

Dated: 30-10-2021

OS 17/2021

ORDERS ON IA NO. II

Heard the arguments on IA No.II. The Plaintiff has filed IA No.II under Order 39 Rule 1 and 2 , R/W Section 151 of CPC praying to pass an exparte order of temporary injunction against the opponent/defendant, his men, officials, servants, agents and all persons claiming under him from illegally entering, trespassing into the plaint A schedule property or interfering with peaceful possession and enjoyment of the plaintiff or from alienating, mortgaging, conveyance, mutating the RTC or committing any illegal or tortuous acts in the said property till the final disposal of the above suit in the interest of justice.

In the accompanying affidavit it is stated that The plaintiff has been in peaceful possession and enjoyment of plaint A-Schedule property. Originally the plaint A-Schedule property was belonging to father and mother of the plaintiff. They settled the suit property as per the settlement deed dated 22-12-2009.

As per the settlement deed, the plaint A-Schedule property has been allotted to the plaintiff. Even after there was dispute among the children of father of the plaintiff. To that effect a civil suit has been also filed. The said civil suit ended with a compromise. Even as per the compromise decree the plaintiff is entitled to the plaint A-Schedule property. When such being the case taking advantage of the entires as per the compromise decree the father of the defendant transferred the plaint A-Schedule property in favour of the defendant by settlement deed dated 09-08-2019. Though the plaintiff is in the possession of the plaint A-Schedule the defendant is now trying to interfere with plaintiff's peaceful possession and enjoyment of the plaint A-Schedule property. The defendant is also trying to third party interest over it. Therefore the plaintiff has prayed to allow the IA No.II in the interest of justice.

Heard the arguments.

Perused the documents produced by the plaintiff. It is cleared from the documents that the plaintiff father initially settled the plaint A-Schedule property in favour of the plaintiff. Therefore after a suit was also filed by one of the son of Late Sri Isidore Pinto . The said suit was compromised between the parties. Even after the compromise, the father of the plaintiff did not had absolute right to transfer the plaint A-Schedule in

favour of the defendant. According to the settlement deed and the compromise decree, the father of the plaintiff had only life interest. When the father of the plaintiff had only life interest in the plaint A-Schedule property , question of transferring the same to the defendant is not correct. The plaintiff has also produced the Tax paid receipts to show that the plaintiff is in possession of the suit schedule property. At this stage the plaintiff has made out the prime-facia case. Considering all these it is just and necessary to pass the ex-party temporary injunction order. If the ex-party injunction is not granted at this stage the very purpose of filing the suit will defeated. Hence following:

:ORDER:

IA No.II filed by the plaintiff under Order 39 Rule 1 and 2 of CPC praying to grant exparte ad-interim exparte order of temporary injunction restraining defendants is hereby allowed. The opponent/defendants, his men, servants, agents and all persons claiming under him from illegally entering, trespassing into the plaint A schedule property or interfering with peaceful possession and enjoyment of the plaintiff or from alienating, mortgaging, conveyance, mutating the RTC or committing any illegal or tortuous acts till the next date of hearing.

The plaintiff is hereby directed to comply the Order 39 Rule 3 of CPC.

The office is hereby directed to issue suit summons and emergent IA notice and temporary injunction order against the defendants.

Call on for await summons by 26.02.2021.

Sd/-

(YASHVANTHA KUMAR R.)
CIVIL JUDGE & JMFC,
MOODBIDRI