

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C., AT KOLLEGALA**

:PRESENT:

SRI. SANTHOSHA KOTARI, B.A.L.LLB.,
Prl.Civil Judge and JMFC., Kollegal.

Dated this the 15th day of February 2022

ORIGINAL SUIT NO. 312/2021

PLAINTIFF	Sri Ganesh S/o Late Nataraju, Aged about 45 years, R/at Kallukunike, Opposite to Maruthi Rice Mill, Hunasuru Town, Mysore District.
	(By Sri. S. Rudraradhya, Advocate)
	V/S
DEFENDANT	Sri. Nataraju @ Venugopal S/o Late Appuswamy, Aged about 60 years, R/at Kallukunike, Opposite to Maruthi Rice Mill, Hunasuru Town, Mysore District.
	(By Sri. Shashibimba, Advocate)

ORDERS ON I.A. I FILED BY THE PLAINTIFF UNDER
ORDER XXXIX RULE 1 AND 2 R/W SECTION 151 OF THE
CODE OF CIVIL PROCEDURE

This IA No.I is filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of the Code of Civil Procedure seeking Temporary Injunction restraining the defendant from carry out any further illegal construction in the suit 'B' schedule property pending disposal of the suit.

2. In the affidavit accompanying the IA No.I the plaintiff has sworn to an affidavit and prayed to consider averments made in plaint as part and parcel of the affidavit filed in support of IA N.I. It is stated that the suit 'A' schedule property is the ancestral property of his father as he acquired the same under partition deed dated 11.05.1999 and since the date of partition his father had been in peaceful possession and enjoyment of the suit schedule property by cultivating the same. It is further stated that his father is illiterate, and after he acquiring the suit schedule property under partition deed dated 11.05.1999 he had not got changed the khata of the suit schedule property in his name and same was standing in the name of his mother Guruvayamma. Thereafter, in the year 2020 his father had given an application to change the katha of the suit schedule property in his name. On 30.09.2021 the concerned authority has approved to enter the khata of the suit schedule property

in the name of his father. Accordingly, the khata of the suit schedule property was changed in his father's name vide MRT 01/2021-22. It is further stated that even before the authority passed an order approving to change katha in name of his father, he died on 27.09.2020 leaving the plaintiff, his wife Ramamma and two daughters Jamuna and Arathi as his legal heirs. It is further stated that his mother and two sisters are residing in the Tamilnadu and the plaintiff had given money and gold ornament to his sisters towards their shares in the suit schedule property and he only looking after his mother Ramamma. It is further stated that he filed the above suit being Kartha of his family. After the partition, his father had been in peaceful possession and enjoyment of the suit schedule property till his death and after his death, the plaintiff being legal heir of the said Nataraju has been in possession and enjoyment of the suit schedule property by cultivating the same.

3. It is further stated that due to indifference between plaintiff and his sisters they lodged complaint against the plaintiff and his family in C.R. No. 121/2021 before the Ramapura Police Station. At that time, the plaintiff with an intention to obtain anticipatory bail in the said case was forced to stay out of the Village. The defendant by misusing the said situation, was illegally trespassed in to the suit 'B' schedule

property which is part and parcel of the suit 'A' schedule property and has illegally commenced to construct house therein. When the plaintiff tried to object the same, the defendant brought police to arrest him in C.R. No.121/2021. Due to which, he was unable to stop the defendant from constructing house therein. Though the defendant has no manner of right, title or interest over the suit 'B' schedule property he illegally commenced to construct house in the said property. He further stated that if he is not restrained from carry out further construction in the suit 'B' schedule property, his right will be affected and the defendant will change the nature of the suit 'B' schedule property. Hence, he constrained to file present application along with suit.

4. On the other hand, the defendant has filed a detailed objection denying the averments made in the affidavit accompanying the IA No.I and stated that the application filed by the plaintiff is neither maintainable under law nor on facts and same is liable to be rejected. He denied that the suit schedule property is the ancestral property of the plaintiff as he acquired the same through inheritance. he further denied that the plaintiff's father had acquired the suit schedule property under partition deed dated 11.05.1999. It is stated that the grand father of the defendant by name Ramaswamy and his grand mother Smt. Guruvayamma had seven children by name

Abbuswamy, Gandhi, Guruswamy, Chinnaswamy, Kannammal, R. Nataraju and Ramaswamy and the plaintiff is son of the Nataraju and defendant is first son of the deceased Abbuswamy. The grand mother of the defendant by name Smt. Guruvayamma and defendant's father Abbuswamy, his uncles Gandhi and Guruswamy have purchased the suit schedule property under registered sale deed dated 09.07.1971 from its previous vendor. It is further stated that his grand father and grandmother along with suit schedule property they also have landed property in the Tamilnadu and other places. All the said properties were divided under oral partition and in the said partition, Northern portion of the suit schedule property was allotted to the share of the plaintiff's father and Southern portion of the suit schedule property was allotted to the share of the defendant's father. There are two old houses in the portion of property allotted to this defendant's father share and the defendant has been residing therein.

