

KADW400005822022



**IN THE COURT OF THE CIVIL JUDGE &
JMFC KUNDGOL**

Present

Sri . P.J. PARAMESHWARA, B.Com., LL.B.
C/C Senior Civil Judge and JMFC.,
Kundgol.

Dated 22nd day of July 2022

OS No.27/2022

Plaintiff: Sri. Mehabubapira S/o Modinasab Darga.

Vs.

Defendants: Sri. Mabusab S/o Nabisab Nadaf and
another.

ORDER ON IA No.1

The applicant/plaintiff filed this application U/O.39 R.1 and 2 R/w Sec.151 of CPC seeking relief of temporary injunction restrained defendants from possession and enjoyment of suit property pending disposal of the suit.

2. In support of application, the plaintiff filed an affidavit and sworn contended that, the suit schedule property is his

ancestral property and it was in possession and enjoyment of himself and his deceased brother. Now the plaintiff is in possession and enjoyment of the suit property by constructing shed, haystack etc. Though the defendants have no manner of tried, interest title or possession over the suit property taking innocence of plaintiff and his old age trying to construct a house in the suit property and interfering in the possession and enjoyment of the plaintiff. On.02.02.2022 the defendants have also threatened to life of plaintiff. The plaintiff advised the defendants but it went in vain and they continued to interfere and trying to construct a building in the possession and enjoyment of the property. Therefore, it is necessary to restrained the defendants from construct a building in the Suit schedule property and interfere in the possession and enjoyment of the suit property of the plaintiff. If an order of injunction is not granted, the plaintiff will be put to irreparable loss. On the other hands, no hardship will be caused to the defendants. Therefore, the plaintiff prayed to grant relief of temporary injunction.

3. This application is resist by defendants by filing a memo adopting their written statement as objection. In their written statement the defendants denied that the plaintiff and his deceased brother were in possession and enjoyment of the suit property and it was their ancestral property. The

defendants also denied that, the plaintiff is in possession and enjoyment of the suit property by constructing cowshed haystack etc. Further, the defendants denied that they are interfering in possession and enjoyment of the property of the plaintiff. The defendants contended that the plaintiff has not mentioned details of his property and he has given wrong boundaries of property bearing No.336/A consist of house backyard belongs to the defendants. The name of plaintiff is also not mentioned in Khata Utara and his name is mentioned with another person. But the plaintiff has not made him as party in the suit. Hence, the suit is bad for non joinder of necessary parties.

4. The defendants contended that, property bearing No.336/A situated at Betadura village consist of house and backyard is their ancestral property originally belong to thier grand father Husainasab Nadaf. The said Husainasab Nadaf died leaving behind his sons Nabisab and Allabakshasab Nadaf. After the death of Husainasab Nadaf, his legal heirs were owners in possession of the property. After the death of Nabisab his children are the legal heirs and they were in separate joint owners of property bearing No.336/A. It is further the case of the defendants that, the brother of plaintiff namely Tajuddinapeera had filed a suit in OS. No.34/2002 in respect of land and house properties for

partition and the said suit is decreed by passing preliminary decree. Thereafter, the plaintiff and his legal heirs of deceased brothers filed RA. No.54/2016 before Senior Civil Judge, Kundagol but it was dismissed. Thereafter, Tajuddinapeera Darga has filed FDP. No.7/2015 and final decree passed on 07.06.2019. From these facts and circumstances it can be said that the plaintiff is not the only owner and in possession and enjoyment of the suit property. The plaintiff suit is also not maintainable without seeking relief for declaration of title. Under these backgrounds, the defendants prayed to dismiss the suit.

5. In the light of the above rival contention of the parties, the following points that arise for my consideration are :

POINTS

1. Whether the plaintiffs have made out prima-facie case ?
2. Whether the balance of convenience tilts in favour of plaintiffs ?
3. Whether the plaintiffs will be put to irreparable loss or injury, if an Order of injunction not granted ?
4. What Order ?

