

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT HONNALI.

Dated on this 16th day of November 2022.

PRESENT:

Sri. MANJUNATHA R. B.A.L. LL.B.,
Prl. Civil Judge & JMFC.,
Honnali .

O.S. No.205/2021

PLAINTIFF : Pavithrananda

V/s

DEFENDANTS : Mallikarjunappa and another.

IA No-I

Applicant/ : Pavithrananda
plaintiff

V/s

Opponents/ : Mallikarjunappa and another
Defendants

* * *

ORDERS ON IA No.I

This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC., restrain the defendants, their agents or servants or anybody on their behalf from interfering with the plaintiff possession and enjoyment of over the suit schedule property till pending disposal of the suit.

2. The reasons ventilated in the affidavit accompanying to the application are that the plaintiff is absolute owner in

possession and enjoyment of the application schedule property having acquired the same under the partition deed dated 03-02-2003. As per the partition the revenue records mutated in his name. The defendants property is situated towards the western side of the suit schedule property and they have no manner of right, title or interest over the suit schedule property. In spite of that they are causing interference from the western side of the suit schedule property. Further on 15-07-2021 around 10.00 a.m while he was working in the suit schedule property, the defendants came near the suit schedule property and tried to obstruct his work and also tried to store fire wood in the backyard of his house and tried to store the cow-dung in his place and he has resisted their illegal and high handed acts with the assistance of neighbors and made them to return back, while returning the defendants openly proclaimed that, they will come again and dispossess him from the suit schedule property. The defendants are powerful and influential persons in the locality and they have got men and money at their command, the plaintiff is innocent and law abiding person and he unable to resist the illegal and high handed acts of the defendants without the aid and assistance of this court. Hence sought to allow the application.

3. In pursuance of service of summons the defendants have appeared before this court through their counsel and defendant No.1 filed written statement and adopted the same as objection to IA No.1 by filing memo and prays to dismiss the application.

4. Heard the arguments of learned counsels appearing for the parties and perused the materials on record.

5. Now, the points that arise for consideration are as follows:

1. Whether plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for ?

2. Whether balance of convenience lies in his favour?

3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A. is not allowed?

4. What order?

6. The findings of this Court to the above points are as under:

Point No.1 to 3 : In the Affirmative.

Point No.4 : As per final Order

for the following:

R E A S O N S

7. Point Nos.1 to 3 :- Since these points are inter related with each other, they are taken together for common discussion to avoid repetition.

8. The plaintiff has filed the present suit against the defendants for the relief of Permanent injunction in respect of the suit schedule property. Through this instant application the plaintiff sought for temporary injunction restrain the defendants from interfering with his peaceful possession and enjoyment over the suit schedule property. The specific assertion of the plaintiff that he is an absolute owner in possession and enjoyment of the suit schedule property and he had acquired the same by way of partition. The defendants are having property towards the western side of the suit schedule property and they have no right, title and interest over the suit schedule property and causing interference towards the western side of suit schedule property. Hence it has to be curbed by granting temporary injunction. Per contra the defendant No.1 has denied the possession of plaintiff over the suit schedule property and also the alleged interference has alleged by the plaintiff. Further it is contented that, partition deed dated 03-02-2003 the house property was divided equally between plaintiff and defendant No.1, eastern side of the property was allotted to plaintiff and western side property allotted to 1st defendant and they are adjacent owners of the suit schedule property. As per the partition old house was allotted to plaintiff share and same was collapsed and their remained only one coconut tree and said coconut tree is grown near to the 1st defendant house and due to the fallen of coconut the house of 1st defendant get damaged. The plaintiff is not residing in the suit schedule property, since it is vacant space and he is residing 100 meter away from the suit

schedule property by constructing his residential house. In support of the rival contentions both the parties have relied on their own documents.

9. Before going to the merits of the case, I would like to bestow my attention to the well settled principle of law which has to be considered by the trial Courts while entertaining an application Under Order 39 Rule 1 and 2 of CPC.

In Dalpat Kumar Vs Prahalad Singh AIR 1993 SC 276, Hon'ble Apex Court has laid down guidelines to the trial Courts while granting order of temporary injunction. Which reads as follows:-

(a) Temporary injunction order can be granted when there is a serious disputed question to be tried in the court, there is probability of his being entitled to the relief asked for by the parties.

