

IN THE COURT OF THE CIVIL JUDGE AND JMFC,
N.R.PURA

Present:- Kum. B. Priyanka, B.A., LL.B.,
Civil Judge and JMFC, N.R.Pura.

Dated this the 27th day of March 2018

O.S. No. 87/2016

Plaintiff: Smt. Lilly Pento W/o Late Santhan
Pinto, Aged about 70years, R/o
Mahalgodu, Magundi Village and
Post, N.R.Pura Taluk.

(Represented by Sri H.R.V., Advocate)

V/S

Defendant: Basthan Lobo @ Sebastian Lobo S/o
Ishnathi Lobo, Aged about 85years,
R/o Magundi Village and Post,
N.R.Pura Taluk.

(Represented by Sri MHSK/KSS, Advocates)

ORDERS ON I.A.NO.II FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 & 2 READ WITH SECTION 151 CPC.

The plaintiff has filed this application under order XXXIX Rule 1 and 2 read with section 151 of CPC to restrain the defendant, his men, agents, servants or anybody claiming under him from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property until the disposal of the suit.

The suit schedule property is described below:

SCHEDULE

1-11Acs., of land in Sy. No. 25 of Magundi village,
Balehonnur Hobli, N.R.Pura Taluk, bounded on:-

East by	:	Halla
West by	:	Forest land
North by	:	House and encroached land of plaintiff
South by	:	House of Roshan D. Almeda

2. The plaintiff in her affidavit has contended that the defendant was granted the occupancy right in respect of Sy. No. 25 measuring 1 acre 11 guntas of Magundi village by the Land Tribunal, N.R.Pura and the defendant being the owner of the suit schedule property entered into an agreement of sale dated 17.04.1986 with Sri Santhan Pinto who is the deceased husband of the plaintiff for a consideration of Rs.10,000/- and that the registered sale deed would be executed after the completion of non alienation period and the possession of the suit schedule property was handed over to the husband of the plaintiff on the date of agreement itself and since that date the plaintiff is in peaceful possession and enjoyment of the suit schedule property.

3. The plaintiff further submits that her husband died on 13.10.2010 and after his death the defendant along with his children supporters and workers came near

the suit schedule property on 26.08.2016 and tried to trespass the suit schedule property and destroy the fence put up by the plaintiff and the same was resisted with the great difficulty and among these grounds prays for the application to be allowed.

4. On the other hand the defendant has filed his objections to the said application denying the agreement of sale dated 17.04.1986 and contends that the possession and ownership of suit schedule property is with the defendant and the plaintiff has filed the present suit with an intention to make illegal gain. Since the plaintiff is not at all in possession of the suit schedule property, the question of defendants interfering and trying to dispossess the plaintiff does not arise at all and the plaintiff has created fictitious cause of action in order to file this suit and among these grounds prays for the rejection of application.

5. Head Sri H.R.Venkateshmurthy, for the learned advocate appearing on behalf of the applicant (plaintiff). Heard the learned advocate Sri K.S. Subhash, appearing on behalf of the opponent (defendant) and perused the records carefully and meticulously.

6. The following points arise for my consideration.

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and hardship in case of refusal of temporary injunction?
4. What order?

7. My answer to the aforesaid points are as follows:

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

REASONS

8. **Point No.1 to 3:-**

Point No.1 to 3 are inter connected hence they are taken up together to avoid repetition. The plaintiff in her affidavit has contended that the defendant was granted the occupancy right in respect of Sy. No. 25 measuring 1 acre 11 guntas of Magundi village by the Land Tribunal, N.R.Pura and the defendant being the owner of the suit schedule property entered into an agreement of sale dated 17.04.1986 with Sri Santhan Pinto who is the deceased husband of the plaintiff for a consideration of Rs.10,000/-and the possession of the suit schedule property was handed over to the husband of the plaintiff on the date of agreement itself and that her

husband died on 13.10.2010 and after his death she has continued to be in possession of the suit schedule property.

9. The defendant has absolutely denied the execution of the said agreement of sale and he has also denied the possession of the plaintiff over the suit schedule property. The plaintiff in support of her contention has produced the original agreement of sale dated 17.04.1986 and on perusal of the same, the recitals of the same reveals that the agreement was entered between Santhan Pinto and Bastan Lobo for a consideration of Rs. 10,000/- and the possession of the property bearing Sy. No. 25 measuring 1 acre 11 guntas was handed over to Sri Santhan Pinto on the same date and the same is extracted below:

'ಸ್ವತ್ತನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಾನುಭವಕ್ಕೆ
ವಹಿಸಿಕೊಟ್ಟಿರುತ್ತೇನೆ.'

10. The plaintiff has also produced the RTCs and the mutation register extract in respect of suit schedule property and it shows the name of the defendant as the owner of the suit schedule property. It is the main contention of the defendant that he has not executed the alleged agreement of sale and this question cannot be decided at this stage.

11. Though the sale agreement is denied by the defendant, the plaintiff has produced the original sale deed which dates back to the year 1986 and the same was entered before the filing of the present suit, chances of creating the said document for the purpose of the suit is very slim. The authenticity of the said document of course, cannot be decided at this stage and I am of the opinion that the plaintiff has prima facie shown that she is in possession of the suit schedule property and if the injunction is not granted she being a widow will be put to untold hardship.

12. The object of interim injunction is to protect the plaintiff against the injury which could not be adequately compensated, if the uncertainty were resolved in his favour at the trial. Therefore keeping in mind the said object I am of the opinion that the plaintiff has made out a prima facie case.

13. This court has to balance the relief given to the plaintiff against the injury that will be caused to the defendant. Comparing the contentions of the plaintiff and defendant, I am of the opinion that the balance of convenience lies in favour of plaintiff because more hardship will be caused to her. At this stage the court cannot hold a mini trial to determine the rights of parties.

14. In this case there is a threat of irreparable injury which is forcibly tilting the balance in favour of the plaintiff. Therefore, I proceed to hold that balance of convenience is in favour of the plaintiff and more hardship will be caused to the plaintiff if the present application is not allowed.

15. **Point No.4:**

In view of my aforesaid reasonings, I proceed to pass the following:

ORDER

Application filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants, their men, agents, servants or anybody are restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property in any manner until the disposal of the suit.

Sd/-
Civil Judge & J.M.F.C.,
N.R.Pura.