

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: 23rd Day of February, 2024.

ORIGINAL SUIT NO. 176/2020

Plaintiff:

Smt. Ummakka,
W/o Ammi Poojary,
Aged about 66 years,
R/at Arodu, Karangeelu House,
Thanneerupantha Village,
Belthangady Taluk.

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

-:V/S:-

Defendant:

Sri. Libin Jose,
S/o K.T Joseph,
Aged about 30 years,
R/at Karangeelu Darkhasu House,
Thanneerupantha Village,
Putthila Post,
Belthangady Taluk.

(By: Sri. J.K.P., Adv.)

1.	Provision under which application filed.	Under Order 39 rule 1& 2 and section 151 of CPC.
2.	Relief sought	Restraining the defendant, his men and servants or any other person claiming through him from carrying any construction work over the suit schedule property
3.	The date on which application filed.	12.10.2020
4.	Number of application	IA No.II
5.	The date of which the objection filed by the respondent /defendant	Objection not filed

6.	The date on which the order were passed on the said application	23.02.2024
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**ORDERS ON IA NO II FILED BY THE PLAINTIFF
UNDER, ORDER XXXIX RULE 1 & 2 and
SECTION 151 OF CPC.**

This application filed by the plaintiff under order XXXIX rule 1 and 2 and section 151 of CPC seeking ad-interim temporary injunction restraining the defendant, his men and servants or any other person claiming through him from carrying any construction work over the suit schedule property till disposal of the suit.

2. Case of the plaintiff in brief is as under:

The plaintiff has sworn an affidavit in support of the application she stated that, plaintiff is in unauthorized occupation of plaint schedule property since more than 35 years. The said land is government waste land. Plaintiff is effected vast valuable improvements over said property and also erected mud agalu and fence around the suit schedule land in order to protect the improvements effected therein. As plaintiff is in unauthorized occupation of the schedule land at the advent of provision to file application seeking regularization of said encroachments, plaintiff filed an application in NCRCR No. 453/98-99 before Tahasildar, Belthangady. The Tahasildar on receipt of the application has not initiated any steps for regularization of encroachments in contemplation of the provision of the Act. The Thahsildar recorded the endorsement against plaintiff claim. Aggrieved by the said

endorsement plaintiff preferred an appeal before Assistant Commissioner in Puttur in REVSr No. 66/08-09. The Assistant Commissioner allowed the application by setting aside the endorsement with a direction to Tahsildar to disposal of the application in accordance with law. Till so far the application filed by the plaintiff is not disposed off. Plaintiff is in possession and enjoyment of suit schedule property by effecting valuable improvements which consist of some cashew plants, coconut plants etc. The plaintiff schedule property is absolutely in the possession and enjoyment of plaintiff since more than 35 years.

3. It is further stated that, the plaintiff schedule property forms kumki land to plaintiff kadeem warga property in Sy.No. 17/2, 3, 4, 5 of Thannerupantha village. The plaintiff schedule property is located in the eastern side of plaintiff kadeem warga property. The plaintiff is also entitled to use over the suit schedule property without any hindrance, even if her application seeking regularization is not attained finality. The application is pending disposal before the land grant committee and plaintiff is continuing possession and enjoyment as unauthorized occupant. Plaintiff is entitled to protect her possession till the disposal of the application on merits.

4. It is further stated that, defendant is having some land in said locality in Sy.No. 165/2 and attempting to take possession of the portion of the suit schedule property. On several occasions the defendant and his men trespassed into a suit schedule land attempted to remove the fence on the pretext that, it is a government land. The

defendant has no right to intervene in the possession and enjoyment of the suit schedule property. The RTC in respect of suit schedule property still stands in the name of government. The defendant without asserting the factual and legal state of things is preferring to take possession of property from the plaintiff. Defendant is trying to laying foundation for construction of building in a portion of suit schedule property on 30.4.2020 at about 3.30 p.m. defendant has not right to meddle with the possession and enjoyment of the suit schedule property or to take law in their own hands. Plaintiff is enable to meet high handed act of the defendant. Plaintiff has made out prima-facie case and balance of convenience lies in her favour, no hardship will cause if the application is allowed. Hence this application.

5. The defendant has filed memo and stated that, written statement is considering objection of IA No.II. In the written statement he denied the plaint averments and contended that, the Survey number mentioned in as 17/2, 3, 4 and 5 does not belongs to the plaintiff and the warga property is not belongs to the plaintiff, she cannot having kumki privilege by suppressing the real fact the plaintiff is playing hide and seek tactics. The plaintiff has approached before this court by suppressing real fact, hence she does not entitled any reliefs of the nature of the suit. The land in possession of the plaintiff is situated about half kilometers from the land of defendant and defendant is not having any idea of encroachment of any land consisting with improvements of coconut and cashew

plantation much less belongs to the plaintiff. Defendant mother has already constructed a house in the land belongs to her and the defendant is residing there, hence there is no need for the defendant to construct a house as alleged. Since the plaintiff is not in possession of plaintiff schedule property she does not deserve for in a relief as claimed the suit, hence pray for dismissal the application.

