

IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
BANTWAL, D.K.

Present: - Smt. Prathibha D.S., B.A.,L.L.B.,
Addl. Civil Judge & JMFC., Bantwal, D.K.
C/C Prl. Civil Judge & JMFC., Bantwal, D.K.

Dated: - This the 26th day of February, 2018.

ORIGINAL SUIT No.70/2018

Between:

Abdul Kadhar,
S/o Mahammad, Aged 40 years,
R/at Agri House,
Salethur Village and Post,
Bantwal Taluk, D.K.
Plaintiff.

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(By Adv: Sri. B.G.S.)

/ And /

1. Kolnadu Grama Panchayath
Represented by Panchayath Development Officer,
Kolnadu Village, Bantwal Taluk.
2. Subbanna Naika,
S.o Late Mahabala Naika, Aged 67 years,
R/at Shubhashya, Pudkethoor of
Konadu Village,
Bantwal Taluk, D.K.

. Defendants

(By Adv: D1-Sri.M.S.K, D2-Sri.V.A.S.)

Between:

In I.A.No.II

Abdul Kadhar,

-Applicant.

/ And /

Kolnadu Grama Panchayath
Represented by Panchayath
Development Officer

-Opponent.

ORDER ON I.A.No. II FILED BY PLAINTIFF UNDER
ORDER XXXIX Rule 1 and 2 OF C.P.C.

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The plaintiff has filed this application, seeking an order of temporary injunction, restraining the defendant no.1/opponent its men, servants, agents, etc from any way dispossessing the plaintiff forcibly from the Schedule property and/or demolishing the building situated in the plaint schedule property without recourses to law during the pendency of the suit.

2. In the affidavit annexed to the application the plaintiff has contended that, he is a businessman by profession and has been running a chicken meat stall under the name and style of Naseeb Chicken and Muttons in a building measuring about 350 sq ft, situated in S.No.477-2BP3 measuring 17 cents of Kolnadu Village

of Bantwal Taluk. The said land belongs to Subbanna Naika S/o Mahabala Naika, the defendant no.2 herein, which is granted to him as per the order in NCRSR 1293/99-2000. He has further contended that, he is a tenant under the defendants no.2 herein as per the rent bond dated 21.07.2017, on a monthly rental of Rs.6000/- per month and he is paying the said amount by cash. After expiry of the period mentioned in the said rent bond, he is continuing with the actual possession as a holding over tenant. The premises is also provided with electric connection as per RR.No. MH 3382. He has further contended that, the plaintiff is running the business in the property owned by defendant no.2, which is granted in his favour and no one has got any right to demolish or meddle with the same during the continuance of the tenancy. The defendant no.2 is not in good terms with the plaintiff and he with the help of D1 and other persons, has been making repeated attempts to dispose the plaintiff forcibly from the building. Neither the defendant no.2 nor anyone has got right to dispose the plaintiff without recourse to due process of law. It is learnt by the plaintiff that false records were being built up by the defendant no.1 with the support of the defendant no.2 in order to evict the plaintiff from the building forcibly claiming that it is a government land.

From the records built up by the defendant no.1 it self it reveals that the plaintiff is running the business stall in the name and style of Naseeb Chicken and Muttons. Hence, plaintiff cannot be dispossessed from the building and also the building can be demolished without due process of the law.

3. It is further contended that, the Thashildar Bantwal appears to have issued notice to the defendant no.2 seeking to vacate the property in Sy.No.477/2BP3, measuring 45 cents of Kolnadu village. In turn defendant no.2 has given statement stating that the said land has been granted in his favor and opposed the notice. Thereafter, no further action was taken in this regard. This being the situation defendant no.1, at the instance of defendant no.2, on 1.02.2008 at about 3 P.M with the help of some persons claiming to be the workers of the defendant no1, trespassed in to the plaint B schedule property and threatened plaintiff to vacate the building immediately by stopping the business and also threatened that they will demolish the building situated in the suit schedule property. The plaintiff has objected for the same. Neither the defendant no.1 or the defendant no.2 has got any right to dispossess the plaintiff forcibly without due process of law. Plaintiff is in actual possession and enjoyment of the suit schedule property

and made out a prima-facie case to grant of injunction and hence, he has prayed to allow the application.

4. The defendant No.1 has filed memo to treat written statement filed by him as objection to I.A.No. II. In the written statement, the defendant No.1 has contended that, the suit is not maintainable. The suit is clearly barred under Section 295(2) of Karnataka Panchayath Raj Act and the suit is also barred under provision of Section 289 of Karnataka Panchayath Raj Act, as no notice as contemplated under Section 289 of the Act has been issued to the defendant Panchayath. The defendant further contended that, one Mr.Abdul Hakim had given a representation to the 1st defendant seeking demolition of the said construction and also filed PIL before the Hon'ble High Court of Karnataka in WP No.44266/2017 and Hon'ble High court of Karnataka by its order dated 22.01.2018 directed the defendant no.1 to consider the representation of Mr.Abdul Hakim within 4 weeks and hence this defendant issued notice to plaintiff and defendant no.1 further contended that the 1st defendant has got no intention of evicting the plaintiff without due process of law. The defendant no.1 has denied the entire case of the plaintiff and produced copy of the order passed in writ petition and produced

documents along with the list and prayed to reject the application.

