

IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C.
AT BELTHANGADY.

Present:-

Sri. Sandesha K. MA, LLB.,

(Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 19th Day of August, 2024

ORIGINAL SUIT NO. 140/2024

Plaintiff: St. Joseph Hospital/Health Center,
Kakkinje, Charmady village,
Belthangady .
Rep. By its Present Director,
Yohannan K.J S/o Joseph,
Aged about 42 years,
R/at #421, Jnana Mandira,
Bogadi village and Post,
Kasaba hobli,
Mysore Taluk, Mysore district.

(By: Sri.S.P., Adv.)

-:V/S:-

Defendants:

1. Dr. Nithin P Joy,
S/o Dr. John Jacob,
Aged about 33 years,
2. Adam Bhava,
S/o Hakeem,
Aged about 45 years,
D1 and 2 are R/at
Uppinangady house,
Uppinangady village,
Belthangady Taluk.
3. Habeeb S/o Aboobakkar,
Aged about 34 years,
R/at Subhash Nagara,
Mukkachery, Ullala,
Mangalore.
4. Mumtaz M. Sali,
D/o K.Shekabba,
aged about 59 years,
R/at 2-95-1, Haseen Manzil,
Rao Katte Road, Padukody,
Kulur, Mangalore Taluk.

5. Joseph Chaverikudi, (Sooraj)
S/o Kuriyachan,
Aged about 36 years,
R/at 1-107/2 Nagabhramasthana,
Gorigudde, Kankanady,
Mangalore Taluk.

(By: Sri. M.I.,Adv. For D1 &2)

(By: Sri.A.B.,Adv. For D3&5)

(By: Sri.M.C.A.,Adv. For D4)

1.	Provision under which application filed.	Under order 39 rule 1& 2 and section 151 of CPC.
2.	Relief sought	Restraining the respondents, their men and servants or any other persons claiming through them from trespassing into plaint A schedule property
3.	The date on which application filed.	14.05.2024
4.	Number of application	IA No.III
5.	The date of which the objection filed by the respondent /defendant	03-06-2024
6.	The date on which the order were passed on the said application	19.08.2024

ORDERS ON IA NO. III FILED BY THE
PETITIONER UNDER ORDER XXXIX RULE 1 & 2
& SECTION 151 OF CPC.

This application filed by the plaintiff/petitioner under order XXXIX rule 1 and 2 & section 151 of CPC seeking ad-interim temporary injunction restraining the respondents, their men and servants or any other persons claiming through them from trespassing into plaint 'A' schedule property till the disposal of the suit.

Case of the plaintiff in brief is as under:

2. The plaintiff has sworn an affidavit in support of the application he stated that, plaint 'A' schedule property is absolute ownership of the plaintiff institution, which was granted in the name of the plaintiff institution as per PRDR No.67/80-81 of Tahasildar Belthangady. Plaintiff institution established its service in the hospital built in the granted of plaint 'A' schedule property in the year of 1978. Till 06.10.2021 plaintiff institution led the hospital providing Ayurvedic medicine service to the needy in the name St. Joseph Ayurvedic hospital. In the plaintiff Tenure as the director he converted this Ayurvedic hospital into Allopathic hospital. The Registration certificate is also issued in the name St. Joseph Hospital by the Member Secretary and District Health and Welfare Officer, District Registration and Grievance Redrreassal Authority Karnataka Private Medical, Dakshina Kannad. Plaintiff is in peaceful possession and enjoyment of the entire plaint schedule property is a lawful owner.

3. It is further stated that, due to some inconveniences plaintiff hospital was given to lease to the defendant No.1 for the period of 11 months, i.e., from 01.06.2021 to 01.05.2022. The Agreement was also entered between plaintiff hospital and defendant No.1 on 09.07.2021. Even though the defendant No.1 expressed his willingness to continue his lease for further 11 months, he was not available for any other legal process as he was out of station for most of the times. After the termination of the lease period the employees appointed by the defendant No.1 continued their service in the plaintiff hospital for

some more months. Thereafter the hospital was closed from 3 months, here before, with the planning to re-open the same for better arrangement. The plaintiff possession was not with any interference till resent days.

