P.A. has been canceled by the the plaintiffs on 27.06.2017 and thereafter release deed has been executed illegally. There is huge loss sustained by the plaintiffs.

19. The defendants submits that injunction cannot be granted against them as they are not strangers, but in possession by developing the sites as per the joint development agreement. The Joint development has not been canceled nor suit is filed for alleges loss. Moreover even after the alleged cancellation of G.P.A. affidavit Dt.06.12.2019 is filed giving consent by the plaintiffs.

20. It is the duty of the court to look as to the nature of the suit in claiming injunction and the person who is going to sustain hardship if injunction is granted or not. The joint development between the parties is not a dispute and also the plaintiffs being the land owner and defendants being the developers is also not in dispute. The plaintiffs have produced photographs which shows that the land needs to be developed yet. There is no documents produced by the defendants to show that land is developed into sites completely. The photographs produced by the plaintiffs establish that still development needs to be done.

21. If the injunction is granted, then the defendants having right over the joint development agreement, which is not at all canceled, will be put to hardship and their rights cannot be taken away by the plaintiffs claiming injunction. Also the court needs to protect the interest of the plaintiffs simultaneously because if the defendants showing the under

developed sites as developed sites and alienates, then the plaintiffs will be put to hardship because the prospective purchasers may proceed to consumer forum against plaintiffs if the sites are not upto the standard of development, which is nothing but multiplicity of proceedings.

22. As the development agreement is in force and the defendants having right on it, hence they cannot be restrained from entering in to the suit schedule property, but the defendants are restrained from alienating the suit schedule properties to prospective purchasers till the dispute between the parties is settled. Hence, with these observations I answer point No.1 in the negative.

23. **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 plaintiffs under Order 39 Rule 1 & 2 R/w Sec.151 of CPC is dismissed.

However, both parties, i.e., plaintiffs and defendants are restrained from alienating the suit schedule properties till the dispute comes to on end.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 14th day of June 2022)

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