5. Heard the arguments on both sides.

6. Upon rival contention, following points would arise for my consideration:-

1. Whether the plaintiff has proved that he has got a prima facie case in his favour?
2. Whether the plaintiff proves that balance of convenience lies in his favour?
3. Whether the plaintiff proves that irreparable loss or injury will be caused to him if T.I as prayed is not granted?
4. Whether plaintiff is entitled for the reliefs claimed in the I.A.?
5. What Order?

7. Upon appreciation of rival contention, I have answered above points as follows:-

- Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : In the Affirmative
Point No. 5 : As per final order

for the following:

REASONS

8.Point Nos.1 to 4 : - Since these points are interconnected to each other, I propose to take up these points together for discussion.

9. In order to obtain an order of temporary injunction, the plaintiff has to establish that he has got a prima facie case in his favour. It is well-established principle of law that prima facie case does not mean that in all probabilities the plaintiff should succeed his case. On the other hand, the plaintiff should have a prima facie case to go for trial.

10. The suit of plaintiff against the defendants is for bare injunction, restraining the defendants from in anyway dispossessing the plaintiff forcibly from the schedule property and demolishing the building situated in the plaint schedule property without recourses of law. The plaintiff has also filed the present application under Order 39 Rules 1 and 2 of C.P.C seeking an order of temporary injunction, restraining the defendant no.1/opponent its men, servants, agents, etc from any way from in any way dispossessing the plaintiff forcibly from the Schedule property and/or demolishing the building situated in the plaint schedule property without recourses to law during the pendency of the suit.

11. The plaintiff in support of the suit and application produced documents along with plaint. The first document is the order of the Thashildar of Bantwal Taluk wherein it is seen that defendant no. 2 was granted the plaint schedule property along with other properties in NCRSR 1293/99-2000. The defendant no.2 in turn has rented the shop situated on the schedule property to the plaintiff under the rent agreement dated 27.01.2017. The RTC of the suit schedule property stands in the name of Government. Plaintiff has also produced notice issued by the Thashildar of Bantwal to the plaintiff and the defendant no.2 and the reply given by the defendant no.2 to the said notice and also the report of the Revenue Inspector of Vittal.

12. From a perusal of reply of defendant no.2 it is seen that, the defendant no.2 has stated that he was granted 17 cents of land in Sy.No.477/2BP3 of Kolnadu Village and he has denied that entire extent of the land in the above survey numbers belongs to the government. He has also stated that the shop built up in the said land is used as a Farm house, which is also for a agricultural purpose and hence opposed the notice. From a perusal of the report of the Revenue Inspector of Vittal, he has stated that, the 2nd defendant has constructed unauthorized building in the suit schedule property.

Defendant no.2 has replied to the notice issued by him stating that he was granted 17 cents of land. For past 10 years, plaintiff is running a poultry Farm in the shop constructed on suit schedule property. He has also stated in the report that at the time of widening the road though the said shop was demolished, he has constructed a new shop without taking any licence. The plaintiff produced documents i.e., notice issued by the 1st defendant and the appeal preferred by the plaintiff against the notice and the order of the Appellate Authority dated 8.2.2018, dismissing the appeal of the plaintiff.

13. The defendant in support of his argument has produced copy of order passed by the Hon'ble High Court of Karnataka in Writ Petition No.44266/2017, wherein, the 1st defendant was directed to consider the representation of the petitioner so also the action taken by the 1st defendant in view of the direction passed in Writ Petition No.44266/2017.

14. The plaintiff in support of his arguments has relied upon the rulings reported in:- 2000 7 Kar.L.J 574 in the case of H.Govinda Gowda Vrs Secretary B Hosur Grama Panchayath and R.s.A.No. 2357/2007 in the case of Ningappa Vrs The Gram Panchayath Committee, Hulyul- wherein, Hon'ble High Court of Karnataka held

that the jurisdiction of the regular Civil Court from entertaining the suit against the Grama Panchayath is not expressly ousted under the Karnataka Panchayat Raj Act.

15. From the perusal of the documents on record it is seen that the plaintiff is claiming right through defendant no.2 as a tenant-holding-over. The documents produced by the plaintiff also shows that he is in possession of the property, which is also clear from the report of Revenue Inspector. The defendant no.1 though discharging its lawful duties under the provision of Karnataka Panchayath Raj Act, the plaintiff cannot be forcibly dispossessed without due process of law. Hence, plaintiff has proved that he has got prima-facie case to show that he is in possession of the suit schedule property and balance of convenience also lies in his favor and his possession also admitted by the both the defendants. The plaintiff has also constructed a shop and running a business which is well within the knowledge of the both the defendants. Irreparable loss and injury will be caused to the plaintiff if the temporary injunction is not granted.