4. It is further stated that, on 01.05.2024 at about 11.55 p.m all of sudden defendant No.2 and 3 with some other persons trespassing to plaintiff schedule hospital by breaking the lock put to the front gate of plaintiff hospital. Plaintiff is protested strongly. At that time the defendant No.2 and 3 claimed that they are the authorized persons by the defendant No. 1 and 5 respectively. After the enquiry plaintiff came to know that, the defendants have joint together forged some documents in their name with an intention of Malpractice of issuing the certificate in the name of plaintiff hospital to some persons. The plaintiff came to know that, the defendants have already issued some forged certificate to so many persons and already FIR have been registered in the name of the 1st defendant in the state of Kerala. After that, the defendants are left out the plaint schedule property. Now defendants are threatening that they will forcible possession of the suit schedule property with in a few days .

5. If is further state that, the defendants have absolute no right over the 'A' schedule properties. Getting benefit of plaintiff weak condition, the defendants with an intention to take illegal possession of plaint schedule property they are trying to interfering with the plaintiff peaceful possession and enjoyment of the plaint schedule property. Therefore the plaintiff has made out a prima facie case

and balance of convenience lies in his favour. Hence this application.

6. The defendant No. 1 to 3, 5 have filed objection IA No.III. Defendant No.1 and 2 have contended that, believing the plaintiff promise defendant No.1 has given possession to defendant No.5 of the plaint schedule properties and defendant No.5 has developed plaint schedule property by spending more than 2 crore rupees to installation of medical equipments, machinery and developed building and infrastructure and furnished new furniture's tools etc and also purchase Ambulance with all these effects defendant No.5 has decided run the plaint schedule property for charitable purpose and to help poor persons with free service. During the development of the plaint schedule property plaintiff has well supported and appreciated the defendant No.5 works for society until competition of development work. Thereafter 5th defendant got utter shock that, plaintiff has issued a notice to them and stating that, they have not interested continue the agreement. By believing defendant assurance of continuation of agreement till next 20 year defendant No.5 has developed the plaint schedule property. Until competition of development work in the plaint schedule property, plaintiff kept quite, but while they saw the splendid infrastructure and development of plaint schedule property. Plaintiff denied the continue the agreement. Defendant No.5 has filed suit in OS No.115/2024 before Addl. Civil Judge & JMFC, Belthangady. Being aggrieved by this plaintiff has filed

this suit with unclean had hence pray for dismiss the application.

7. Defendant No. 3 and 5 in their objection they contended that, plaintiff has come before the court with unclean hand and suppressed the material fact. Original 115/2024 is pending before the Hon'ble Addl. Civil Judge & JMFC., Belthangay with regard to not to interfere possession of the defendant No.5 by the plaintiff, but it was also suppressed by the plaintiff misled the court and obtained injunction order from vacation court. The plaintiff has agreed in his complaint given to the police that plaintiff given said hospital to the defendant No.1 for the lease period for 1.06.2021 to 1.05.2022 and defendant No.1 approached the defendant No.5 to invest to the hospital and entered into an agreement between defendant No.1 and 5 with the consent of the plaintiff. Thereafter defendant No.5 has invested about the 2 crore to the said hospital and academy.

8. It is further contended that, defendant No. 5 has filed injunction suit not to illegally vecate the defendant No.5 till settlement of investment but this court pleased to not granted any interim injunction, after that, vacation began the plaintiff taken advantage of vacation and illegally entered the premises with some goondas. Plaintiff has not made out a prima facie case and balance of convenience lies in favour. Hence pray for dismiss the application.

9. Defendant No.4 has filed adoption memo to adopt the objection defendant No.1 to 3 and 5.

10. Heard on arguments of both parties and perused the pleadings and materials on record.

11. The following points that arise for the consideration of this court.

POINTS

- 1. Whether the plaintiff/applicant has made out a prima-facie case?**
- 2. Whether balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted as prayed?**
- 4. What order?**

12. The findings on the above points are as hereunder:

Point No.1: In the **Affirmative**

Point No.2: In the **Affirmative**

Point No.3: In the **Affirmative**

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

REASONS

13. Point No.1: It is the case of the plaintiff that, plaintiff schedule property is originally belongs to the plaintiff institution which was granted by the Tahasildar Belthangady. Plaintiff institution running hospital in the plaint 'A' schedule property in the name of St. Josph Ayurvedic hospital. Thereafter it is converted as Ayurvedic hospital into a Allopathic hospital by obtaining permission from the consent authority. Plaintiff institution possession and enjoyment of the plaint schedule property. Due some inconvenience, plaintiff hospital was given to a lease to the defendant No.1 for a period of 11 months from

