

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 7th day of March 2020.

O.S. No. 50/2019

Plaintiff/s : M/s. The Anaparai Estates Limited,
Murgadi Estate, Durgadabetta Post,
Koppa Taluk, Chikmagalur District,
Being a registered company represented
by its Authorized person M.C. Cherian,
S/o M.C. Chandy, Aged about 41 years,
Manager, Yelliemadaloo Estate,
R/O 55, Lavelle Road, Bangalore-01.
(Represented by Sri., Hareesh Singatagere/B.K.
Venkatesh, Adv.,)

V/S

Defendant/s : R.Janav, S/o Late Rathnappa,
Aged about 43 years, Photographer,
Behind Syndicate Bank,
Shanthipura, Durgadabetta Post,
Koppa Taluk.
(Represented by Sri. Muralidhar H.
Nayak/B.S. Kalavarkar , Adv.,)

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

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. seeking an order of temporary injunction against the defendant by restraining the defendant, his men, agents, servants or anybody claiming through him from trespassing into the plaint schedule properties or from officiating as priest of the plaint 'B' schedule temple or from making constructions over the plaint schedule properties or in any way interfering with the peaceful worshipping of the God Babbu Swamy situated over the plaint 'B' schedule property by the labourers of the plaintiff company till pending disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff has stated that the plaintiff company is a registered company and has

authorized its Manager, who is fully conversant with the facts of the case to initiate legal actions on behalf of the plaintiff company. The plaintiff company purchased the plaint 'A' schedule property under registered sale deed, dated 15.7.1943 from one Manamel Cherian along with other properties. The plaintiff is in possession and enjoyment of the said property ever since from its purchase. After purchase of the said property Hissa Phodi was conducted and it was assigned Hissa No.1 and 3. The Hissa No.3 is the present plaint 'A' schedule property, in which the plaintiff company cultivated with Coffee, Silver Oak tree, pepper etc.

It is further stated that the labourers and the staff of the plaintiff company who were devotees of God Babbu Swamy and Chamundeshwari, requested the management of the plaintiff company to grant permission to construct a temple for their God Babbu Swamy and Chamundeshwari and also to perform other

religious ceremonies in the plaint A' schedule property. The plaintiff company on the request of its labourers and staff, who came from earlier South Canara District, permitted them to use 6 guntas of land in the plaint 'A' schedule property for the construction of the temple of Gods by name Babbu Swamy and Chamundeshwari.

After the permission was granted by the plaintiff company and with the financial assistance of the plaintiff company, its labourers and staff constructed a temple for their God Babbu Swamy and Goddess Chamundeshwari over the plaint 'A' schedule property which is described as plaint 'B' schedule property. The said temple is situated beside private path which runs over the plaint schedule property. The said Gods were/are being worshiped by the labourers of the plaintiff company and it

is exclusively meant for the worship of its labourers and staff, the general public have got no right whatsoever over the said temple.

The defendant is the resident of Shanthipura and with the permission of the plaintiff company, got appointed as Archak of the said temple in the year 2009. It is alleged that the defendant with an intention to make money started to woo the devotees to the said temple by attributing exaggerated magical powers to the said gods and started to solicit donations from devotees and other sources. The plaintiff company had warned the defendant to stop the same as it will harm the reputation of the plaintiff company. The defendant enraged by the same started to make claim over the management of the said temple and to expand the land around the said temple. The defendant leveled the ground around the said temple in order to make some construction. The plaintiff company also directed the defendant to not to do such illegal

activities. Thereafter, the defendant became more aggressive in making claims over the management of the said temple and started to file false petitions against the plaintiff company.

It is further alleged that the defendant earlier used to take permission from the plaintiff company before undertaking any activities over the plaint schedule property. About 3 weeks back the defendant once again tried to level the adjoining area of the temple and he also tried to remove the fallen tree in the plaint 'A' schedule property which was opposed by the plaintiff company. When the said illegal activities were opposed by the staff of the plaintiff company, the defendant abused and threatened the staff and labourers of the plaintiff company. In this regard the complaint was lodged before the Jayapura Police who issued an endorsement. Thereafter the defendant started to lodge false petitions against the plaintiff company before revenue, forest and

other authorities of the State by falsely alleging that the plaintiff company has encroached the forest land. There is no land adjoining the plaint 'B' schedule property which belongs to the Revenue or the forest department and the same is surrounded by plaint 'A' schedule property. It is a false complaint made by the defendant in order to harass the plaintiff company and thereby usurp the management of the said temple and to occupy the said plaint 'B' schedule property. The defendant is making hectic efforts to clear the adjoining area of the plaint 'B' schedule temple and make construction over the said area. The defendant in order to achieve his illegal goal, get certain documents created illegally.

