

2. The Plaintiff/applicant by name T.M.Basavarappa S/o Mahadevappa sworn to an affidavit and stating that, his father had purchased the suit schedule property under registered sale deed dated 10.03.1987. Ever since he has been in possession and enjoyment of the suit schedule property. Thereafter the death of his father khata got mutated in the name of the plaintiff. Ever since the plaintiff and his mother have been in possession of the suit schedule property by constructed keni mane and kana. When matter stood, the defendant without having any kind of right trying to interference with the peaceful possession and enjoyment of the plaintiff in the suit schedule property. The plaintiff was unable to resist the high handed act of the defendant, hence prays for allow the application.

3. On the other hand the defendant appeared before the court through his counsel and filed written statement along with memo to treat WS as objection to this IA and contended that, the defendant has been in possession of the

suit schedule property. Where as the plaintiff never been in possession of the suit schedule property. In order to gulp off the property of the defendant, the plaintiff filed this suit. Hence prays to dismiss the application.

4. Heard arguments from both side. I have perused materials on records.

5. The points that would arise for my consideration are:-

(1) Whether the plaintiff has made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiff?

(3) Whether the plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?

(4) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

*Point No.4 : As per final orders
For the following:*

REASONS

7. **POINTS No.1 to 3:-** Since these points involve common discussion, to avoid repetition of facts, they are taken together for consideration.

8. Learned counsel for the plaintiff argued that, the plaintiff's father had purchased the suit schedule property under registered sale deed dated 10.03.1987. Ever since he has been in possession and enjoyment of the suit schedule property. Thereafter the death of his father khata got mutated in the name of the plaintiff. Ever since the plaintiff and his mother have been in possession of the suit schedule property by constructed keni mane and kana. When matter stood, the defendant without having any kind of right trying to interference with the peaceful possession and enjoyment of the plaintiff in the suit schedule property. The plaintiff was

unable to resist the high handed act of the defendant. In support of his arguments the plaintiff's counsel relied upon Sale deed, DCB register, Mutation extract, panchayath records and notice.

9. Learned counsel for the defendant argued that, the defendant has been in possession of the suit schedule property. Where as the plaintiff never been in possession of the suit schedule property. In order to gulp off the property of the defendant, the plaintiff filed this suit. In support of his arguments the defendant's counsel has not relied upon any documents.

10. In this background I have gone through the records. Admittedly the plaintiff filed this suit for the relief of permanent injunction. In support of the main relief the plaintiff maintained this I A with the grievance that the defendant interfering with the peaceful possession of the plaintiff in the suit schedule property. The defendant taken a specific stand that he has been in possession of the suit

schedule property and specifically denied the possession of the plaintiff in the suit schedule property. The defendant though has taken the said specific contention had not produced any documents to that effect. Further sale deed and DCB registers relied by the plaintiff prima facie goes to show that the plaintiff's father had purchased the suit schedule property and after his death the pertaining to suit schedule property got mutated in the name of the plaintiff. Therefore the documents relied by the plaintiff prima facie appears that the plaintiff is in possession of the suit schedule property. At this stage there is no contra documents produced to disbelieve the case of the plaintiff.

11. Therefore from the said material it is meticulous that the plaintiff has made out case for trial. If the temporary injunction not granted at this stage there may a great hardship and loss caused to the plaintiff. Therefore, at this stage I am of the considered view that the plaintiff has made out prima facie case, and as stated supra the balance of

inconvenience definitely lies in favour of plaintiff, which cannot be compensated by way of money. If the application is rejected a hardship and loss will be caused to the plaintiff, because the very object of granting temporary injunction is to protect and to preserve the plaintiff's properties till disposal of the suit, so that if ultimately, the applicant/plaintiff who is the initiator of the suit, succeeds in the suit, would not be put to irreparable and uncompensatable loss and further the provisions under Order 39 Rule 1 and 2 is very specific that it says temporary injunction will be granted only where in any suit it is proved by affidavit or otherwise:

- a) That any property in dispute to the suit, or wrongfully sold in execution of a decree, or
- b) That the defendant threatens or intends to remove or dispose of his property with a view to his creditors,
- c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the

plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act.

12. Absolutely such grievance is made out by the plaintiff. Hence no hardship and irreparable injury will cause to the defendant if application is allowed. Therefore it is just and necessary to restrain the defendant from his act as stated in the application. Hence with these observations, **I answered Points No.1 to 3 in the Affirmative.**

13. **POINT NO.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

I.A.No.I filed under order 39 rule 1 and 2 of CPC is hereby allowed with cost.

The defendant, his mens and supporters are hereby restrained by way of temporary injunction from

interference with the peaceful possession and enjoyment of the plaintiff in the suit schedule property, till further orders.

Plaintiff is directed to expedite the matter.

(Dictated to the Stenographer directly on the computer, revised & corrected by me and then pronounced in the open Court on this the 15th day of December, 2020.)

(Zarifa Banu A.R.)
Prl. Civil Judge & JMFC,
Channagiri.