

KADG220007222023



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Present: Kum.Shama Srivatsa.

B.A ,LL.B, (Hon's), LL.M.

I ADDL. Civil Judge & JMFC, Channagiri.

Dated: This the 17th Day of December 2024.

O.S. No.104/2023

PLAINTIFFS : Sri. Asadhulla Khan
and another

/Vs/

DEFENDANTS : Sri. H.B Vijaya Kumara

PARTIES IN I. A.I

APPLICANT : Sri. Asadhulla Khan
and another
----- (plaintiff)

/Vs/

OPPONENTS : Sri. H.B Vijaya Kumara -----
(defendants)

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 R/w 151 of CPC
2.	Relief sought for	Ad- interim temporary injunction
3	Date on which the application is filed	10.03.2023
4.	Number of the application	I.A.No.I

5.	Date on which the objections are filed by different opponents	23.05.2023
6.	The date on which the orders is passed	17.12.2024

Order on I.A No.1

This application is filed under order 39 Rule 1 and 2 read with Section 151 of CPC by the plaintiffs seeking ad-interim temporary injunction to restrain the defendants, their henchmen, assignees or anybody claiming through them from interfering into the plaintiffs peaceful possession and enjoyment over the schedule property till pending disposal of the suit.

2. Brief Facts stated in the Affidavit:

Counsel for plaintiff filed an interim application seeking ad interim exparte order against defendants by restraining their supporters agents and other persons acting under him. Plaintiff ventilated reasons in the affidavit that plaintiff is absolute owner in possession and enjoyment of the suit schedule property as described under suit schedule. On 25.09.1994 government issued Saguvali Chit and suit schedule property accordingly granted to plaintiff. Subsequently revenue records including RTC mutated in the name of plaintiff. Since then plaintiff is in possession and enjoyment of the suit schedule property. Since plaintiff is a old age person he alone cannot look after the agricultural activities of the suit schedule property. Thus, plaintiff No. 2 is assisting to look after the affairs.

3. Statement of objection filed by the defendant:

The defendants having no manner of right, title or interest interfered with the peaceful possession and enjoyment of the suit schedule property on first week of February 2023 and insisted to sell the suit schedule property to him. When plaintiff denied to do so defendant interfered with the supporters on 23.02.2023 at about 9.00 PM and abused plaintiff No. 2 with filthy language and threatened that he would kill him and his family if the suit schedule property is not sold to defendant. Defendant being economically and politically powerful plaintiff unable to restrain him. Plaintiff further averred that he and his family are fully dependant on the source coming out from the suit schedule property. Plaintiff lodged complaint with Channagiri Police but due to high influence of the defendant police refuse to take complaint accordingly plaintiff approached S.P, Davanagere on 24.02.2023 . However, police have not taken any action with respect to complaint . Thus having no alternate approached this court to seek ad interim temporary injunction against defendant.

4. Defendant contended that the affidavit annexed to the application is false and concocted. On 03.05.2010 plaintiff determined to sell the suit schedule property when defendant came to know about the same came forward to purchase the suit schedule property valued consideration of Rs. 1,10,000/-

accordingly paid Rs. 55,000/- on the date of agreement as part of the sale consideration amount. Remaining balance of sale consideration amount will be paid at the time of agreement to plaintiff. Plaintiff along with his wife and minor daughters executed agreement of sale infavour of defendant in the presence of witness and described. Since date of agreement till date defendant became the owner in possession and enjoyment of the suit schedule property by improving the suit schedule property by investing huge amount. Defendant further contended that at the time of executing sale agreement not time fixed for registration and plaintiff No. 1 voluntarily agreed all the terms and conditions of sale agreement and specifically agreed that this sale agreement is not to canceled and this agreement of sale enforce at any point of time. After registration of sale survey haddu bastu sketch is necessary and the same is delayed to obtain. Thus, plaintiff received advance amount and as per sale agreement conditions executed agreement of sale. Plaintiff also agreed that if any dispute or interference coming from anybody the same is solve by his own respest cost. The condition No. RD 56MUSSOSA99 dated: 10.05.1999 as per registration act 1908 under section 22 A to F is not applied to suit schedule property first plaintiff after aware of the all the terms and conditions agreed for agreement of sale. Accordingly defendant is in possession and enjoyment of the suit schedule property from the date of agreement of sale till date. Plaintiff approached defendant the seek financial help and defendant

had paid Rs. 20,000/- as remaining part of the sale consideration amount in the presence of witness and scribe. In spite of several oral request, demand made by the defendant plaintiff not executed sale agreement. As such being the scenario plaintiff again approached defendant to seek financial help and accordingly defendant paid Rs.15,000/- as part of the sale consideration. The plaintiff in spite of knowing this fact colluded with each other made illegal and unlawful acts against defendant herein.

5. When plaintiff No. 1 tried to get loan by mortgaging suit schedule property defendant herein submitted the requisition to the manager Syndicate Bank, Channagiri not to sanction any loan to the plaintiff No. 1 on 15.12.2017. Plaintiff caused interference and obstruction with the peaceful possession of the defendant and threatening by plaintiff defendant lodged complaint with Channagiri Police accordingly Channagiri police have issued NOC to the defendant. Having no alternate defendant herein approached Masjid Convenion, Agarabannihatti Village and submitted requisition to take the necessary action against plaintiff as plaintiff belongs to muslim religion.