The defendant, who has got no right, title whatsoever over the plaint schedule properties, is making illegal claims by forming a committee for the management of the said temple which is a private temple exclusively meant for the labourers and staff of the

plaintiff company. The defendant in order to get the possession of the said temple is making such illegal efforts. The defendant was removed as Archaka of the said temple on 25.10.2019 and directed to not to officiate as priest of the said temple by the devotees of the said temple and by the plaintiff company. It is alleged that on 8.11.2019, the defendant along with supporters trespassed into the plaint schedule properties and the temple situated in the plaint 'A' schedule property and tried to open the door of the said temple and perform religious ceremonies as priest. The same was opposed by the labourers of the plaintiff company. The defendant is creating disharmony among the labourers of the plaintiff company and as well as threatening to take possession of the above said temple situated over the plaint 'A' schedule property. Hence, the present suit is filed along with the present I.A.

3. After service of summons, the defendant appeared through his counsel. The defendant filed detailed written statement along with memo by adopting the contents of written statement as objection to I.A. No. I. In the mean time, the defendant has also filed I.A. No. V under order VII rule 11(d) R/W section 20 of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989 and prayed to reject the plaint as the suit is barred by the provisions of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989. The said I.A. No. 5 is also heard and posted for orders and the same is disposed off today itself by separate detailed order.

In the written statement the allegations of plaintiff company is denied as false and also the ownership and possession of the plaintiff company over the plaint schedule 'A' property and also the purchase of suit schedule 'A' property by the plaintiff

company and also the hissa phodi work as stated in the plaint is denied by the defendant.

Further in the written statement the defendant admitted that the labourers and staff of the plaintiff company are devotees of God Babbu Swamy and Chamundeshwari. But, denied the allegation of the plaintiff about the construction of the temple with the permission of the plaintiff company in the pliant 'A' schedule property. The defendant submitted that the said temple is constructed 80 years back before independence in the Government Land. The defendant further alleged that the plaintiff company created fake revenue documents and sketch to grab the temple land which is in the government property.

The description of the suit schedule 'A' property and the temple is specifically denied by the defendant. The defendant

submitted that, the God in the temple is being worshiped by the labourers, who belongs to the Mundala Community of Schedule Caste and it is exclusively meant for the worship by the Schedule Caste people who are the labourers of plaintiff company and other estate labourers also. Further, the defendant admitted that the said temple is not general public temple but the plaintiff has got no right whatsoever over the said temple.

It is further submitted by the defendant that he is the Archaka of the above said temple, who got right from succession in his family. It is submitted that before the death of the defendant's father Late. Rathnappa was working as main Archaka of the above said temple as a customary right of the schedule caste community. The defendant's family and other labourers migrated from South Canara District before Indian Independents and was working as a coolie workers. After the death of the father of the

defendant, the defendant started to reside in Shanthipura behind Syndicate Bank, Yelemadalu Village, Koppa Taluk for his business purpose. The other allegations of the plaintiff company about getting appointed as Archak in the year 2009 and with an intention to make money started to woo the devotees are denied specifically by the defendant. The allegations of making claim over the management of the temple and also about the alleged encroachment by the defendant is denied by the defendant. The alleged cause of action is also not admitted by the defendant. The defendant admitted that he has filed false petition against the plaintiff company before the revenue, forest and other authorities of the State. The defendant lodged petition falsely alleging that the plaintiff company had encroached forest land. The defendant further submitted that the plaintiff company had encroached the government land surrounded by plaint 'A' schedule property and revenue land which is adjoined to the 'B' schedule.

The defendant submitted that he has right in the plaint schedule properties and also submitted that he has never asked by the plaintiff company to officiate as priest of the temple and he has never removed as the Archak of the said temple. Once again the cause of action as alleged by the plaintiff company is denied by the defendant.

