

KAHS310025062016



IN THE COURT OF ADDITIONAL CIVIL JUDGE & J.M.F.C
AT ARKALAGUD

PRESENT : SMT. PREETI L. MALAVALLI., B.B.A .LLB.,
Addl. Civil Judge & JMFC.,
Arkalagudu

O. S. No. 302/2016

Dated this the 18th day of October, 2021

Plaintiff :- Shivamma W/o Nanjegowda,
Aged about 55 years,
R/o Dhummi Village,
Doddamagge Hobli,
Arakalagud Taluk.

(By Sri. RKM, Advocate for Plaintiff)

-V/s-

Defendants :- 1. Hucchamma W/o Late Kalaiah,
Aged about 56 years,
2. Annaji S/o Late Kalaiah,
Aged about 36 years,
3. Shekara S/o Late Kalaiah,
Aged about 30 years,
All are R/at Dhummi Village,
Doddamagge Hobli,
Arakalagud Taluk.

(By Sri. HRN, Advocate for Defendants)

Parties to IA No. V

Applicant: Shivamma

-V/s-

Opponents : Hucchamma and others

**ORDERS ON IA NO.V FILED UNDER SECTION 151 OF CODE
OF CIVIL PROCEDURE**

This application is filed by the plaintiff seeking to provide police protection to the suit schedule property as the defendants are interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property inspite of temporary injunction granted by the Court.

2. In the affidavit annexed to the application, the plaintiff has stated that she has filed this suit for the relief of declaration and permanent injunction. That after hearing both sides on IA No. 1, the Court had granted Temporary Injunction against the defendants on 19/06/2017. That even after the said order, the defendants are interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and trying to damage the crops raised by the plaintiff in the suit property. As such it is very much necessary to pass an order directing the police to help the plaintiff in enforcing the order of this Court . Hence this application.

3. Counsel for defendants filed objections stating that the application is not maintainable either under law or on facts. Further that appeal was preferred against the order of this Court. It is further contended that the plaintiff has created all revenue documents and obtained TI order and as such she is not entitled to Police protection in order to enforce the said order of the Court. Further that the defendants are in possession of suit schedule property and hence the present application deserves to be dismissed.

4. On the basis of rival contentions, the following points arise for my consideration:

1. Whether the plaintiff has made out grounds to allow this application?

2. What order?

5. Heard on both sides.

6. My findings to the above points are as follows:

Point No.1: In the affirmative

Point No.2: As per final order for the following:

REASONS

7. Point No.1: The plaintiff filed this application seeking Police protection to the suit schedule property in order to enforce the order of temporary injunction granted by this Court on 19/06/2017. Per contra, the defendants objected to said application on the grounds stated above.

8. The plaintiff had filed an application under Order 39 Rule 1 and 2 of CPC and this Court on hearing both sides and on merits passed an order of temporary injunction on 19/06/2017, restraining the defendants from interfering with peaceful possession and enjoyment of suit schedule property by the plaintiff till disposal of suit. The defendants preferred appeal against the said order, which came to be dismissed by Hon'ble Senior Civil Judge and JMFC, Arakalagudu. Hence the order of this Court remains in force.

9. In the application on hand, which has been filed under Section 151 of CPC, the plaintiff has requested the court to direct the Police to provide suitable protection for enforcement of order of this Court dated 19/06/2017.

10. Learned counsel for the plaintiff/applicant has relied upon the decision of Hon'ble High Court of Karnataka in **Smt. Karisidamma and others V/s Smt. Sanna Kenchamma** reported in **ILR 2010 KAR 1197** wherein it is held that *"for implementing the injunction order, the Court can always exercise its inherent powers to grant police aid. The aggrieved party cannot be precluded from seeking police assistance in enforcing the temporary injunction order, just because he can exercise the remedy provided under Order 39 Rule 2-A of CPC. In a fit case, the court can undoubtedly direct police aid as a preventive measure. This power though not expressly conferred, is a power incidental or ancillary to the exercise of the power to grant injunction pending the suit. When a temporary injunction is made absolute after hearing both the sides, there are no legal impediments in granting the police assistance for enforcing the temporary injunction under depending upon the gravity of situation"*.

The aforesaid decision is aptly applicable to the present situation and it comes to aid of plaintiff/applicant, as it is for the Court to see that the order of temporary injunction passed by it is enforced without any impediment and further that proper assistance is given to plaintiff/applicant in enforcing the Court order.

11. The counsel for defendant/opponent has relied upon the decision of Hon'ble High Court of Andrapradesh in **B.Chandra Sekhar Reddy and Others V/s K.Naga Raju Yadav And Another** decided on 04th january-2013, wherein it is held that " (i) *when allegations are made by the party*

obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2 A of CPC seeking attachment and/or arrest of the violator for contempt of the Court. (ii) when a petition is filed seeking Police protection, whether or not to exercise of power under Section 94(e) or Section 151 of CPC, the facts alleged or pleaded, an order for police protection cannot be passed in a routine manner. (iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has the power to order police protection imposing necessary conditions not to interfere with the life, liberty, and rights of the opposite party".

12. Hence it is the contention of defendants that the application filed by plaintiff seeking police protection is not maintainable. However it is pertinent to note that the Hon'ble High Court of Karnataka in a subsequent decision in **Rudrappa V/s Riyaz Ahamad and another reported in 2016 SCC online Karnataka 3809**, has clearly held that the law laid down in *Karisiddamma V/s Sannakenchamma* holds good and that the Court can direct the Police to ensure that the injunction order is carried out and for the said purpose it has got inherent power to direct police to implement the order of temporary injunction. Hence by the said decision it is crystal clear that the decision relied upon by the defendant does not come to his aid. Hence the plaintiff is entitled to police protection as sought for. At this stage, this Court is only to determine about the enforcement of TI order and not to determine whether the

defendants are in possession of suit schedule property. Hence the contentions taken by defendants in objection statement do not hold any water.

Further also, the Hon'ble High Court of Karnataka in **Papanna V/s Nagachari reported in ILR 1996 KAR 1271** has held that the remedy under Order 39 Rule 2-A of CPC is not exhaustive and court can pass appropriate orders to see that its orders are enforced. Further that in necessary cases, even the police can be directed to enforce the orders of the court. Therefore, at this juncture, this Court deems it necessary to grant police protection to plaintiff in enforcing the order of temporary injunction passed by this court on 19/06/2017. Hence I answer **Point No.1 in the affirmative.**

13. Point No. 2: For the above said reasons to point No.1, I proceed to pass the following:

ORDER

The application filed by plaintiff/applicant under Section 151 of CPC is hereby allowed.

The jurisdictional police i.e., the Konanuru Police is hereby directed to extend their protection in favour of plaintiff for implementation of injunction order of this Court dated 19/06/2017.

(Dictated to the stenographer, transcribed by her, revised by me and after corrections pronounced in the open court on this the 18th Day October, 2021)

(SMT. PREETI L.MALAVALLI)
Addl. Civil Judge & JMFC
Arakalgud.