(b) The courts interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at the trial.

(c) That the comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

10. Keeping the above guidelines in the mind and upon hearing the counsel for plaintiff, defendants and on perusal of the records it reveals that the plaintiff claiming his right and possession over the suit schedule property by way of partition. The defendants No.1 did not dispute the acquisition of the property by the plaintiff and also admitted about the existence of the suit schedule property towards the eastern side of his property. On perusal of these rival contentions it is crystal clear that with regard to the acquisition of the suit schedule property by the plaintiff is not in dispute. The defendant No.1 disputed the possession of the plaintiff as well as interference caused by him. The plaintiff in order to prove his ownership as well as possession over the suit schedule property he has produced partition deed dated 03-02-2003. On perusal of the said document it clearly reveals that, the assessment number 51, 59, new No. 59 totally measuring East-West 86 feet, North-South 148 feet was equally divided between plaintiff and defendant no.1 to an extent of 43 x 148 feet. Both the properties of plaintiff and 1st defendant are abutting each other. The khata and mutation extracts produced by the plaintiff clearly reveals that, his possession over the suit schedule property. The photographs produced by the plaintiff clearly depicts about existence of old house in the suit schedule property and its collapsed and presently the suit schedule property is vacant. This fact is also admitted by the defendant no.1. The documentary evidence placed by the plaintiff clearly establish that he has got prima-facie case. The defendant No.1 in order to substantiate his contentions he has produced the documents. The boundaries mentioned in the partition deed

dated 03-02-2003 are corroborate the plaint schedule boundaries regarding identification of the suit schedule property.

11. It is well settled law that the civil rights of the parties are to be protected by the civil courts only. In this case when the plaintiff pleaded that he has got apprehension in his mind that the defendants are trying to cause obstruction to his peaceful possession and enjoyment over the suit schedule property and defendants have also disputed the possession of the plaintiff over the suit schedule property. This itself sufficient to grant an order of temporary injunction as prayed by the plaintiff. If the temporary injunction is granted and the defendants are restrained from interfering to the suit schedule property then no hard will be caused to them. Per contra if the defendants are succeeded in their attempts it will cause irreparable loss to the plaintiff.

12. It is well settled principle of law that at the time of consideration of this type of application prima-facie case, balance of convenience and to whom irreparable loss is caused has only to be looked into. Further the prima-facie case is not a prima-facie title. The apprehension of the plaintiff itself is sufficient to grant an order of temporary injunction. Further the averments made in the written statement itself shows the alleged interference caused by the defendants over the suit schedule property and it lends support the version of plaintiff.

13. The prima-facie case only means that there is a case which requires trial. It is also well settled that the defendants should not be permitted to alter, waste away or damage the suit property pending disposal of the suit. In this case balance of convenience leans in favour of the plaintiff who is likely to suffer substantial mischief if the injunction is refused, when compared to the defendants if the injunction is granted. The defendant no.1 is having property towards the western side of the suit schedule property. The defendant No.1 is denying the possession of the plaintiff over the suit schedule property. In such being the case, if the defendants are not restrained from causing interference no irreparable injury or damage is caused to them. Hence I am of the opinion that the plaintiff has made out prima-facie case and balance of convenience lies in his favour and if an order to temporary injunction is not granted then the plaintiff will be put to irreparable injury, which cannot be compensated in terms of money. Hence I answered the Point No.1 to 3 in the Affirmative.

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

ORDER

The I.A. No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby allowed.

The defendants, their agents or servants or anybody on their behalf from interfering in plaintiff peaceful

possession and enjoyment of the suit
schedule property till pending disposal
of the suit.

[Dictated to the stenographer, transcript typed by her, corrected and
then pronounced by me in the open court on this day of 16th November,
2022]

(Manjunatha R)
PrI. C.J & JMFC., Honnali

(Order pronounced in the open court vide separate order)

//ORDER //

The I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby allowed.

The defendants, their agents or servants or anybody on their behalf from interfering in plaintiff peaceful possession and enjoyment of the suit schedule property till pending disposal of the suit.

(Manjunatha R)

Prl. C.J & JMFC., Honnali

Call on for compliance Under Section 89 of CPC by 10-01-2023.

Prl. C.J & JMFC., Honnali