

KADG220000542020



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI

-: PRESENT :-

Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 20th Day of April 2023.

O.S.No.13/2020

PLAINTIFF : Sri.Hanumanthappa
(By Shri. T.C.S., Advocate)

V/s

DEFENDANTS : Sri.Basappa and Others
(D1 to 4 By Shri. M.T.S., Advocate)
(D5 exparte)

I.A. NO.VII

Applicant/Plaintiff : Sri.Hanumanthappa

V/s

Opponents/Defendants : Sri.Basappa and Others

ORDER ON I.A.No.VII

The plaintiff has filed the instant application under Order 39 Rule 1 and 2 R/w Sec.151 of the Code of Civil Procedure praying for an *Ad-Interim* Temporary Injunction against the defendants. It is filed, when the matter is set for plaintiff's further evidence.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The plaintiff has sworn the affidavit and has stated in the said affidavit that, he is the owner and was in peaceful possession of suit schedule property. He had inherited the same by way of pouthy khatha bearing MRH No.11/2012-13 dt: 28.02.2013. The defendants without their being any manner of right are making road in the suit property and in that context, they encroached to an extant of 4 Guntas of land belonging to the plaintiff. The local authority did not take any action and as such, the plaintiff filed this application. The plaintiff has made out prima facie case, balance of convenience is in his favour and if the order as prayed for is not granted, then, the plaintiff will be put to irreparable loss and hardship. Accordingly, the plaintiff prays to allow the application.

3. STATEMENT OF OBJECTION OF THE DEFENDANTS AS UNDER:

The defendants filed statement of objection denying all the contents of the affidavit. The defendants have specifically contended

that, the plaintiff himself stated in para No.12 and 15 of the plaint that, the defendant No.5 inspite of request made by the plaintiff are not handing over the vacant possession of suit property by demolishing the structures standing thereon. They have not done so and as such they are liable to pay the damages of Rs.1,50,000/-. Further, the defendants contended that, the PW.1 himself admitted in the cross examination that, the entire suit property is not in his possession and is in possession of the villagers, the local authority did road, extended the electricity supply and all basic needs to the public. The PW.1 has also admitted the situation of the suit property by admitting the photographs produced as per Ex.D-4 to 7. He also admitted the acquisition of the suit property by the government in the year 1947. By these set up contentions the defendants prayed to reject the application.

4. Based on the rival contentions raised by the respective parties, the following points would emerge for my consideration;

POINTS

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff ?
3. Whether the plaintiff will be put to irreparable loss, if the order as prayed for is not granted?
4. What order?

5. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal, my findings to above said points are as under :

POINTS

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per final order,
for the following ;

REASONS

6. POINT No.1 to 3:- I have taken these points together for common discussion, as these points are interrelated and to avoid the repetition of facts.

7. The learned counsel for plaintiff has argued that, inspite of repeated request and despite the pendency of the suit, the defendants are trying to interfere with his possession and as such, the defendants be restrained by way of ad interim temporary injunction till the disposal of the suit. Hence, he prays to allow the application.

8. Per contra, the learned counsel for defendants has argued that, the plaintiff himself admitted in the pleadings and in the cross examination that, the suit schedule property or any of portion of it, is not with his possession. Further, he admitted the location and the situation of the suit property and it's current affairs. Therefore, the

plaintiff cannot maintain the application and accordingly the learned counsel for defendants prays to reject the application.

9. Having heard both the learned counsels and perused the records. I feel it appropriate to refer the pleadings of the plaintiff, which are appearing at paragraph No.12 and 15. The plaintiff himself stated in the para No.12 that, the PDO of Kagathuru village was requested to handover vacant possession of the suit schedule property by demolishing illegal construction made by him. In that regard, no response was received from the said authority. Further, the plaintiff has pleaded in para No.15 of the plaint that, the defendant No.5 is liable to pay the damages to the tune of Rs.1,50,000/- for having illegally encroached the suit schedule property. The plaintiff has also prayed for declaration of his ownership to the extent of 3 Guntas in suit schedule property and also the mandatory injunction for removal of alleged unauthorised construction put thereon.

10. With those primary aspects, I would like to take note of the cross examination portion of PW.1. The PW.1, in the cross examination, at para No.9, has categorically admitted that, he is not in possession of any of the portion of the suit schedule property. Further, he admitted that, the villagers occupied the suit schedule property and are in possession by constructing various structures. He also admitted the exact situation of the suit schedule property.

11. Having consolidated reading of the pleadings and the admissions that have been given by the PW.1 during the course of

cross examination, it appears to the court that, the plaintiff is not in possession of the suit schedule property. In order to consider the application on hand, the plaintiff must prove his prima facie possession in and over the suit schedule property. In view of the admissions and the pleadings, I am of the considered opinion that, the plaintiff is not in prima facie possession of the suit schedule property and is not entitled the relief of as sought under the application. When the plaintiff failed to prove the prima facie possession or prima facie case, the question of considering the other two aspects namely, balance of convenience and irreparable injury would not arise at all. Therefore, I am of the considered opinion that, the plaintiff has failed to prove all three ingredients for granting the ad interim temporary injunction. Accordingly, the **point No.1 to 3** held in the **Negative**.

12. **Point No.4:** As a result, I proceed to pass the following:

ORDER

**The IA No.VII filed U/O. 39 Rule 1 and 2
R/w Sec.151 of CPC by the plaintiff is
hereby rejected.**

No order as to cost.

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the **20th Day of April, 2023**)

Sd/-

**(Shri. Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.**