6. Heard on arguments of Ld counsel for both parties and perused the pleadings and materials on record.

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

POINTS

1. Whether the Plaintiff/applicant have 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?

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

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

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

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

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

REASON

9. Point No.1 to 3: These points are being taken up together as the same are interconnected and the discussion thereupon is going to be common:-

10. It is the case of the plaintiff that, plaintiff is in unauthorized occupancy of the suit schedule property more than 35 years. Plaintiff has effected vast valuable improvements over the suit schedule property and she erected mud agalu and fence around the suit schedule property in order to protect the improvements and also she filed application in NCR CR 453/98-99 before Tahasildar Belthangady. The Tahasildar Belthangady on receipt of the application has not initiated any step for regularization of encroachment. The Tahasildar recorded on endorsement against the claim of the plaintiff. Aggrieved by the said order plaintiff preferred an appeal before the assistant commissioner Puttur, plaint schedule property Forms kumki lands to the kadeem warga property to the plaintiff in Sy.No.17/2,3,4,5 of Thaneerupantha village. Plaintiff is in peaceful possession and enjoyment of the suit schedule property more than 35 years. The plaint schedule property is located eastern side of Kadeem warga property. The application pending disposal before the Land Grant committee plaintiff is continue possession and enjoyment of as unauthorized occupant. The defendant is having some land in the said locality in Sy.No.165/2 and attempting to take possession of the portion of the suit schedule property. The RTC in respect of suit schedule property stands in the name of the plaintiff. The defendant without ascertaining the factual and real state of things is preparing to take possession of the property and attempt was made by the defendant laying foundation for construction of building

in a portion of suit schedule property, hence this application.

11. The learned counsel for the plaintiff argued before this court that, plaintiff is in possession and enjoyment of the suit schedule property morethan 35 years. Suit schedule property forms kumki land to the kadeem warga property of plaintiff in Sy.No.17/2,3,4,5. The defendant has no right title over the suit schedule property he made an attempt to laying foundation for construction of building in a portion of suit schedule property. RTC stands in the name of the plaintiff. Defendant has not filed any objection to application. The plaint schedule property is decided the Kadeem warga property of the plaintiff. The defendant is attempt to take possession of the plaint schedule property. Plaintiff has made out a prima facie case and balance of convenience lies in her favour. If application is allowed no hardship injury cause to the defendant. Hence pray for allow the application.

12. The learned counsel for the defendant argued before this court that, the Sy.No.17/2,3,4,5 stands in the name Jayavarma, the RTC produced by the plaintiff is shows that, suit schedule property stands in th e name of the government. The plaintiff has not produced any iota of document to shows that, she has land in her name. Plaintiff filed this suit in order to claim government property with unclean hand . To knock of the government and defendant plaintiff has filed this suit. Hence pray for dismissal of IA No.II.

13. In the light argument canvased by the learned counsel for the both parties this court has carefully perused the pleadings as well as documents produced by the parties. The plaintiff has produced RTC extract in respect of suit schedule property which is stands in the name of government. Plaintiff is also produced FMB sketch with regard to Sy.No.17/2,3,4, and 5, order of Assistant commissioner, Revision application, application for grant of suit schedule property RTC in respect of 17/2,3,4,5. Defendant has not produced any iota of document. The RTC extract produced by the plaintiff with regard to suit schedule property is prima facie shows that, plaint schedule property stands in the name of the government. Upon verifying the plaint averments, plaintiff stated that, plaint schedule property form kumki land to the kadeem warga property of the plaintiff in Sy.No.17/2,3,4,5 of Thaneerupantha village, but upon verifying the RTC in Sy.No.17/2,3,4,5 it is shows that, said property stands in the name of the Jayavarma. When a plaintiffs claimed the suit schedule property as kumki land to the kadeem warga property fo the plaintiff . She has produced kadeem warga property RTC stands in her name but she has fail to do so.

14. 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 go to the prima facie title and only consider whether the plaintiff has made out a prima facie case for granting of interim relief.

15. The purpose of granting interim relief is the preservation of things in dispute till legal rights and conflicting claims 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 extent 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.

16. 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.

17. The first rule is that the plaintiff must make out a prima facie case in support of the claim 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 her. The existence of a prima facie right and infraction of such right is a condition precedent for granting of temporary injunction.

18. In order to ascertain the prima facie case, this court as carefully perused the document produced by the plaintiff i.e., RTC extract with respect to the suit schedule property its clearly shows that, said property stands in the name of government. It is claim of the plaintiff that she has filed application before the Tahasildar for granting of suit schedule property and she was in possession and enjoyment of the suit schedule property morethan 35 years. But plaintiff has not produced any iota of document to prove the said claim. If the suit schedule property is form kumki to the plaintiff property in Sy.No.17/2,3,4,5 she has produced the RTC extract with respect to the above said survey number which is stands in her name, but the RTC extract produced by the plaintiff in Sy.No. 17/2,3,4,5 which is stands in the name of Jayavarma. The plaintiff has not produced any supporting document to prove her claim upon verifying the contended of the affidavit annexed with the IA No.II, prima facie shows that plaintiff is not come with the court with clean hand she suppressed material and true fact. Hence plaintiff is not entitled any equitable injunction.

19. Though the plaintiff has produced order of Assistant Commissioner and application give to the Tahasildar, said documents are not considered without full pledge enquiry said documents are subject to prove. At this stage

plaintiff has not made out balance of convenience also not lies in favour of plaintiff. If the application is allowed the defendant will put irreparable injury and hardship. In these circumstances this court is the opinion that, if IA No. II is allowed more mischief and hardship will be caused to the defendant when compeered to the mischief and hardship which will be suffered by the plaintiff. By considering all this aspect this court is of the opinion that if the application is allowed, the defendant will be put to irreparable loss and hardship and the same cannot be compensated in terms of money hence this court answered point No. 1 to 3 are in the **Negative**.

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

ORDER

I.A. No.II filed by the plaintiff U/o
XXXIX Rule 1 and 2 of CPC is hereby
rejected.

No order as to cost.

(Dictated to the stenographer, typed by him corrected and signed by me and
then pronounced in the Open Court on this 23rd day of February 2024)

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