It is further submitted by the defendant that he belongs to schedule caste community who is the main Archaka of the Bhagvan Sri Babbu Swamy and Sri Chamundeshwari Ammanavara Temple at Moorugadde Village. The local plantations workers originally came from Costal South Canara Region. Especially the 19 families were offering the above said God and constructing the small temple before the independence. The said temple situated in the Government Land which is subsequently grabbed by the plaintiff company illegally. The

said temple is independent temple which is managed by the 19 families of the schedule caste people. So that, the plaintiff company has no right, interest over the said temple.

It is further submitted by the defendant that the plaintiff and their followers belongs to Christian Community and they always attempt to remove the said temple from the government land and also illegally interfering with the devotional and customary rights and ceremonies of devotees.

It is submitted that the plaintiff with illegal intention to obstruct the poojas performing by the defendant and their families trying to wrongfully dispossess the defendant from the above said temple premises which is enjoyed and possessed by the defendant and their families. The plaintiff company instituted false, malicious and vexatious suit against the defendant and

trying to obstruct and prevent the defendant from entering the temple by the defendant and performing the pooja as an Archaka.

The defendant further submitted that on 30.12.2019 the defendant informed the Jayapura Police Station, Koppa Taluk, against the plaintiff and their followers under section 3(1)(g), 3(1)(p), 3(1)(za), 3(1)(zb) of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act. 1989 (Amended 2016). The Jayapura Police station lodged a FIR against the plaintiff and others in crime No. 36/2019. The said case is still pending for enquiry by the Dy.S.P. of Koppa Division. Therefore, under section 20 of the Schedule Caste and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (Amended 2016) the present case is not maintainable under the law. Hence, prays to dismiss the interim application with cost.

4. Heard the counsel for plaintiff and defendant. Upon perusal of the contents of affidavit accompanying the application and the objections put forth by the defendant and other materials submitted by the plaintiff and the defendant, the following points were arisen for my consideration:

- 1) Whether the plaintiff made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that the balance of convenience lies in its favour?
- 3) Whether the plaintiff proves that it 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 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 it has a prima facie right, title and interest in the suit schedule properties 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 the right, title and interest, the plaintiff has to prove the

actionable claim against the defendant, then only the court can issue any order of injunction under this provision.

7. Prior to plunging into appreciation of the application on merits, first let us look into certain basic facts pertaining to the present case. It is the specific case of the plaintiff that it has purchased the suit schedule 'A' property and ever since from the date of its purchase, it is in the possession of the entire 'A' schedule property. Further, it is also the case of the plaintiff that it has permitted its labourers to construct the suit 'B' schedule temple in the suit schedule 'A' property. To prove its ownership and possession over the suit schedule properties, the plaintiff produced the copy of the sale deed dated 15.7.1943. Under the said sale deed the plaintiff company purchased the suit schedule 'A' property. The plaintiff further produced the RTC of the

present year which also shows that the khatha of the suit schedule 'A' property is stands in the name of the plaintiff company. The plaintiff company also produced certified copy of the mutation register extract, index of land, pakka book, which also evidentiates that on the basis of the sale deed dated 15.7.1943 the khatha of the suit schedule 'A' property is in the name of the plaintiff company. The plaintiff also produced the village map. The plaintiff further produced the survey sketch conducted by the private surveyor by showing the existence of the plaint 'B' schedule temple in the plaint 'A' schedule property. The plaintiff further produced the certificate of corporation issued in favour of the plaintiff company. The plaintiff company also produced the licence copy given to one private surveyor by name Wesley Pinto to work as a private surveyor. By producing these documents the plaintiff company trying to establish that it is the owner of the suit schedule 'A' property and the suit schedule 'B' property is in

the hiduvali land of the plaintiff company. On the other hand, the defendant has denied the ownership and possession of the plaintiff over the suit schedule 'A' property and also submitted that the suit 'B' schedule temple is in the government land and the plaintiff company has encroached the plaintiff 'B' schedule land which is in the government land. In support of his case, the defendant has produced the caste certificate of the defendant, invitation in respect of the temple programmes, letter given by the president of temple committee seeking donation for the functions of the temple. The defendant also produced the copy of the complaint and F.I.R. registered against the workers of the plaintiff company alleging about the commission of the offence punishable under the provisions of Schedule Caste and Schedule Tribe Act. By producing these documents the defendant claiming that he is officiating as Archak of 'B' schedule temple on the basis of hereditary and plaintiff company has no right to interfere with

his right in worshipping the 'B' schedule temple as pradhana Archak.

