



**IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE
AND JMFC, KADUR.**

Present: - Sri. Thahakaleel K.A., B.A., LL.B.,
III Additional Civil Judge & JMFC.,
Kadur.

Dated: This 11th Day of November 2024

O.S.No.503/2024

Plaintiff/ : Sri. M.D. Vasanthakumar
S/o M.P.Devichand,
Aged about 64 years,
Business,
R/o Ward No.15, NH-506,
Mehaha Bhavana, Birur Town,
Kadur Taluk, Chikkamagaluru
District.

(By.Sri.B.M., Advocate)

V/s.

Defendants : 1. The Chief Veterinary Officer,
Department of Veterinary Hospital,
Birur town, Kadur Taluk.

2. The Chief Officer,
Town Muncipal Council,
Birur, Kadur Taluk.

3. The Deputy Commissioner,
Chikkamagaluru District,
Chikkamagaluru.

KACM210039172024



4. The Director,
Pashu Bhavan,
Hebbal Campus, Bengaluru.
5. The Commissioner,
Department of Animal Husbandry
and Veterinary Services, Pashu
Bhavan, Hebbal Campus,
Bengaluru.
6. The Director of Municipal
Administration, Begaluru.
7. The Chief Secretary to
Government of Karnataka,
Vidhan Soudha, Bengaluru.

**(D-2 By Sri.K.A., Advocate
D-1, 3 to 7 A.G.P.)**

Parties to I.A No. II

Applicant/s : M.D.Vasanthakumar

V/S

Opponent/s : The Chief Veterinary Officer and others

Sl.No	Subject	Remarks
1	Provision under which the application is filed	Order XXXIX Rule 1 and 2 CPC
2	Relief sought for	Temporary Injunction.

KACM210039172024



3	The date of which the application is filed	27.07.2024
4	Number of the application	I.A.No.II
5	The date of which the objections are filed by different opponents.	15.10.2024 by the Defendant No.2.
6	The date of Order.	11.11.2024

ORDERS ON I.A No.II FILED BY THE PLAINTIFF
UNDER ORDER XXXIX Rule 1 AND 2 C.P.C.

The plaintiff has filed present suit against the defendants for the relief of permanent injunction. The Plaintiff also maintained I.A No.II under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C praying to restrain the Defendants from trespassing into the suit schedule property and to establish Indira Canteen in the suit schedule property by causing damage to the suit schedule property till disposal of the suit on merit.

2. The Plaintiff has sworn to the affidavit in support of the application, wherein he has stated that his grandfather Sri Mehata Poonam Chand Pukraj has

KACM210039172024



donated 6 house properties and cash of Rs.2,000/- to the Town Municipal Council, Birur in the year 1965 for the purpose of construction of Veterinary Hospital building at Birur. TMC Birur has accepted the said donation and issued certificate. Thereafter, Government have constructed the Veterinary Hospital and started provided Medical services as per the object of the doner.

3. On 15.07.2004, the plaintiff has received letter from defendant No.1 wherein it is mentioned that in the suit schedule property Government have proposed to construct Indira Canteen which is against to the object of the donation. Hence, the plaintiff has given representation to the TMC, Birur and Veterinary Hospital by giving his objection to construct Indira Canteen. Despite of the same, the defendants is constructing Indira Canteen over the suit schedule properties. Hence, filed suit for permanent injunction and maintained this I.A.

KACM210039172024



4. The Defendant No.2 appeared before the court and filed written statement as well as objection to I.A No.II. In its objections, it is contended that the grandfather of the plaintiff has paid sum of Rs.2,000/- to the 2nd defendant to construct Veterinary Hospital, but denied about donation of 6 house properties. Government of Karnataka has passed Order No.30,SFC 2017 dated 23.10.2017 to open Indira Canteen in every Municipal area of Karnataka to provide the food to poor people at lowest price directed the municipal authority to acquire the property belongs to the Revenue Department, Local body, Karnataka Water supply and underground drainage department property, Electricity company, Police Department and other properties belongs to the Government without following any formalities regarding transfer of property. As per the said Order the defendant No.2 has decided to establish Indira Canteen in the remaining vacant site measuring 126 + 150 /2 x 200 feet

KACM210039172024



which is belongs to the defendant No.2. In the small portion of the area it is proposed to construct Indira Canteen in a property measuring 50 x 51 feet, if the Indira Canteen is established area there is no disturbance to the Veterinary Hospital and Farmer who brings the animal for treatment. Hence, prayed to reject the I.A.

5. Heard arguments of learned counsel appearing for both side. Perused the IA and material on records.

6. The following Point would arise for determination of this Court.

POINT No.1: Whether the plaintiff has made prima-facie case for grant of Temporary injunction as sought for?

POINT No.2: Whether balance of convenience lies in their favour?

POINT No.3: Whether the plaintiff will be put to irreparable loss and hardship, if IA No.II is not allowed?

POINT No.4: What order?



7. The findings of this Court to the above said points are as under:

- POINT No.1** : In the Negative.
POINT No.2 : In the Negative.
POINT No.3 : In the Negative.
POINT No.4 : As per the final order for the following;

REASONS

8. **POINT No.1:-** The Learned Counsel for the Plaintiff vehemently argued before the Court the grandfather of the plaintiff has donated 6 house properties value Rs.6,000/- each and Rs.2,000/- to construct Veterinary Hospital at Birur. The defendant now constructing the Indira Canteen which is against to the object after donation. On the other hand, the defendant No.2 argued that though the grandfather of the plaintiff had donated a sum of Rs.2,000/- for

KACM210039172024



construction of Veterinary Hospital denied donation of 6 house properties.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable

KACM210039172024



formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

KACM210039172024



12. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

13. In the light of the arguments canvassed by the Learned Counsel for the parties, this Court has carefully perused the materials on record in order to ascertain the prima-facie case as averred by the Plaintiff. The case of the Plaintiff is that grandfather of the plaintiff has gifted 6 house properties to construct the veterinary hospital at Birur Town. Every Gift has to be effected in terms of

KACM210039172024



section 123 of Transfer of property Act, 1882. But herein the plaintiff has not produced any registered instrument to show the gift of the property for the purpose of construction of the veterinary hospital at Biruru was made by the grand father of the Plaintiff. By considering all these aspects, this court is of the Court is of the opinion that the Plaintiff has not made out prima-facie case for grant of Temporary Injunction. **With these observations, this Court has answered Point No.1 in the Negative.**

14.POINT No.2 and 3: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be

KACM210039172024



greater than that which is likely to be caused to the opposite party by granting it.

15. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

16. This Court after considering the materials on record is of the opinion that when the Defendant had already completed construction of the Indira canteen now if he is temporarily restrained to maintain status quo then he will be put to irreparable loss and hardship. Further this court is of the opinion that no loss or hardship will be caused to the Plaintiff. Further this

KACM210039172024



Court is of the opinion that if I.A.No.II is allowed, then more mischief and hardship will cause to the Defendant than the mischief and hardship will be caused to the Plaintiff if I.A.No.II is rejected. Further this Court is of the opinion that the balance of convenience does not lie in favour of the Plaintiff and if I.A.No.II is rejected no loss or hardship caused to the Plaintiff. With these observations this Court has answered **Point No. 2 and 3 in the Negative.**

17. POINT NO.4:- For the aforesaid discussions on Point No.1 to 3, this Court proceed to pass the following:

ORDER

I.A No.II filed by the plaintiff Under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby rejected.

No Order as to cost.

Sd/-

(THAHAKALEEL K.A)

III Addl. Civil Judge and JMFC
Kadur.