1.06.2021 to 1.05.2022. Even though defendant No.1 expressed his willingness to continue his lease for further 11 months. But he was not shown the interest. Thereafter the hospital was closed for 3 months, with the planning to reopening the same which better arrangement. On 01.05.2024 at about 11.55 am defendant No.2 and 3 with some other person trespassed into the plaint schedule hospital breaking the lock put to the front gate of the plaintiff hospital. Plaintiff protested strongly, thereafter defendant No.2 and 3 claiming that they are the authorized persons by the defendant No.1 and 5. defendant No.1 issued some forged certificate to the so many persons in the regard, FIR has been registered against the defendant No.1 in the state of Kerala. Now defendants are threatening that, they will take forcible possession of the suit schedule property. Defendants have no right over the plaint 'A' schedule property. There is very chance of dispossession/trespassing from the defendants. Hence this application.

14. The Ld counsel for the plaintiff argued before this court that, plaint 'A' schedule property is belongs to the plaintiff institution. In the premises of the plaint schedule property plaintiff running hospital in the year of 1978. originally said property was granted by the Tahasildar Belthangady. Thereafter plaintiff running hospital in the name of St.Josph Ayurvedic hospital, thereafter it is converted to Allopathic hospital. Plaintiff has obtained permission from the consent authority for running the hospital. Due to some inconvenience plaintiff was given a needy to the 1st defendant for the period of 11 months

from 01.06.2021 to 01.05.2022. Defendant No.1 expressed his willingness to continue his led for further 11 months. But he was not shown interest. Therefore the lease is not continued. Plaintiff is possession and enjoyment of the plaint schedule property. On 01.05.2024 at about 11.55 pm defendant No.2 and 3 and some other persons trespassing the plaint schedule hospital by breaking the lock put up to the front gate of the hospital that time director of the plaintiff institution protested strongly, At that time defendant No.2 and 3 claimed that, they are authorized persons of defendant No.1 and 5. defendant No.1 with an intention to forged some certificate in the name of the Hospital he trying to trespassing to the plaint schedule property. Defendant No.1 issued a forged certificate in the name of the other persons, in the regard FIR also registered. Defendants claiming that, they have take possession of the plaint schedule property illegally and forcibly. The defendants have no right over the plaint 'A' schedule property. Hence pray for allow the application.

15. The Ld counsel for the defendant No.1 to 3 argued before this court that, defendant No.5 has invested the more then 2 crore rupees for development of the plaint schedule property and also installation of medical equipment, machinery and developed building and infrastructure and also furnished new furniture's and tools. During the development of plaint schedule property plaintiff has well support and appreciated the defendants, thereafter he issued a notice by stating that, they have not interest to continue the agreement. By believing the

defendants assurance of the continuation of agreement till next 20 year defendant No.5 has developed and installed various equipment. If the application is allowed defendants are put loss and injury. Plaintiff has suppressed the material and true fact and he come before the court with unclean hand. Defendant No.5 has filed suit against the plaintiff before the Addl. Civil Judge & JMFC. Belthangady in OS No.115/2024, but this Hon'ble court has not granted injunction, thereafter the plaintiff has filed this suit before vacation court and get an injunction by suppressed the material facts. The balance of convenience not lies in favour of plaintiff. Hence pray for dismiss the application.

16. Having take note the argument advanced by the Ld counsel appearing for the parties and this court has carefully perused the pleadings as well as documents produced by the plaintiff. The plaintiff has produced photo copy of grant certificate, photo copy of patent order, photo copy of registration issued by the Government of Karnataka. Photo copy agreement dated 09.07.2021, Tax paid receipt, RTC extract, and photo copy of FIR in Cr. No.30/2024 and FIR registered against the defendant No.1 in the state of Kerala. Defendant No.1 and 2 have produced GPA. The photo copy of memorandum of understanding dated 09.7.2021 between the plaintiff and 1st defendant which is clearly shows that, the duration of memorandum of understanding is only 11 month from 01.06.2021 to 01.05.2022. After that 1st defendant has to vacate the said premises as per the condition memorandum of understanding. It is admitted by the

defendants that plaintiff schedule premises is belongs to plaintiff institution, the claim of the defendant is plaintiff has promise to the defendant to continue the lease period. On the promise of the plaintiff defendant No.5 have invested the more than 2 crore rupees and also installation of medical equipment, to that effect defendant No. 5 has not produced any single document. Moreover The condition of memorandum of understanding is second party shall not sublet or put in possession either the whole or any part of the schedule premises in favour of any third party. But in the instant case 1st defendant has sublet the plaintiff schedule premises to the 5th defendant. 1st defendant has violated the condition of memorandum of understanding .