8. By keeping both the contents urged by the plaintiff and defendant in the background, the plaintiff company produced sale deed and revenue documents to prove that it is the owner of the suit schedule 'A' property. The plaintiff also produced the survey sketch to evidentiates that the suit schedule 'B' property is within the suit schedule 'A' property. The plaintiff also produced the certificate of the Surveyor who prepared the said sketch. These documents and the ownership over the suit schedule 'A' property is denied by the defendant. The defendant is alleging that the plaintiff company has encroached the government land including the 'B' schedule property by creating the false documents. But no documents are produced by the defendant in support of this allegation. On what basis the revenue documents and sale deed

produced by the plaintiff company is fake and false documents is not explained by the defendant. It is settled principle of law under section 133 of Land Revenue Act that the entries in the revenue record presume to be true until the contrary is proved. The defendant has not made out any of the contrary to disbelieve the entries in the revenue documents produced by the plaintiff company.

9. Coming to the next point the defendant in the written statement itself admitted that the said temple is a private temple and not public temple. Further in the written statement itself the defendant has admitted that the labourers and the staff of the plaintiff company are also devotees of the God in the suit schedule 'B' temple.

10. The defendant claiming that he is the Pradana Archak in the suit schedule 'B' temple after the death of his father. At this stage, the documents produced by the plaintiff company and also in lieu of the admission given by the defendant, it is showing that the suit schedule 'B' property is in the hiduvali land of the plaintiff company. The plaintiff company further produced the letter dated 20.8.2019, 28.9.2019 and 6.9.2018, in which the letters dated 28.9.2019 and 6.9.2018 which are given by the defendant discloses that the every act and every modification in the suit schedule 'B' land is conducting with the prior permission and consent of the management of the plaintiff company. The letter dated 28.9.2019 and 6.9.2018 also bears the signature of the defendant. In these letters the defendant himself seeking the permission from the management of the plaintiff company to make changes and also for construction of retaining wall in the suit schedule 'B' property. If the management of the 'B' schedule

temple is solely controlled by the 19 families as alleged by the defendant, why the defendant has given letter dated 28.9.2019 and 6.9.2018 by seeking permission from the plaintiff company for the developmental work in the suit 'B' schedule temple.

11. The defendant has not produced any documents to show that the suit schedule 'B' property is in the government land. The defendant claiming the hereditary right and customary right to perform the pooja in the 'B' schedule temple as a Pradhana Archak. Section 48 of Indian Evidence Act speaks about the forming of opinion on the existence of right or customs. In section 13 of the Indian Evidence Act when the question is arose on the existence of right or custom, the facts which are relevant to be considered is explained. Both the sections are hereby quoted:

Section 13 of Indian Evidence Act:

Facts relevant when right or custom is in question.

—Where the question is as to the existence of any right or custom, the following facts are relevant:—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted or departed from.

Illustration: The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right,

or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Section 48 of Indian Evidence Act:

Opinion as to existence of right or custom, when relevant.—When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression “general custom or right” includes customs or rights common to any considerable class of persons.
Illustration The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

12. As per section 13 of Indian Evidence Act, any transaction from which the right or custom in question was created, claimed, modified, recognized, asserted or denied are the relevant facts in proving such right or custom. Further, any particular instances in which the right or custom was claimed or recognized or exercised or in which its exercise was disputed, asserted or departed is also going to be a relevant fact in consideration of custom in question.

13. At this stage, the documents showing that the suit schedule 'B' property is within the suit schedule 'A' property. The suit schedule 'A' property is purchased by the plaintiff company under the registered sale deed. The plaintiff company filed the affidavits of one Jayaram, Manjunatha, Puttamma, Damodhara, Vishwanatha and one Benoy, who are the workers of the plaintiff company. In these affidavits the deponents deposed that they are

the workers of the plaintiff company and also the devotees of the suit schedule 'B' temple. In the affidavit it is also deposed that the said temple is a private temple and the defendant was working as Archak under the permission of plaintiff company. Thus, the plaintiff company by filing the affidavits trying to establish that the suit schedule 'B' property is private temple which is meant for its labourers and employees.

