

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 12th day of October 2018.

O.S. No. 28/2017

Plaintiff/s : Smt. Naseemunisa, W/o Fayaza Ahamed,
Aged about 48 years,
Resident of Kalanayakanakatte,
Niluvagilu Post, Koppa Taluk,
Chikmagalur District.
(Represented by Sri. B.S. Naveen Rao, Adv.,)
V/S

Defendant/s : 1. Sri. Mohammed Ali, S/o Ibrahim Sab,
Aged about 32 years,
2. Sri. Noorullakhan,
Father's name not known to this
plaintiff, Aged about 47 years,
3. Sri. Abdul Sattar,
S/o Chabu Sab, Aged about 60 years,
4. Sri. Basha Sab,
S/o Mohammed Hussain,
Aged about 65 years,
5. Sri. Hassen,
S/o Ummar Sab, Aged about 55
6. Sri. Meerasab,
S/o Late Budan Sab, Aged about 35 years,
7. Sri. Abbubekkar, Aged about 54 years,
That the defendant No. 1 to 7 are the residents
of Kalanayakanakatte,
Niluvagilu Post, Koppa Taluk.
(Represented by Sri. Muralidhar H. Nayak, Adv.,)

**ORDER ON I.A. NO. 1 FILED BY THE PLAINTIFF UNDER ORDER
39 RULE 1 AND 2 R/W RULE 3 OF C.P.C.**

The present application is filed by the plaintiff under order 39 rule 1 and 2 R/W rule 3 of C.P.C. seeking an order of temporary injunction restraining the defendants, their men, agents or any other persons claiming through defendants from interfering with the peaceful possession and enjoyment of the suit schedule property or causing any damage to the fence, till the disposal of this case.

2. In the affidavit annexed to the application, the plaintiff has stated that she is the absolute owner in possession and enjoyment of the residential Mangalore tiled house measuring an extent of 20 X 20 feet situated in Sy.No. 81 of Niluvagilu Village, Hariharapura Hobli, Koppa. Taluk. This property is having assessment Sl. No. 133, property No. 133/1 for the year 2009-10. The said property is described as suit schedule property. The plaintiff further stated that she has constructed the house about 25 years back by obtaining the license. She being the rightful owner is paying kadayam to the government and also applied for the regularization of unauthorized construction in the year 2014 and the same is pending for consideration before the competent authority. It is further stated by the plaintiff that the said construction is beyond state highway limits and in between the state highway and suit schedule property the plaintiff has planted the banana plants and engrossed the suit schedule property with fence in all the sides. Except the plaintiff, no one had any right over the suit schedule property.

The defendant No. 4 who is the brother of the husband of the plaintiff has jealousy towards the plaintiff and instigated the other neighbours and tried to disturb the peaceful possession and enjoyment of the plaintiff over the suit schedule property by claiming that the suit schedule property is granted to madarasa/school. The plaintiff somehow restrained the defendants. Thereafter, when she visited the concerned panchayath and verified the records, she found that the suit schedule property was not granted to the defendants or for madarasa/school. The defendants on 12.4.2017 have wrongfully trespassed over the suit schedule property in the absence of family members of the plaintiff and tried to level the land for construction of madarasa/school. The plaintiff somehow restrained the defendants. The plaintiff being the lady cannot restrain the defendants without the order of this court. Hence, the plaintiff has filed the present suit and there is existence of prima facie case and balance of convenience in her favour. If the temporary injunction is not granted, it will cause irreparable loss and injury which cannot be compensated in terms of money. Hence, prays to allow the application.

3. After service of summons, the defendants have appeared through their counsel and filed the detailed written statement and also filed memo to treat the contents of written statement as objection to I.A. No. 1. In the written statement the defendants have denied the averments made by the plaintiff. The entire contents of plaint and affidavit annexed to the I.A. No. 1 denied by the defendants and also submitted that the documents produced by the plaintiff are created and fabricated one. It is further case of the defendants

that the site No. 19 measuring 60 X 40 feet located in Sy.No. 81 of Niluvagilu Village has been reserved for school. The plaintiff and her husband Fayaj Ahamed have constructed a house and while constructing the house occupied a portion of the site reserved for school. Thereafter recently they have put up the fence covering the portion in front of the house and planted some banana plants. The said area where banana plants has been planted is the site earmarked for school. Hence, the public of the locality have petitioned to the authorities concerned for removal of the encroachment over the area reserved for school. Therefore, on 20.3.2017 the president and members of Samajika Nyaya Samithi, Niluvagilu Grama Panchayath visited the spot and after verification it was found that the husband of the plaintiff has encroached the portion of the site reserved for the school. The panchayath had directed the plaintiff's husband and her sons to vacate the same. Thereafter, the plaintiff's husband and her sons have agreed for to vacate the same. On 21.4.2017 the Special Grama Sabha Meeting of Niluvagilu Grama Panchayath has unanimously approved the decision, dated 20.3.2017. The plaintiff knowing all these facts has filed the present suit to grab the said property. The plaintiff has not approached the court with clean hand and she has encroached and planted the banana plant in the site No. 19 which is reserved for Arabbi school. Hence, prayed to dismiss the I.A.

