

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.

O.S. No.332/2024

Dated this the 06th day of December, 2024

Plaintiff : Mahadevappa S/o Karaveerappa
Ullagaddi.

.Vs.

Defendant : Sri. Shekhargouda S/o Shivanagouda
Hittalamani and others.

PARTIES TO I.A. NO.I

Applicant/s : Mahadevappa S/o Karaveerappa
Ullagaddi.

.Vs.

Opponent/s : Sri. Shekhargouda S/o Shivanagouda
Hittalamani and others.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 of CPC.
- ii. Relief sought for : To restrain the defendant from obstructing or interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff till disposal of the suit.
- iii. The date on which application is filed : 22.07.2024

- iv. Number of the : 1
application
- v. The date on which : 26.10.2024
objections are filed
by different
opponents
- vi. The date on which : 06.12.2024
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/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendant from obstructing or interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the plaintiff is in possession over the suit property prior to agreement of sale dated 16.05.2017. The defendants have tried to interfere with the possession of the suit properties. The defendants have not restrained by way of temporary injunction order, the situation might be become irreversible at the time of the disposal of the suit. Hence, the plaintiffs filed these applications for supra relief.

3. The defendant No.1, 3 to 5, 7 to 12 have resisted the application by filing memo to considered the written statement as objections to application. The defendant No.10 has totally denied the averments of the plaint in the

written statement and contended that, the plaintiff has created and fabricated the document in order to engulf the suit schedule property. The defendants have not executed any documents as alleged in the plaint. The plaintiff has not revealed that, how he has come into possession of the suit property in the year 2010. Rather the defendants are in possession over the suit schedule property. The suit of the plaintiff is not maintainable as the suit document is an unregistered document and it is hit by section 17 of Indian Registration Act. The Court fee paid by the plaintiff is insufficient and improper. Hence, the defendants prayed to dismiss the application with costs.

4. I have heard the arguments canvassed by learned counsel for parties.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiffs has 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?

6. 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

7. **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. The plaintiff have claiming the title on the basis of unregistered document and permanent injunction. The plaintiff has solely relied on unregistered document styled as sale deed. It is the contention of the plaintiff that, the defendants have executed the sale deed in favour of the plaintiff before the notary. The plaintiffs have not placed the original document before the Court and they have produced notarized copy. On careful perusal of recitals of the document, the document ought to have registered before the concerned authority. The plaintiff has not placed any material worth to show his possession over the suit property. The property extract is standing in the name of the defendants. It prima facie indicates that the defendants are in possession of the suit property. The plaintiff has not placed any materials to show, he is in possession of the suit property since 2010. As such, to give specific finding on the possession of the plaintiff over the suit property it needs full pledged trial of the both parties.

8. 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 defendants 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.

9. 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. 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. Further as I mentioned above, in order to decide the claim of the plaintiff it needs full fledged trail. By considering the all the materials on record it is appears to Court that, it is not necessary to issue prohibitory order against the defendants as prayed by the plaintiff in this application. In other words, 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.**

10. **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 **06th day of December, 2024**)

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