14. The defendant produced the complaint given by him to the Jayapura Police Station against the employees of the plaintiff company by alleging the commission of the offence punishable under the provision of Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989 (Amended 2016). In the said complaint the defendant himself stated that their forefathers have constructed the temple in 10 guntas in Sy.No. 2/3 of Moorugadde Village and the said land is sold by the Devadanam Coffee

Syndicate to the plaintiff company. (ಮೂರುಗಡ್ಡೆ ಗ್ರಾಮದ, ಬಾಳೆಹೊನ್ನೂರು ಟೀ ಪ್ಲಾಂಟೇಶನ್‌ನಲ್ಲಿ ಕೆಲಸ ಮಾಡಲು ಮೂಲತಃ ದಕ್ಷಿಣ ಕನ್ನಡ ಜಿಲ್ಲೆ ಹಾಗೂ ಉಡುಪಿ ಜಿಲ್ಲೆಯ ಕರಾವಳಿ ಪ್ರದೇಶದ ನಮ್ಮ ಜನಾಂಗದವರು ನೂರು ವರ್ಷಗಳ ಹಿಂದೆ ಟೀ ಪ್ಲಾಂಟೇಶನ್‌ನಲ್ಲಿ ಕೆಲಸ ಮಾಡಲು ಇಲ್ಲಿಗೆ ವಲಸೆ ಬಂದು ವಾಸವಾಗಿರುತ್ತಾರೆ. ಆ ಸಮಯದಲ್ಲಿ ನಮ್ಮ ಜನಾಂಗದ ಕರಾವಳಿಯ ಆರಾಧ್ಯ ದೇವರು "ಶ್ರೀ ಬಬ್ಬುಸ್ವಾಮಿ ಹಾಗೂ ಶ್ರೀ ಚಾಮುಂಡೇಶ್ವರಿ ಅಮ್ಮನವರು ಹಾಗೂ ಪರಿವಾರ ದೇವರುಗಳ ದೇವಸ್ಥಾನವನ್ನು ಮೂರುಗಡ್ಡೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 2/3 ರಲ್ಲಿ ವಿಸ್ತೀರ್ಣ 0.10 ಗುಂಟೆ ಸ್ಥಳದಲ್ಲಿ ನಿರ್ಮಾಣ ಮಾಡಿ ಅನಾಧಿಕಾಲದಿಂದಲೂ ಪೂಜೆ ಪುನಸ್ಕಾರ ಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತೇವೆ." ಆದರೆ ಸುಮಾರು 1944 ನೇ ಇಸವಿಯಲ್ಲಿ ದೇವದಾನಂ ಕಾಫಿ ಸಿಂಡಿಕೇಟ್ ನವರು ಮೇಲೆ ತಿಳಿಸಿದ 1 ನೇ ಆರೋಪಿತರು ಪ್ರತಿನಿಧಿಸುವ ಮೆ. ಆನಪರೈ ಎಸ್ಟೇಟ್ ಲಿಮಿಟೆಡ್ ಇವರಿಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ).

15. Thereby the defendant admitted that the suit schedule 'B' property is within the suit schedule 'A' property. It is very important to note that the defendant is claiming the suit schedule 'B' temple in total 10 guntas. But, the suit schedule 'B' property is described as temple in 6 guntas. Thereby, it shows that there is a difference between the plaintiff and defendant about the

measurement of the temple land. On what basis the defendant is claiming the temple property in 10 guntas is not explained by the defendant. This also shows the prima facie case for trial between the plaintiff company and the defendant. Further, in the complaint given by the defendant he has annexed nearly 8 documents along with the complaint. The same is shown in the annexures. In the documents shown as the annexures, except the first and third documents, no other documents are available before this court nor the defendant has taken effort to produce those documents. But, the plaintiff produced the 5th document, which is letter, dated 20.9.1991 in which the villagers of Moorgadde Village requested the government to grant 3 acres of land in Sy.No. 1, in which they have constructed the house and temple of Vydyanatha. Through the said letter, the villagers were requested to grant 3 acres of land in Sy.No. 1 of Moorugadde Village for the purpose of their residence and for the