5. It is further stated the defendant with an intention to construct a new house near to the said old house had laid foundation three years ago and thereafter due to outbreak of Covid-19 pandemic, he stopped further construction. It is further stated that the house in which they are residing is in dilapidated condition, as such, he commenced further construction work on the said earlier foundation by investing

Nine Lack Rupees and he formed wall on the said foundation. Though, the plaintiff aware that the defendant is in possession of the Southern portion of the suit schedule property has filed a false suit against him. He denied the partition deed dated 11.05.1999. It is further stated that the suit schedule property stands in the name of the grand mother of the defendant by name Smt. Guruvayamma vide MR 04/1971-72. Now the plaintiff is stating that the katha was changed in his father name vide MRT 01/2021-22. However, the plaintiff has not produced any supportive documents for said change of katha. Further, the plaintiff's father had given an application for change of katha only in respect of 2 acres of land in the suit schedule property and accordingly check list was prepared. However, the Tahasildar of the Hanur instead of passing an order as objectionable case, has passed an illegal order to change the Katha in the name of the deceased father of the plaintiff as such. Against which, he already prepared an appeal before the AC Court and same is pending for adjudication. He further stated that the suit schedule property came to the defendant and his family under the registered sale deed and the defendant is in possession and enjoyment of Southern half portion of the suit schedule property. However, the plaintiff behind the back of the defendant has fraudulently got changed the katha of the suit schedule property in his father name and

obtained ex parte order of temporary injunction and obstructing him in constructing house in his property. For all these reasons, he prayed to reject the application.

6. Heard arguments of both sides. Perused the materials on record. The following points would arise for my consideration:

- 1. Whether the plaintiff has made out a prima facie case?*
- 2. Whether the plaintiff proves that the balance of convenience lies in his favour?*
- 3. Whether the plaintiff establishes that he would be put to irreparable loss and injury if temporary injunction as prayed in the I.A.No. 1 is not granted?*
- 4. What orders ?*

7. My answer 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 : As per final order for the following:

REASONS

8. **Point No.1**: It is settled law that the grant of temporary injunction is a discretionary relief. The burden is

on the plaintiff to establish by evidence that there is a prima facie case. If a person is to get entitled to the relief of temporary injunction he must show that he has a prima facie case. In order to get himself entitled to the relief of temporary injunction the person seeking temporary injunction must show that, not only he has made out a prima facie case but also the balance of convenience lies in his favour and that irreparable injury which cannot be compensated in terms of money would be caused to him in the event the injunction sought is refused. Bearing these legal principles with regard to the grant or refusal of temporary injunction we shall turn our attention to the case made out by both the sides and find out as to whether the plaintiffs have made out a prima facie case.

9. The plaintiff has filed the above suit against the defendant for the relief of Declaration that he is the absolute owner of the suit 'A' schedule property and Possession of the suit 'B' schedule property and Mandatory and Permanent Injunction. It is case of the plaintiff that he is the absolute owner in possession and enjoyment of the suit schedule property as he acquired the same through inheritance as the same was allotted to his father share under partition deed dated 11.05.1999. Since the date of partition, he along with his father had been in peaceful possession and enjoyment of the suit schedule property. When he was out of the Village to

obtain anticipatory bail in Crime No.133/2021, though the defendant has no manner of right, title or interest over the suit schedule property has illegally trespassed in to the suit schedule property and encroached the suit 'B' schedule property and commenced to construct house therein. The plaintiff in support of his case has produced unregistered partition deed dated 11.05.1991 and copy of death certificate of his father, copy of family tree certificate, RTC extract in respect of the suit schedule property, photo and CD.