4. Heard the counsel for plaintiff and defendants. Upon perusal of the averments in affidavit accompanying the application, the objection putforth by the defendants and other materials submitted by the plaintiff and defendants, the following points were arisen for my consideration:

- 1) Whether the plaintiff has made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that the balance of convenience lies in her favour?
- 3) Whether the plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted?
- 4) Whether the plaintiff is entitled for order of discretionary relief of temporary injunction as prayed in I.A. No. I ?
- 5) What order?

5. My findings to the above points are as under:

Point No. 1 : In the affirmative
Point No. 2 : In the affirmative
Point No. 3 : In the affirmative
Point No. 4 : In the affirmative
Point No. 5 : As per the final order
for the following reasons.

REASONS

6. **Point No. 1:** In this application the plaintiff is seeking relief under Order 39 Rule 1 and 2 of CPC. Bare reading of this provision, it is clear that with an application seeking order of an injunction the plaintiff must prove that she has a prima facie right, title and interest in the suit schedule property as well as the provision clearly indicates that the right and title has to be examined with the contents of affidavit and supporting documents

annexed to the application. Further, the provision is very much clear that not only upon considering the affidavit to prove right, title and interest, the plaintiff has to prove actionable claim against the defendants, then only the court can issue any order of injunction under this provision.

7. In the present case the plaintiff has filed detailed affidavit in support of I.A. For that the defendants have filed the detailed objection along with the documents.

8. Prior to plunging into appreciation of the application on merits, first let us look into certain basic facts pertaining to the present case. As the facts of the case and objections are already stated at the inception of this order, hence, once again reiterating the same is not required at this stage.

9. The plaintiff claiming that she is in possession and enjoyment of the suit schedule property and also planted some banana trees between her residential house and the state highway, which is morefully described as suit schedule property. In support of her claim, the plaintiff has produced rough sketch and assessment register extract of the year 2009-2010. The said document discloses that the site Sl.No. 133 is in the possession of the plaintiff and it is a residential house. The plaintiff further produced total 14 tax paid receipts to show that she is paying tax to the panchayath. The plaintiff further produced photographs along with C.D. which shows that she has planted some banana trees in front of her residential house and also maintaining the said garden by fencing it. The plaintiff further produced

endorsement for having filing the application for the regularization of her unauthorized occupation. The assessment register extract and 14 tax paid receipts shows that the plaintiff is in possession of the site assessment No. 133 and she is paying tax regularly to the government. The plaintiff further produced the bill, dated 25.1.1993 for paying the requisite fee to obtain the license to construct the house in the suit schedule property. The photographs produced by the plaintiff clearly indicates that in front of her house and between the state highway the plaintiff has planted some banana trees by fencing the same. These photographs and documents clearly shows that the plaintiff is in possession of the suit schedule property.

10. The defendants even though denied the contentions urged by the plaintiff, they have not denied the possession of the plaintiff and also planting of banana trees by the plaintiff. It is the contention of the defendants that the place wherein the plaintiff has planted the banana trees it reserved for the construction of Barry's school. The plaintiff has illegally encroached the land reserved for the Barry's school or madarasa. Hence, prays to dismissal of the I.A. In support of their claim the defendants have produced the saguvali register extract wherein it shows that site No. 331 is reserved for the school. Further, the defendants have produced the mahazer of Niluvagilu Village Panchayath and also resolution, dated 20.3.2017.

11. If we perused the written statement and the documents produced by the defendants, it can be concluded that the plaintiff is in possession of the suit schedule property. The possession of the plaintiff as shown in the suit

schedule is admitted by the defendants. In para No. 3 and 12 of the written statement, the defendants have admitted that the plaintiff is in possession of the suit schedule property and also have planted the banana trees in the same. The said admission is hereby reproduced:

“It is submitted that the plaintiff and her husband Fayaz Ahammed have recently planted some banana plants in site No. 19 reserved for Arabbi School and put up fence in front side/southern side.

It is submitted that the site No. 19 measuring 60 X 40 feet located in Sy.No. 81 of Niluvagilu Village has been reserved for school. The plaintiff and her husband Fayaj Ahamed have constructed a house and while constructing the house occupied a portion of the site reserved for school. Thereafter recently they have put up the fence covering the portion in front of the house and planted some banana plants. The said area where banana plants has been planted is the site earmarked for school. Hence, the public of the locality have petitioned to the authorities concerned for removal of the encroachment over the area reserved for school. Therefore, on 20.3.2017 the president and members of Samajika Nyaya Samithi, Niluvagilu Grama Panchayath visited the spot and after verification it was found that the husband of the plaintiff by name Fayaj Ahamed has encroached the site No. 19 in Sy.No. 81 earmarked for Arabbi School and Mr. Fayaj asked to clear the encroachment. “