temple of Vydyanatha. The said letter is also shown as one of the annexure in the complaint given by the defendant against the employees of the plaintiff company. Thus, by relying on this, the learned counsel for the plaintiff argued that the suit schedule 'B' temple is a purely private temple which is in the property of the hiduvali land of the plaintiff company and the defendant falsely creating the right over the 'B' schedule temple. On the other hand, by relying on the very same letter the learned counsel for the defendant argued that the God Vydyanatha and the God Babbuswamy is one and the same and the family of the defendant was worshiping the said temple as Archakas on hereditary basis. This argument canvassed by the learned counsel for the defendant cannot be acceptable because even though for the argument sake if we accept the God Babbuswamy and Vydyanatha is one and the same under the said letter the villagers were claiming the right on the 3 acres of land in Sy.No. 1, which was already in their

exclusive possession. But, the present suit schedule 'B' property is 6 guntas of land in Sy.No. 2/3 of Moorugadde Village. Hence, the property claiming under the letter dated 20.9.1991 totally different from the suit schedule properties.

16. By considering all these points, the plaintiff company at this stage established the prima facie case in its favour in which it can be held that the prima facie case is available in favour of the plaintiff company which is fit for trial. By considering all these reasons, the point No. 1 is answered in the affirmative.

17. **Point No. 2 and 3 :** As these points are inter connected, they are taken together for common discussion in order to avoid the repetition of facts. It is already discussed in point No. 1 that the plaintiff made out prima facie case, which is fit for trial. On

the other hand, at this stage, the defendant failed to substantiate his claim.

18. The suit schedule 'B' property is situated within the land which is in possession of the plaintiff company. The plaintiff company alleged that the defendant by officiating as a Pradhana Archak disturbing the worshipping of the God by the labourers and employees of the plaintiff company. The defendant admittedly not the employee or the labourer of the plaintiff company. The defendant himself admitted that the suit schedule 'B' temple is a private temple. The defendant is residing in Shanthipura Village. The defendant himself claiming that he is a Pradhana Archak on the hereditary basis which is in the suit schedule 'A' property. It is alleged that the defendant is trying to extend the suit schedule 'B' property and thereby trying to encroach the suit schedule 'A' property which belongs to the plaintiff company.

19. The plaintiff company prima facie established its right over the suit schedule 'A' property. If the suit schedule 'A' property is encroached and it is damaged, certainly it will cause irreparable loss and injuries to the plaintiff company. The plaintiff company being the owner of the suit schedule 'A' property has every right to protect its property, thus the balance of convenience being the owner of suit schedule 'A' property lies in favour of the plaintiff company. Hence, the balance of convenience lies in favour of the plaintiff company and if the injunction is not granted the plaintiff company will be put to irreparable loss and injury by losing land. Hence, point No. 2 and 3 answered in affirmative.

20. **Point No. 4:** Mere existence of prima facie case, balance of convenience and irreparable loss will not make the plaintiff to claim for the discretionary relief of injunction. In this case the

plaintiff company is claiming its ownership over the suit schedule 'A' property and claiming that the suit schedule 'B' property is a private temple which is meant for the labourers and employees of the plaintiff company. The plaintiff company also filed the affidavits of its employees and labourers in this regard.

21. The learned counsel for the plaintiff produced the copy of the following citations which are relied by him in support of his argument.

- 1) A.I.R. (Kar.) 2016 Page. 410
- 2) 1986 A.I.R. (Cal.) 120

22. On the other hand, the learned counsel for the defendant also relied on the following citations in support of his argument.

- 1) 2011 (2) KCCR SN 120
- 2) 2015 SAR (CIVIL) 1151
- 3) 2015 (1) KCCR 394
- 4) 2012 (4) KCCR 3588

- 5) The SC/ST (Prevention of Atrocities) Act
- 6) The Protection of Civil Rights Act
- 7) Smt. Narasamma V/S Sri. K.V. Ramprasad (Hon'ble Karnataka High Court WP No. 12971/2012).
- 8) Bhargavi Constructions & Another V/S Kothakapu Muthyam Reddy and Others. (Hon'ble Supreme Court Civil Appeal No. 11345/2017)
- 9) Ashok Marketing Ltd., & Another V/S Punjab National Bank and Others. (1991 A.I.R. 855)
- 10) Gujarat Urja Vikas Nigam Ltd., V/S Essar Power Ltd., (Hon'ble Supreme Court Civil Appeal No.1940/2008)
- 11) ILR 2003 Kar. 3913.(Smt. Guduma V/S Shikandar & Others)

23. These citations were also relied by the both parties at the time of canvassing the arguments on I.A. No. 5 also. The facts and circumstances of these quoted cases are totally different. Hence, the precedent laid down in these cases are not applicable to the present case in disposing the I.A. No. I.