17. At this stage, without going through the merits of the case and holding mini trial, this court has consider the aspect of prima facie case. At this stage this court makes it very clear that the court is looking towards prima facie case and not for prima facie title. It is well settled principles of law that at the time disposing the temporary injunction application this court cannot going the prima facie title and only consider whether the plaintiff has made out prima facie case for granting of interim relief.

18. The purpose of granting interim relief is the preservation of things in dispute till legal rights and conflicting claim of the parties before the court are adjudicated. In other words the object of making an order regarding interim relief is to evolve a workable formula to the extant called for by the demand of the situation.

Keeping in mind the pros and cons of the matter and striking a delicate balance between conflicting interests i.e., injury and prejudice, likely to be caused to the defendants if the relief is granted. The underlying object of granting of temporary injunction is to maintain and preserve status quo at the time of institution of proceedings and prevent any change until the final determination of the suit.

19. The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

20. The first rule is that the plaintiff must make out a prima facie case in support of the claim made by him. The court must be satisfied that there is a bonafide dispute raised by the plaintiff. That there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the plaintiff being entitled to the relief claimed by him. The existence of a prima facie right and infringement of such right is a condition precedent for granting of temporary injunction.

21. In order to ascertain the prima facie case, this court has carefully perused the documents produced by the plaintiff i.e., memorandum of understanding, RTC extract with respect to the plaint schedule property. It is already stated that, duration of the memorandum of understanding between the plaintiff and defendant No.1

only for 11 months from 01.06.2021 to 01.05.2022. After competition of the duration 1st defendant as to vacate the plaint schedule property. But the objection filed by the 5th defendant shows that, 1st defendant has sublet the plaint schedule property in favour of the 5th defendant. The 1st defendant is violate the condition of memorandum of understanding between the plaintiff and defendant No.1.

22. One more condition incorporate in the memorandum of understanding that, second party shall not carry out any anti social activities. But the FIR produced by the plaintiff in Cr.No.30/2024 which is clearly shows that, 1st defendant has carried out some anti- social activities in the suit schedule premises.

23. The main contention of the defendant that, plaintiff is promise to continue the agreement, therefore the 5th defendant has invested the more than 2 crore rupees to the plaint schedule property and also installed some machinery. But plaintiff is denied the same hence the contention raised by the 5th defendant cannot be considered without trial. The said contention has to be considered after full-pledge trial of both parties. At this stage the memorandum of understanding dated 09.07.2021 which is clearly shows that, plaintiff has made out a prima facie case. Moreover plaint schedule property stands in the name of the plaintiff institution. The defendants have not produced any single of documents prove their contention. With these observation this court as answered point No. 1 in the **Affirmative**.

24. Point No.2 and 3: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant, in other words this court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicants by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it.

25. The existence of prima facie case alone does not entitled the plaintiff for a temporary injunction. The applicant/plaintiff must further satisfied the court about the 3rd condition by showing that they will suffer irreparable injury if the injunction as prayed is not granted and there is no other remedy open to them by which they can protect themselves from the consequences of apprehended injury. The plaintiff has produced memorandum of understanding between the plaintiff and defendant No.1 which is clearly shows that, said memorandum understanding is expire on 01.05.2022. hence defendants have no right to interfering in the suit schedule property. If the application is not allowed plaintiff will put injury, loss and hardship. At this stage the balance of convenience lies in favour of plaintiff. In these circumstances this court is the opinion that, if IA No. III is rejected more mischief and hardship will be caused to the plaintiff when compared to the mischief and hardship which will be suffered by the defendant if IA No. III is allowed. By considering all this aspect this court is of the opinion that if the application is rejected, the plaintiff will be put to irreparable loss and hardship and the same

cannot be compensated in terms of money hence this court answered point No. 2 and 3 in the **affirmative**.

26. Point No.4: In view of the discussion, this court proceeds to pass the following:

ORDER

I.A. No.III filed by the plaintiff under order XXXIX Rule 1 and 2 and section 151 of CPC is hereby allowed.

The defendants, their men, servants, or any other person claiming through them or here by restraining from trespassing into plaint 'A' schedule property till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on the computer, corrected and signed by me and then pronounced in the Open Court on this 19th day of August 2024)

(Sandesha.K)
Prl. Civil judge & JMFC.,
Belthangady