6. Therefore in spite of knowing the suit is filled with false and concocted stories plaintiff making head tic efforts to interfere with possession of the defendants. Thus, if I.A is

allowed irreparable loss will caused to defendant herein. Thus, prays to dismiss the application with a exemplary cost.

7. Heard the counsel for plaintiff and counsel for defendants. Perused the records and on perusal of the same, following points arises for my considerations;

- 1. Whether the plaintiffs have made out prima facie case ?*
- 2. Whether the plaintiffs have shown that balance of convenience lies in their favour?*
- 3. Whether the plaintiffs have further shown that if temporary injunction as prayed herein is not granted, they will be put to irreparable loss and injustice?*
- 4. What order ?*

8. Having gone through the records produced by the parties and on perusal of the same, my findings on the above points are under:

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|--------------|---|
| Point No.i | : In the Affirmative |
| Point No.ii | : In the Affirmative |
| Point No.iii | : In the Affirmative |
| Point No.iv | : As per the final order
for the following ; |

REASONS

9. Point No. 1 to 3:

Since these points are interlinked with each other and they form part of the same transaction, they are taken up together for common discussion to avoid the repetition of facts.

10. I have carefully gone through the entire pleadings as well as the documents placed before this court by both parties. In order to consider the application under Order 39 Rule 1 and 2, the court should be satisfied that three ingredients namely, prima facie case, balance of convenience and irreparable injury are not satisfied. In order to consider the application under Order XXXIX Rule 1 & 2, the Court should satisfy three ingredients namely, prima facie case, balance of convenience and irreparable injury to the plaintiff if injunction is not granted. The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first hurdle itself. But if there was a prima facie case then other considerations governing the grant of

injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima-facie case or even a very strong prima-facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between. Even granting that, the plaintiff has an invincible prima-facie case, he will not be entitled *ex debito justitiae*, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima-facie case. Keeping these principles I would like to discuss the facts of the present case on hand.

11. The plaintiff in order to succeed in this application has to prove prima-facie case in his favour and balance of convenience which has to be in-favour of the plaintiff and also is called upon to prove the irreparable loss and injury, which would be caused to her if this application is rejected.

12. With this basic principles in mind, now let me analyze the factual matrix on the basis of materials placed on record. The plaintiff by this application prays to restrain the defendants from not to interfere with the peaceful possession of the suit schedule property.

13. This is a suit filed by the plaintiff against the defendants for the relief of permanent injunction against suit schedule property. In the affidavit annexed to the application

it is stated that, plaintiff acquired through grant and saguvali chit issued subsequently his name mutated in the revenue records. Plaintiff No. 1 alone unable to look after all the agricultural activities of the suit schedule property his son, plaintiff No. 2 assists him in the agricultural work.

14. The plaintiff in order to prove the prima facie case has furnished saguvali chit dated: 25.10.1990. Wherein on perusal, Sy.No.92 measuring 1.10Gunta bounded on East-Sy.No.92, West-North – Halla on South – Sy.No. 91, granted to plaintiff. Accordingly his name mutated in the revenue records, to show the same plaintiff also placed MR No. 9/1996-97 wherein at Sl.No. 3 of plaintiff's name is depicted against suit schedule property and mode of a possession is shown as grant vide RVQOSR No. 3/1993 -94 dated: 23.05.1994. Further the plaintiff furnished RTC for the year 2022-23 with respect to suit schedule property. On perusal of the same it appears that, the property at Sy.no. 92 is standing in the name of plaintiff No. 1 and mode of acquisition is grant. Per contra defendant contended that plaintiff having knowledge about agreement of sale for Rs. 55000/-, 20,000/-, 15000/- as part payment of consideration amount being paid and promised to execute agreement of sale after obtaining haddu bastu survey sketch for registration of the same, In spite of having the sale agreement plaintiff caused interference with the peaceful possession of the defendant and defendant is in possession of the suit schedule property since

the date of agreement of agreement of sale. In ordered to substantiate the contention defendant not placed any iota of documents to being his pleadings. Plaintiff with out documents cannot be construed to dismiss the application. At this stage the plaintiff has made out prima-facie case and balance of convenience lies in his favour and also irreparable loss and injury would be caused to the plaintiff than the defendants if the application is rejected. Accordingly, I answered the above point No1 to 3 held in the **Affirmative.**

15. **Point No. 4:-** In view of my findings on Point Nos.1 to 3, I proceed to pass the following:

ORDER

The IA No.I filed U/O.39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, the defendants restraining them from interfering with the plaintiff lawful and peaceful possession and enjoyment of the suit schedule property till disposal of this suit.

No order as to costs.

(Direct dictate to the Stenographer on computer, corrected by me and pronounced in the Open Court on this 17th day of December , 2024)

Sd/-
(Kum. Shama Srivatsa)
I Addl Civil Judge & JMFC.,
Channagiri.