24. Further, the learned counsel for the defendant also argued that the defendant has given the complaint against the employees of the plaintiff company for committing the offence punishable under the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989, which is pending for enquiry by the Dy.S.P., Koppa Sub-Division. Hence, section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989, which overrides the general law. Hence, in view of the committal of the offence which are punishable under the provision of above said Act and also in lieu of override clause of section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989, the present case is not maintainable. Hence, it is further argued that, when the suit itself is not maintainable, the interim order cannot be granted. On the other hand, the learned counsel for the plaintiff argued that the provisions of the Schedule Caste and Schedule Tribes (Prevention

of Atrocity) Act 1989 will not make the suit as not maintainable, which is filed for the protection of civil rights and prayed for interim order as prayed in the I.A.

25. For the better appreciation of the case section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989 is hereby quoted:

“Act to override other laws.— Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

26. No doubt that the provisions of Special Act prevails over the General Law. Section 20 of the Schedule Caste and Schedule

Tribes (Prevention of Atrocity) Act 1989 will not bars from the plaintiff company to claim or establish its right by filing the suit in respect of the property owns by it. Section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989 is applicable to the penal provisions and not for the suit for injunction which is filed on immovable property. As discussed in the inception of the order, the defendant also filed I.A. No. 5 under order 7 rule 11(d) R/W section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act 1989 is came to be dismissed with detailed order. Thereby, it is held that the suit of the plaintiff is maintainable.

27. 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)”

28. In the present case the plaintiff company made out the prima facie case and if the injunction is not granted and the defendant succeeded in extending the suit schedule 'B' property and thereby encroached the suit schedule 'A' property, certainly it will cause damage to the plaintiff company and the very purpose of the institution of this suit will be defeated. It is very important to note that the plaintiff company alleged that the defendant is obstructing the employees and labourers of the plaintiff company in worshipping the Gods in the suit schedule 'B' property. In this regard, the plaintiff company also filed the affidavits of its labourers and employees, who are the devotees of the Gods of suit schedule 'B' property. The plaintiff company also filed the

affidavit of one Vishwanatha, who deposed on oath that he is officiating as a Archak of the said temple, but the defendant is causing obstruction for his work as Archak. The right of the defendant needs to be adjudicated. The letters filed by the plaintiff company disclosing that all these days the defendant was taking permission from the plaintiff company for the developmental work of the suit schedule 'B' temple. The defendant failed to establish that the suit schedule 'B' property is government land. As per the complaint given by the defendant before the Jayapura Police Station, admittedly, the suit schedule 'B' property is within the property belongs to the plaintiff company. In the same complaint the defendant alleging that the temple is in 10 guntas. But the plaintiff is stating that the suit schedule 'B' property is in 6 guntas. The photographs produced by the both parties discloses that the temple is constructed in a considerable big place. If the plaintiff company is intolerable

towards the other religion and customs, why it is going to allow to the temple to be established in such a big place as shown in the photographs? The temple has its own devotees. Now, one Vishwanatha is said to be appointed as Archak of the said temple. The defendant on what basis can claim the hereditary right is not established by him. Admittedly, the defendant is doing the business and also residing in Shanthipura Village. Hence, at this stage, when the plaintiff has made out prima facie case and when the defendant failed to show the existence of his right to claim the post of Archak, this court is under the opinion that the plaintiff company has made out sufficient grounds for interim order. Accordingly, point No. 4 is answered in the affirmative.

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

ORDER

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

The defendant, his men, agents, servants or anybody claiming through him are hereby restrained from trespassing into the plaint schedule properties or from officiating as priest of the plaint 'B' schedule temple or from making constructions over the plaint schedule properties or in any way interfering with the peaceful worshiping of the God Babbu Swamy situated over the plaint 'B' schedule property by the labourers of the plaintiff company, till the disposal of this suit.

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 7th day of March, 2020)

Sd/-xxxx 7/3/2020
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.