

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., HUBBALLI

Present:
Sri. Ganapathi Prashanth M.,
B.A.LL.B.,
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.167/2015

Dated this the 05th day of April, 2023

Plaintiff/s : Smt. Anasuya W/o Kallapa Katti and
others.

.Vs.

Defendant/s : Smt. Basavva W/o Shivappa
Huttakkanavar and others.

PARTIES TO I.A. DATED:14.02.2023

Applicant/s : Smt. Anasuya W/o Kallapa Katti and
(Plaintiffs) others

.Vs.

Opponent/s : Smt. Basavva W/o Shivappa
(Defendants) Huttakkanavar and others.

ORDERS ON I.A.DATED:14.02.2023 under order 39 Rule 1
and 2 of C.P.C.

The plaintiff has filed the above application under Order 39 Rules 1 and 2 r/w.Sec.151 of C.P.C., seeking temporary injunction against the defendants from putting up illegal construction in plaint 'C' schedule property No.4, pending disposal of the suit.

2. The defendants filed objections.

3. Heard, perused the pleadings and materials placed on record.

4. The points for consideration are;

1. Whether the plaintiff has made out prima facie case ?
2. Whether balance of convenience is lies in favour of the plaintiff ?
3. Whether the plaintiff will be put to irreparable injury if order is not granted ?
4. What order ?

5. My findings on the above points are as follows:

Point No.1 to 3 : In the affirmative.

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

REASONS

6. **Point No.1:** Shorn off unnecessary particulars, the present suit is filed by the plaintiff No.1 to 5 against the defendants seeking 1/3rd share in the suit properties and to hold that the release deed dated:09.04.2009 purported to be executed by the plaintiffs is void and that the gift deed executed by defendant No.7 in favour of defendant No.8 does not bind the plaintiffs.

7. In the affidavit in support of the present application it is pleaded that the defendants unilaterally filed application on 07.01.2023 seeking compromise among themselves and claimed that there is no partition and also claim that they have got independent rights. The defendant No.2 and his family members started illegal construction of permanent structure in the vacant land in 'C' schedule property No.4 viz PID No.69,

House No.50, situated in Municipal Ward 36-T. It is stated that such an act illegally oust the lawful joint possession and would lead to multiplicity of proceedings and would cause irreparable injuries to the plaintiffs. It is therefore stated that the balance of convenience lies in favour of the plaintiffs and prima-facie case is made out by the plaintiffs.

8. The objections of the defendants is that the plaintiffs have suppressed real facts and they have constructed residential house in Municipal Ward No.36-T, PID No.36T/68. Building No.47 very recently and completed the construction last month. The defendants family also does not have accommodation for their family members and hence, the plaintiffs have no right to question the construction undertaken by the defendants and already the defendants have invested huge amount and purchased materials and the construction if stalled, would cause irreparable injury to the defendants and prayed to dismiss the application.

9. It is relevant to note that the release deed dated:09.04.2009 is the subject matter of the dispute involved herein. The plaintiffs have amended the plaint as per order dated:07.12.2018 and claimed that the said document was got executed by fraud and misrepresentation by informing that for the purpose of obtaining loan and for bank loan renewal signature of all the legal heirs are necessary and thus, the reality was suppressed at the time of subscribing the signatures and hence, the execution is vitiated and therefore, the document is void. The relief of declaration that the said document is void is also inserted by amendment vide order dated:07.12.2018. The suit is filed on 15.06.2015. The

plaintiffs claimed that for the first time they came to know about the release deed supra when the defendants filed written statement on 17.12.2015. The said aspect is matter for adjudication.

10. The property bearing No.47 is not a suit property involved specifically in the present suit. The suit 'C' schedule item No.6 is building No.46, item No.3 is building No.49, item No.4 is building No.50, item No.5 is building No.144 and item No.7 is building No.110. The present application is filed in respect of item No.4 bearing No.50 supra. Therefore, prima-facie the objection that the defendants are putting up construction, the plaintiffs had put up a new construction recently is not valid objection.

11. From the documents produced by the plaintiffs, digging of land and installation of iron rods for putting up RCC columns / pillars is visible. The defendants have not denied the same. Per contra, the defendants have produced photograph of the house of the plaintiff.

12. The prima facie case is not prima facie success, but an opinion that there exists a triable issue, which requires recording of evidence and decision on merits. In the decision reported in 1992(1) SCC 719 (*Dalpath Kumar Vs. Prahlad Singh*), the Hon'ble Apex Court has observed as follows:

"The prima facie case is not to be confused with prima facie title, which has to be established, on evidence at the trial. Only prima facie case is a substantial question rise, bonafide, which needs investigation and a decision on merits."

13. Therefore, when there is a triable issue is involved, it must be held that the a prima-facie case is made out by the

plaintiffs. In the decision reported in AIR 2005 SC 104 (Maharwal Khewaji Trust (Registered), Faridkot Vs. Baldev Dass), the Hon'ble Apex Court has held as follows:

“Unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard.”

14. Therefore, the defendants cannot unilaterally change the nature of the suit property pending disposal of the suit. Hence, point No.1 requires to be answered in the affirmative. Hence, answered in the affirmative accordingly.

15. **Point No.2 and 3:** In view of the finding on the point No.1, if the defendants put up a permanent structure, it would change the nature of the property which is not desirable, as it may lead to multiplicity of proceedings and unnecessary complications of the issues involved in the suit. It might deprive the plaintiffs from getting their shares by metes and bounds in the said property and may lead to compulsory

partition. Thus, the rights claimed by the plaintiffs getting jeopardized cannot be ruled out. Hence, plaintiffs will put to irreparable injury as infringement of legal rights cannot be compensated in terms of money. Hence, balance of convenience lies in favour of the plaintiffs. Per contra, mere delay in giving a finding on the dispute after holding trial is not considered as irreparable injury under law. Hence, **point No.2 and 3 are answered in the affirmative.**

16. **Point No.4:** In view of findings on point No.1 to 3, this court proceeds to pass the following;

ORDER

I.A. dated:14.02.2023 filed by the plaintiffs under Order 39 Rules 1 and 2 r/w.Sec.151 of C.P.C. is hereby allowed.

The defendants are persons acting on their behalf are hereby restrained from putting up construction in site No.50 in PID No.36G/69, situated at Municipal Ward No.36T, involved in this suit as property No.4 in plaint 'C' schedule, or from proceeding with the said construction in any manner, pending disposal of the suit, by way of order of temporary injunction.

(Dictated to the Stenographer directly on the computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the 05th day of April, 2023)

(Ganapathi Prashanth M.,)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.