6. Heard arguments and perused the materials available on record.

7. My answer to 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

8. **Point No.1 to 3**: Since these points are inter related to each other, they taken together for common discussion to avoid repetition of facts and findings.

9. It is the case of plaintiff that, he is the owner in possession and enjoyment of the suit property and though the defendants have no manner of right in the possession and enjoyment of the suit property, they are interfering in possession and enjoyment of the suit property. In support of his case application has filed his affidavit and reiterated his case. He also produced RTC bearing Sy. No.999/GRNO16/1 situated at Betadura village and hand sketch of boundaries of property bearing VPC. No.337 situated at Betadura village. On the other hand, the defendants have produced certificate issued by Secretary of Betadura Gram Panchayat in respect of property bearing No.336/A and tax paid receipt.

10. A perusal of RTC issued in the year 2021-2022 in respect of suit property appears that the name of plaintiff and his brothers mentioned a column No.9 and 12 as possessors and cultivators of the suit property. The certificate issued by the Secretary of Betadura Gram Panchayat in respect of property of defendant bearing No.336/A reveals that the name of defendant No.1 and others mentioned as the owner of property and their enjoying the property by paying taxes.

11. On perusal of pleadings and documents of both the parties it appears that there is a serious dispute between the parties not only in respect of suit property but also in respect of property bearing No.336/A. Both parties are claiming their possession and enjoyment of the properties. Though the plaintiff has not pleaded or produced any documents to show that he has constructed cowshed, haystack etc in the agriculture land mentioned in the RTC, names of the plaintiff and his brothers found as they are in possession and enjoyment of the suit property.

12. In the present case, the defendant has also produced hand sketch of his property bearing No.336/A which discloses that the property of plaintiff is situated towards northern side of property. Whether the defendant is

constructing house and interfering in the possession and enjoyment of the suit property of the plaintiff are all facts which are determined based on oral and documentary evidence of both the parties. But at this stage, the pleadings and documents produced by the parties discloses that there are triable issues in the suit and to that extent it can be inferred that, the plaintiff has made out prima-facie case.

13. Mere proving of prima-facie case is not sufficient to grant equitable relief of temporary injunction. The plaintiff has to establish that the balance of convenience tilt in his favour and he will be put to irreparable loss if injunction is not granted. In the present case, the plaintiff contended that, the defendants is trying interfere by putting up construction in his suit property and as such it is necessary to restrain and if the defendants constructed the building it will cause irreparable loss to him. Though the defendants in their written statement denied the contention of the plaintiffs they have not produced any materials to disprove the allegation made in the plaintiff. Admittedly, there is no as against oath of the plaintiffs. When there is a oath in the affidavit complaining interference which are not disputed by the defendants by filing affidavit it can also be considered as Prima-facie case to show that there is a apprehension of the suit property of the plaintiff being damaged. If the

defendants are restrained from constructing in the suit property now no hardship will be caused to defendants as they will be restrained till pending of the suit. If the plaintiff failed to prove and caused any loss to the defendants by his conduct and same is proved in the trial of suit, the court can grant manitory compensation for damages. Therefore, having regard to the facts and circumstances of the case, the Court is considered opinion that, the plaintiff has made out prima-facie case, balance of convenience tilt in his favour and he will be put irreparable loss if temporary injunction is not granted. Accordingly, I answer Point No.1 to 3 in the **affirmative**.

14. Point No.4: In view of the discussion made above and findings given on Point No.1 to 3, I proceed to pass the following:

ORDER

IA No.1 filed by the plaintiff U/O.39 R.1 and
2 R/w Sec. 151 of CPC is hereby allowed.

Consequently, the defendants or any persons claiming through them are hereby restrained from interfering in the possession and enjoyment of the suit schedule property of the plaintiff pending disposal of the suit.

No order as to cost.

Sd/-

C/C Civil Judge & JMFC
Kundagol.