

KAHS310015302016



Presented on : 19-07-2016
Registered on : 19-07-2016
Decided on : 05-02-2024
Duration : 7years 6months 16days

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
J.M.F.C AT ARAKALGUD**

DATED: THIS 5th DAY OF FEBRUARY 2024

:-P R E S E N T:-

**SRI. RAGHU.M. B.A.L., LL.B.,
II Addl.Civil Judge & JMFC.,
Arakalgud**

ORIGINAL SUIT No.202/2016

Plaintiff

- :-
1. Lakshmamma
W/o. Late.Hanumashetty,
Aged about 67 years,
 2. Sri. Venkatesha,
S/o. Late.Hanumashetty
Aged about 52 years,
 3. Smt.Manjula
W/o. Late. Kumara,
Aged about 37 years,
 4. Sri. Pradeepa
S/o. Late. Kumara,
Aged about 24 years,

5. Sri.Praveena
S/o. Late. Kumara,

Plaintiff No.4 & 5 are the minors,
Rep by minor guardian i.e.,
mother of plaintiff No. 4 Manjula.

6. Sri. Devaraja
S/o. Late. Hanumashetty,
Aged about 38 years,

7. Smt.Lakshmi
W/o. Puttashetty,

8. Smt. Geetha
W/o. Swamy,
Aged about 37 years,

9. Smt.Sudha
W/o. Devaraja,
Aged about 35 years,

All are R/at
Bittagowdanahally Village,
Doddamagge Hobli,
Arakalagudu Taluk,
Hassan District.

(By Sri. G.G.R. Advocate)

-V/s-

Defendants :-

1. Sri. Ravi
S/o. Late. Hanumashetty (dead),

D1(a) Smt. Shobha W/o. Late.Ravi,
Aged about 52 years,
R/at: Bittagowdanahally Village,
Doddamagge Hobli,
Arakalahudu Taluk,
Hassan District.

D1(b) Smt.Lakshmi W/o. Chandrashetty,
Aged about 27 years,
R/at: Handrangi Village,
Konanuru Hobli,
Arakalagudu Taluk.

D1(c) Smt. Mohanakumari
W/o. Shivanna,
Aged about 25 years,
R/at: Santhemaruru village,
Doddamagge Hobli,
Arakalagudu Taluk.

2. Smt.Kamala
W/o. Rangaswamy,
Aged about 43 years,
R/at: Maragodanahally Village,
Hallymysuru Hobli,
Holenarasipura Taluk,
Hassan District.

3. Sri. Prakasha
S/o. Late. Hanumashetty,
Aged about 28 years,

4. Sri.Paramesha
S/o. Late.Hanumashetty,
defendant No. 3 & 4 are R/at:
Bittagowdanahally Village,
Doddamagge Hobli,

Arakalagudu Taluk.

**(Def.No.1,4: By Sri.M.N.R. Advocate
Def.1(a to c) Sri. R.A.E., Advocate)**

INTERIM APPLICATION NO: VII

Applicant/Plaintiffs :- Sri. Devaraja
....Plaintiff No.6

-V/s-

Opponent/defendants :- Sri. Ravi & others
....Defendants

1	Provision Under which the application is filed	U/O. 39 Rule 1 & 2 of CPC
2	Relief sought for	Restraining the defendants from put up construction house or building in the suit schedule property by way of temporary Injunction
3	The date on which the application is filed	26.04.2018
4	Number of the application	I.A.No.7
5	The date on which the objections are filed by different opponents	01.02.2024
6	The date on which the orders were passed on the said application	05.02.2024

**ORDERS ON I.A.NO.7 FILED UNDER ORDER 39 RULE 1 AND
2 OF CPC**

The plaintiff No.6 has filed I.A.No.7 under order 39 rule 1 and 2 of CPC on 26.04.2018 seeking temporary injunction in favor of plaintiffs thereby restraining the defendants from put up construction house or building in the suit schedule property in any manner till disposal of this suit in the interest of justice and equity.

2. The plaintiff No.6 has sworn to an affidavit in support of the application and stated that, the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession over the suit schedule property. The suit schedule property is the ancestral and joint family property of plaintiffs and defendants. The defendants are trying to sell the suit schedule property against the interest of plaintiffs. If the defendants constructs the house in the suit schedule property, nature of the suit will change and the plaintiffs would be put to hardship which is not compensated in any manner. Hence prayed to allow the application.