10. On the other hand the defendant has denied the claim of the plaintiff and he contended that the suit schedule property was purchased by his grandmother, his father and his uncle Gandhi and Guruswamy under registered sale deed dated dated 09.07.1971 from its previous vendor and under the oral partition effected in the family of his grandfather and grandmother half of the suit schedule property i.e., Northern side of the suit schedule property was allotted to the share of the plaintiff father Nataraju and half of the suit schedule property i.e., Southern portion of the suit schedule property was allotted to the share of the defendant's father and he has been in possession and enjoyment of the said Southern side of the suit schedule property. The suit 'B' schedule property comes within the said Southern portion of land in the suit schedule property. He being absolute owner of the Southern

side of the suit schedule property had laid foundation in said property three years ago and due to financial crisis on account of Covid-19 pandemic he stopped further house construction work in the said property. However, since the house in which he residing is in dilapidated condition, recently, he commenced to carry further construction work in the Southern side of the suit schedule property. The plaintiff has no manner of right, title or interest over the Southern portion of the suit schedule property in which the suit 'B' schedule property comes. The defendant in support of his defense has produced copy of the registered sale deed dated 09.07.1971 executed by Maniyam in favour of grandmother of the plaintiff and defendant by name Guruvayamma, Abbuswamy, Gandhi and Guruswamy, RTC extract in respect of the suit schedule property which stands in the name of the grand mother of the plaintiff and defendant by name Smt. Guruvayamma and plaintiff's father Nataraju and certified copy of order sheet in RRT No.31/2020-21, certified copy of notice in said proceedings, copy of mutation register extract, copy of genealogical tree, copy of application given by the plaintiff's father to the Tahasildar Hanur to change Katha in his name, genealogy tree of plaintiff's and defendant's grand father and grand mother family, copy of unregistered partition deed dated 11.05.1999, RTC extract and photos and CD.

11. It is pertinent to mention here that there is serious dispute between the plaintiff and the defendant with respect to the title of the suit schedule property. It is claim of the plaintiff that he is the absolute owner in possession of the entire suit schedule property as he acquired the same through inheritance as the same was allotted to his father share under the partition deed dated 11.05.1999. After his death, he has been in peaceful possession and enjoyment of the suit schedule property. Though the defendant has no manner of right, title or interest over the suit schedule property, he encroached the suit 'B' schedule property and illegally commenced to construct house therein. On the other hand, the defendant has denied the plaintiff's claim and contended that he is the absolute owner of half portion of the suit schedule property i.e., Southern portion of suit schedule property as the same was allotted to share of his father under oral partition effected in the joint family of his grandfather and grandmother. The plaintiff mainly relied on the unregistered partition deed dated 11.05.1999 entered among joint family of his father. Since the defendant has denied the said partition deed and since the said partition deed is unregistered one, at this stage, the said document can not be wholly relied for deciding disputed title over the suit schedule property. However, it is significant to note here that though the defendant has denied the said

partition deed he has clearly admitted the partition effected in the joint family of his grandfather and grandmother. However, he is contending that the said partition is oral partition and in the said oral partition half of the suit schedule property i.e., Northern portion of the suit schedule property was allotted to the share of the plaintiff's father and Southern portion of the suit schedule property was allotted to the share of his father Late. Appuswamy. Though the defendant has taken a such defense he has not produced iota of document in support of his defense. If really an oral partition was effected and Southern portion of the suit schedule property was allotted to his father share, nothing has prevented him to produce any document for having given effect to the said alleged oral partition or documents to show effect of revenue entries based on the said oral partition in his name or in the name of his father.

12. Further, the defendant has produced copy of registered sale deed dated 09.07.1971 contending that his father, grand mother and two uncles were purchased the suit schedule property from its erstwhile owner as such the plaintiff has no right whatsoever over the same. It is pertinent to mention here that though he has taken said defense in his initial part of written statement as well as in the objection filed to present IA, in later part of the said written statement as well as in the objection he has taken a defense that oral partition

was effected among joint family of his grand father and grand mother and in the said partition half portion of the suit schedule property was allotted to the share of the plaintiff's father and thereby the defendant himself has recognise the plaintiff's right over the suit schedule property. Hence, the said registered sale deed does not come to the aid of the defendant. Further, counsel for the defendant has vehemently argued that the plaintiff's father had given a false genealogy tree before the Tahasildar and though there was an objection as to enter katha in respect of the entire suit schedule property, the Tahasildar as per his order dated 09.07.2021 was ordered to effect the katha of entire suit schedule property in the name of deceased father of the plaintiff as such, the very order is illegal. It is pertinent to mention here that the said contention cannot be adjudicated in this suit. If there is any such irregularity or illegality in the order passed by the revenue authority, the aggrieved person should approach an appellate authority and get the said order set aside. This Court can not sit as an appellate authority to decide the validity or otherwise of the said order.