16. It is also made clear that this order will not come in the way of 1st defendant in taking any action against

the plaintiff in accordance with law. Accordingly, I hold Points No.1 to 4 in the Affirmative.

17. Point No.5: - In view of my findings on Point Nos.1 to 4, I proceed to pass the following : -

ORDER

I.A.No.II filed by the plaintiff under Order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No.1 its men, servants, agents, etch from in any way dispossessing the plaintiff forcibly from the Schedule property and/or demolishing the building situated in the plaint schedule property till the disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her in the computer, the transcript revised, corrected, signed and then pronounced by me in the open Court, this the 26th day of February, 2018).

(Prathibha D.S.)

Prl. Civil Judge & J.M.F.C.,
Bantwal, D.K.(C/C)

Order on I.A.No. II and passed
and pronounced in the open Court.

(Vide separate Order)

ORDER

*I.A.No.II filed by the plaintiff under
Order 39 rule 1 and 2 of CPC is hereby
allowed.*

*The defendant No.1 its men, servants,
agents, etch from in any way dispossessing the
plaintiff forcibly from the Schedule property
and/or demolishing the building situated in the
plaint schedule property., till the disposal of
the suit.*

No order as to costs.

(Prathibha D.S.)

*Prl. Civil Judge & J.M.F.C.,
Bantwal, D.K.(C/C)*

ORDER

I.A.NO.XIII filed by the Plaintiff under Order 26 Rule 9 OF C.P.C. is hereby allowed.

An advocate of Bar Association of Bantwal to be nominated by both the parties is hereby appointed as Court Commissioner to make local inspection of suit properties with the assistance of surveyor and file report on the basis of work memo to be filed by both parties.

Issue direction to Tahasildar to provide survey assistance.

Commissioner fee is
tentatively fixed at Rs.1,500/- .

(Jayaprakash D.R.)
Prl. Civil Judge & J.M.F.C.,
Bantwal, D.K.

Order on I.A.Nos.19 and 20 passed and pronounced in the open Court.

(Vide separate Order)

I.A.No.XIX filed by petitioner/defendant Nos.1, 2(a) to (d), 3(a) to (c), 7 to 10 under Section 151 of Civil Procedure Code is hereby partly allowed.

I.A.No.XX filed by petitioner/defendant Nos.1, 2(a) to (d), 3(a) to (c), 7 to 10 under Section 151 of Civil Procedure Code is hereby partly allowed.

Para No.I and II of additional written statements of defendant Nos.5, 15 to 17, 11, 12, 14 is eschewed.

Office is directed to round off said para I and II and make note on additional written statement.

So far other part of additional written statement of defendant Nos.5, 15

to 17, 11, 12, 14 is in accordance with law.

The defendant Nos.5, 15 to 17, 11, 12, 14 are directed to pay Court fee on the relief claimed in the additional written statements.

No order as to costs.

A.C.J. & JMFC., Bantwal, D.K. In this background, it is necessary to note the pleadings in Para No.11 of the plaint which reads as under:

“Shree Panolibailu Kalurti Daivasthana” is situating at Panolibailu of Sajipa Muda Village of Bantwal Taluk. It is referred in this plaint as A schedule Daivasthana hereafter. A deity by name “Shri Kallurti Daiva” is situating thereon and being worshiped by the devotees since many years and it is a famous “Kshethra” in Dakshina Kannada District.

Further it is averred that A schedule Daivasthana has been in existence since more than centuries. But, since from

ancient time, 'Moolya' community belonging to " Bhandarada Mane" or house of Bhandara have been performing the rituals such as "Kolas' 'Agelus' 'Nema' etc., in the said Daivasthana. It is the custom, usage and practice adopted that, the office of Chief-Priest, called as "Pradhana Archaka' is hereditary in nature and is held by the senior most male member of "Bhandarada Mane' from generation to generation as per the rules of succession of Aliyasantna Law. It is called as " 1st Moolya'.

Further in Para No.7 it is averred that;

" It is the custom and usage of the family of "Bhandarada Mane" that office of " Pradhana Archaka" shall be succeeded by the eldest male member of eldest branch in descendency as per Aliyasanthana Law. Hence, after the reign of 1st plaintiff as " Pradhana Archaka" the said office shall devolve on the 2nd plaintiff as per aforesaid custom. This is because the 2nd plaintiff is the eldest male member

in the 1st branch (eldest brant), that is of Angare. Hence, prefers to hold the office of “Pradhana Archaka” to the rest of others either after the retirement or days of 1st plaintiff”.