12. Further, the mahazer, dated 20.3.2017 produced by the defendants also shows that the plaintiff has encroached the land reserved for the Arabbi school. The boundaries mentioned in the said mahazer also shows that to the eastern side there is a house of plaintiff and southern side there is a highway of Koppa – Agumbe. The said schedule mentioned in the mahazer is corroborates with the schedule mentioned in the suit. In lieu of admission by the defendants and also in corroboration of the documents, it can be held that the plaintiff is in possession of suit schedule property as stated by her. The plaintiff has produced one document of the year 2009-2010 and receipt for paying the fee for obtaining the license for the construction of the house. The plaintiff also produced 14 tax paid receipts. It is already held that the plaintiff is in possession of the suit schedule property. The defendants are claiming that the suit schedule property wherein the banana trees were planted is reserved for the construction of school. In the mahazer it is stated that there is no dispute towards the side of plaintiff's house (ಮುಂದಿನ ದಿನಗಳಲ್ಲಿ ರಸ್ತೆ ಅಗಲೀಕರಣ ಸಂದರ್ಭದಲ್ಲಿ ಅರಬ್ಬಿ ಶಾಲೆಯ ಮೀಸಲಿಟ್ಟ ಜಾಗದಲ್ಲಿ ಅಳತೆಯಲ್ಲಿ ಕಡಿಮೆ ಬಂದಲ್ಲಿ ಜಾಗ ಬದಲಾವಣೆ ಮಾಡಿಕೊಳ್ಳುವುದು ಹೊರತು ಹಾಲಿ ಫಯಾಜ್ ವಾಸದ ಮನೆ ಕಡೆ ಯಾವುದೇ ತಂಟೆ ತಕರಾರು ಮಾಡುವುದಿಲ್ಲವೆಂದು ಗ್ರಾಮಸ್ಥರು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತಾರೆ). The plaintiff's possession is identified.

13. It is settled principles of law that even the trespasser has to be evicted through due process of law. Even though the portion of the suit schedule property is reserved for Arabbi school, what rights the defendants have in interference with the possession of the plaintiff has to be proved by the defendants. If the school land is encroached, the respective authority will

take necessary action to vacate the encroached portion. The defendants cannot take the law into their hands. As the defendants are admitting the possession of the plaintiff, the plaintiff has made out prima facie case for trial. By considering this point, the point No. 1 is answered in the affirmative.

14. **Point No. 2 and 3 :** In view of my findings on point No. 1, the plaintiff has proved the prima facie case in her favour. The documents produced by the plaintiff and also in lieu of admissions in the written statement, it shows that the plaintiff is in possession of the suit schedule property. It is the contention of the learned counsel for defendants that the plaintiff has encroached the site reserved for Barry's school. If the same is accepted, the plaintiff has to be evicted through process of law. Further, the unauthorized possession of the plaintiff has to be questioned by the appropriate authority. Whether the defendants are the appropriate authority? By considering this, the defendants cannot take law into their hands. The plaintiff has filed application for the regularization of her unauthorized occupation. The same is pending for consideration before the appropriate authority. If the defendants have disturbed the possession of the plaintiff by taking law into their hands, it will certainly affect the plaintiff's application which is pending before the concerned authority. By considering all these facts, the plaintiff has made out balance of convenience and irreparable loss in her favour. Hence, point No. 2 and 3 are answered in the affirmative.

15. **Point No. 4:** The interim order will be the antidote to protect the existing nature of the property. In this regard, it is just and necessary to quote the following judgment to know the value of the interim order.

ILR 1988 Kar. 2817

(Life Insurance Corporation V/S Bangalore LIC Employees)

(equivalent citation 1988 KLJ 455, 1988 (2) Kar. L.J. 455)

“The preventive remedy of injunction is thus granted as a instant antidote to stop or prevent the invasion of the plaintiff’s right in regard to which a complaint is made. The court having regard to the expediency involved should not embark upon a nit-picking operation at that stage by holding a mini trial to lay thread–bear the case of the plaintiff to find out if a prima facie case is made out or not. It would be sufficient if the court is assured that questions raised by the plaintiff are not vexatious or too casual. But there are such as to merit serious consideration at a subsequent stage. That such is the content and frontiers of the expression prima facie case is also the view of Govinda Bhatt Justice (as his Lordship then was) in the case of State of Karnataka V/S S.Venkataraju, 1975 (1) Kar. L.J. 142 and Jaganatha Shetty (J) (as his Lordship then was) in J.Krishnamurthy V/S Bangalore Turff Club in ILR. Kar. 1975, 1957)”

16. Thereby, the plaintiff being the possession in the suit schedule property, she has every right to protect her possession until she is evicted by the appropriate authority through process of law. Hence, point No. 4 is answered in the affirmative.

17. **Point No. 5:** On the above said reasonings, I proceed to pass the following order.

ORDER

I.A. No. 1 filed by the plaintiff under order 39 rule 1 and 2 R/W rule 3 of C.P.C. is hereby allowed.

The defendants, their men, agents or any other persons claiming through them are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property or causing any damage to the fence enclosed to the suit schedule property, till the disposal of this case or till further order.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 12th day of October, 2018)

Sd/- xxx 12/10/2018
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.

