

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

HUBBALLI

Present:

Sri. RAGHAVENDRA.R.

B.A.L, L.L.B.

I Additional Senior Civil Judge and JMFC.,
Hubballi.

OS No.331/2023

Dated this the 28th day of February, 2024

Plaintiff : Shri. Ramnath S/o Gurunathasa Jituri.

.Vs.

Defendant/s : Shri. Laxman S/o Gurunathasa Jituri and
others.

PARTIES TO I.A. No.I

Applicant/s : Shri. Ramnath S/o Gurunathasa Jituri.

.Vs.

Opponent/s : Shri. Laxman S/o Gurunathasa Jituri and
others.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC
- ii. Relief sought for : To direct the defendants to deposit the entire rental collected from the tenant of the suit schedule property.
- iii. The date on which application is filed : 27.07.2023

- iv. Number of the : I
application
- v. The date on which : D.1, dt:02.02.2024
objections are filed by
different opponents
- vi. The date on which : 28.02.2024
orders were passed on
the said application

ORDERS ON IA No.I

This order arises out of interlocutory application No.I filed by the applicant/plaintiffs under Order XXXIX Rule 1 and 2 read with section 151 of Civil Procedure Code to direct the defendants to deposit the entire rental collected from the tenant of the suit schedule property.

2. The brief facts of the affidavit annexed to application is that, the plaintiff has filed the suit for partition and separate possession in suit schedule properties. It is submitted that, the suit schedule 1 property is consisting of the commercial and residential building, but the defendant No.1 has let out the same in favour of Sri.Ramadev Steel by its proprietor Sri. M.N.Prajapati and thereby collecting more than Rs.25,000/- rental from him. The defendant No.1 is not sharing any profit arising out of the said property. On the contrary he is alone enjoying the profit. It is stated that, absolutely the defendant No.1 has no any absolute right, title and interest over the profit and same is liable to be shared between the plaintiff and defendants. Hence, it is just and necessary to direct the defendant No.1 to deposit

the entire rental till disposal of the case, as otherwise the plaintiff will be put too much loss and injustice. Hence, the plaintiff has filed this application for supra relief.

3. The defendant No.1 has resisted the application by filing detailed objections statement. It is contended that, at the outset, the application is wholly untenable in law and perse the same is frivolous, vexatious. The plaintiff has invoked wrong provision to curb the defendant and thus the same is required to be dismissed in limine. The plaintiff claiming to be in joint possession and enjoyment of the suit property, has no right seek such prayer against the defendant No.1. The prayer sought in the application does not meet out the ingredient and criterial of the proviso under Order XXXIX rule 1 and 2 of CPC. It is submitted that, the tenant who has been named in the affidavit has not all made as party to the suit. It is submitted that, the plaintiff must establish the reasonable probability of ultimate success in getting the order for direction against any defendants. Hence, the defendant No.1 prayed to dismiss the application with costs.

4. The defendants No.2 to 12 have not filed any written statement or objection to application.

5. I have heard the arguments canvassed by the learned counsel for the plaintiff and defendant No.1.

6. The following points are for my consideration.

- Point No.1: Whether the plaintiffs have made out a prima facie case in their favour ?

- Point No.2: Whether balance of convenience lies in favour of the plaintiffs ?
- Point No.3: Whether the plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by them in interim application ?
- Point No.4. What order?

7. My findings to the above points are as under.

- Point No.1: In the Negative.
- Point No.2: In the Negative.
- Point No.3: In the Negative.
- Point No.4: As per final order, for the following;

REASONS

8. **Point No.1 to 3:** These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. It is no doubt, the present suit is for the partition and separate possession. The plaintiff has referred about receipt of rentals in the plaint paragraph No.9. But this paragraph does not depicts the exact rental of suit schedule properties. Further no documents or averments are forthcoming regarding exact rent derived from the suit schedule properties. It is true that, the plaintiff has filed this application to directs the defendants to deposit the entire rental collected from the tenant of the suit property. But in the affidavit it has referred that, the defendant No.1 had let out the property for rent. So, the plaintiff is

not so sure about rental aspects and also he has not sure who have collecting the rent from the person referred in the affidavit. Whether the relief sought in the interim application is fallen into the ambit of the order 39 rule 1 and 2 of CPC. Order XXXIX Rules 1 and 2 of CPC reads thus:

1. Cases in which temporary injunction may be granted.

—[* * *] Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

(2) [* * *]

2. Injunction to restrain repetition or continuance of

breach.—(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) [* * *]

(4) [* * *]”

On careful reading of the above provision along with the prayer sought in the application, it is appears to Court that, the prayer sought in the application is not all fallen into the ambit of the order XXXIX rule 1 and 2 of CPC. The plaintiff counsel vehemently argued that, the plaintiff has filed this application not only under above referred provision but also under section 151 of CPC, hence, the Court can grant the relief by exercising the discretionary powers. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating

protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendant's rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. On careful perusal of the entire materials on records, it does not depict that exact rent and who are all collecting the rents from the tenant. The materials further disclose that, the plaintiff has failed to establish the prima facie case and balance of convenience to get relief as prayed in the application. Hence, I answer **point No.1 to 3 in the Negative.**

9. **Point No.4:** As per following;

ORDER

Interlocutory Application No.I filed by the plaintiff under Order XXXIX rules 1 and 2 of Code of Civil Procedure is hereby dismissed with costs.

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the 28th day of February 2024)

(Raghavendra. R)
I Addl. Senior Civil Judge and JMFC,
Hubballi.