3. On the other hand, the defendant No.2 and 3 have filed objection and contended that, the application filed by the plaintiffs is not maintainable either in law or on facts and liable to be dismissed and the facts stated in the affidavit are all false and the plaintiffs have not entitled any relief in this suit. The defendants have contended that, the property in Sy.No.95/1 of Bittagowdanahalli village, Arakalagudu Taluk, Doddamage Hobli was originally belonged to Government and the said land was allotted by the government to Hanumashetty i.e., father of the defendant No. 2 to 5 vide LNDSR (0) 76(6) 76/1968-69 and SC No.352/69-70. Since then, the said Hanumantshetty was cultivating the crops having right and possession and enjoyment of the suit property and during his life time, he had executed a registered will dated 23.05.2012 in favor of defendant No.1 to 5 and Hanumantshetty was died on 29.6.2013. Then the defendant No. 1 to 5 put in right and possession and have been enjoying the suit schedule property and built 2 residential houses in the said property and the said houses are collapsed due to rain and air and they have to be repaired. In the present suit, plaintiffs evidence have already completed and the plaintiffs have not addressed arguments in

spite giving sufficient opportunities. Hence, prayed to dismiss the application.

4. Heard Arguments of learned counsel for plaintiff and defendant and perused the materials on record.

5. The Points that arises for consideration are as under:-

1. Whether the plaintiffs have made out prima-facie case for grant of Temporary Injunction as sought for ?
2. Whether balance of convenience lies in their favor?
3. Whether the plaintiffs will be put to irreparable loss and hardship, if I.A is not allowed?
4. What order?

6. Findings of the court to the above points are as under:

Point No.1	:	In the Affirmative
Point No.2	:	In the Affirmative
Point No.3	:	In the Affirmative
Point No.4	:	As per final Order for the following:

REASONS

7. Point No.1: The plaintiffs have filed this suit for relief of partition and separate possession with respect to suit schedule property.

8. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principles of law that, at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff No.6 have made out a prima-facie case for granting interim relief.

9. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that, the applicant must make out a prima-facie case in support of the right claimed by her. The court must be satisfied that there is a bonafide dispute raised by the applicant.

10. The plaintiffs have produced documents which consists of RTC in respect to suit schedule property, notarized family tree, tax paid receipt, boundaries, Mutation register and

during arguments, plaintiffs have filed a memo along with documents which consists of Orders passed by the Thasildar, arakalgud, photo and pass book for having savings account in the Cauvery kalpatharu grameena bank. The defendants have filed memo along with documents which consists of will dated 23.05.2012, RTC extracts in 5 numbers in respect to suit schedule property, photo, CD, grant certificate, sketch and death certificate of Hanumashetty.

11. In the instant suit, the plaintiffs have produced photo to show that, the defendants are constructing shed in the suit schedule property and defendants have also produced phot to show that, there is already a house in the suit schedule property and said house is to be repaired as collapsed due to rain and wind and the defendants have also produced a xerox copy of will dated 23.05.2012 to show that, suit schedule property has fallen to the shares of defendants. In the present suit, will have to be proved by the defendants during evidence and at this juncture, the cannot rely with the contents of will. By perusal of photo produced by the plaintiff, it appears that, stone poles are fixed to form shed in the land and by perusal of photo produced by the defendants, it appears that, there is

already a house and the said house is renovating. But the defendants have not taken contention either in written statement or cross examination of Pw.1 that, there are already 2 houses in the suit schedule property and same did not implead in the suit. Hence, the court comes to conclusion that, the plaintiffs have made out that, the defendants are putting up a shed in the suit schedule property. Hence, plaintiffs have made out prima-facie case against the defendants. Accordingly, point No. 1 is answered in the Affirmative.

12. Points No.2 & 3: The second condition for granting interim injunction is that the balance of convenience must be in favor of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

13. The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that she will suffer irreparable injury if the injunction

as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

14. In the present suit, the plaintiffs have made out that, the defendants are constructing a shed in the suit schedule property. If the defendants form a shed in the suit schedule property nature of the suit will change and if the nature of the suit is changed, plaintiffs have to be amended the plaint and it will lead cause delay in disposal of the suit as it is 7 years old. Hence, the plaintiffs have balance of convenience and if the application is not allowed, irreparable loss would cause to the plaintiffs. Therefore, point No. 2 & 3 are answered in the Affirmative.

15. Point No.4: In view of the discussions made above, this Court proceeds to pass the following:

::O R D E R::

I.A.No.7 filed by the plaintiff No.1 U/o 39 rule 1 and 2 is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from putting up

shed in the suit schedule property till disposal
of the suit.

No order as to costs.

(Dictated to the Stenographer and transcribed by him, revised, corrected
and then pronounced by me in the open Court, on this the 5th day of February
2024)

(Sri Raghu.M)
II Addl.Civil Judge and JMFC
Arakalgud