13. Further, it is pertinent mention that the defendant in this case has not denied any construction of house in the suit 'B' schedule property. However, it is his contention that he is the absolute owner in possession of half portion of the suit

schedule property and the suit 'B' schedule property comes within the said half portion of the suit schedule property and he being the absolute owner has commenced to construct house therein. It is significant to mention that though he has taken such defense, at this stage, the defendant has not produced any document to show his absolute title over suit 'B' schedule property or half portion of the suit schedule property i.e., Southern portion of the suit schedule property. Since he admitted carrying of construction work in the suit schedule property, at this stage, it is his burden to show his prima facie title over the suit 'B' schedule property and he has taken a required permission or license from the concerned authority to construct house therein. If really he is an absolute owner of the half portion of the suit schedule property and has sufficient documents in respect of the same, nothing has prevented him to produce the same before the Court to substantiate his stand and produce the same before the concerned authority and get the permission to construct house in the suit schedule property. However, the defendant without doing so and even without producing any document in support of his absolute title over the suit 'B' schedule property and without even obtaining the prior permission to construct house in the said property has commenced to construct house in the suit 'B' schedule property.

14. It is pertinent to mention here that the very object of granting temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is to protect plaintiff against injury by violation of his right. It is pertinent to mention here that in this case the plaintiff has denied the defendant's right over the suit schedule property in its entirety, however, the defendant has not completely denied the plaintiff's right or title over the suit schedule property rather he admitted the plaintiff's right over the Northern portion of the suit schedule property. As, such the defendant clearly recognise the plaintiff's right in the suit schedule property. Further, since there is serious dispute with respect to the title and possession over the Southern portion of the suit schedule property and since the defendant has admitted that he is constructing house therein and since he has not produced any document in support of his stand taken in the written statement as well as in the objection to the present IA, it cannot be held that the plaintiff has not made out a prima facie case. Further, it is relevant to mention that at this stage, this court cannot decide whether the plaintiff is the absolute owner of the suit schedule property or not or whether the defendant has absolute title over the half portion of suit schedule property i.e., Southern portion of the suit schedule property and the suit 'B' schedule property comes within the said half portion or not. The said disputes

have to be decided after fulfilled trial. Under such circumstance, at this stage, this court is of the opinion that the plaintiff has made out prima facia case. **Hence, the point no.1 is answered in the 'Affirmative'.**

15. **Points No.2 and 3:** Points No.2 and 3 are taken up together for common discussion to avoid repetition of facts and reasoning.

16. The second condition for granting temporary 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 greater than that which is likely to be caused to the opposite party by granting it. 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 consequences of apprehended injury.

17. The plaintiff alleges that the defendant has encroached suit 'B' schedule property which is part and parcel of suit 'A' schedule property and illegally commenced to construct house therein even without obtaining license from the concerned authority and thereby infringes his right. It is

further submitted that the acts of the defendant are highly illegal and opposed to law and if the defendant succeeds in his illegal act, irreparable loss and injury would be caused to the plaintiff and very nature of the suit schedule property will be changed. It is pertinent to note that the defendant has not specifically denied the said assertions of the plaintiff. Per contra, the defendant is contending that he is the absolute owner of the Southern portion of the suit schedule property and the suit 'B' schedule property comes within the said portion, as such he commenced house construction work in the said portion. Though he has taken a said stand, he has not produced iota of document to substantiate his stand. Under the circumstances, at this stage, this court is of the opinion that the plaintiff will be put to more hardship vis-a-vis the defendant, if an order of temporary injunction is not granted in favour of plaintiff he would be deprived of his right of enjoying suit schedule property, as such, this court is of the opinion that the balance of convenience also lies with the plaintiff. With these observations, **Points No.2 and 3 are answered in the 'Affirmative'.**

18. **Point No.4:** In view of the reasons and discussions made on Points no.1 to 3, I proceed to pass the following :-

ORDER

I.A.No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure is hereby allowed.

The defendant is hereby restrained by ad-interim order of temporary injunction from carry out any further construction work in the suit 'B' schedule property pending disposal of the above suit.

No order as to cost.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the 15th day of February 2022)

(SANTHOSHA KOTARI)
Prl. Civil Judge & JMFC.,
Kollegala.

(Vide separate Order pronounced in Open Court)

ORDER

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