

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
& J.M.F.C., CHANNARAYAPATNA**

**PRESENT: OONKAR MURTHY K.M.
B.Sc., L.L.M.,
PRINCIPAL SENIOR CIVIL JUDGE
CHANNARAYAPATNA**

DATED ON THIS 11th DAY OF NOVEMBER 2019

O.S.No.13/2017

Plaintiffs : 1. Sri.Balakrishna K.P.
S/o late Puttaswamygowda,
Aged about 67 years,

2. Sri.Pradeepkumar,
S/o K.P.Balakrishna, 35 years,
Both are R/o K.Kamanagatta,
Hirisave hobli,
Channarayapatna Taluk.

V/s

Defendants : 1. Sri.K.P.Puttaraju,
S/o late Puttaswamygowda, 56 years,

2. Sri.K.P.Manjegowda,
S/o late Puttaswamygowda, 54 years,

A. Smt.Sujatha,
W/o late Manjegowda, 50 years,

B. Kum.Prakruthi,
D/o late Manjegowda, 26 years,

C. Kum.Pranitha,
D/o late Manjegowda, 23 years,

3. Sri.K.P.Ramakrishna,
S/o late Puttaswamygowda, 52 years,
4. Sri.K.P.Kumaraswamy,
S/o late Puttaswamygowda, 63 years,
5. Sri.Ramaprasad,
S/o Puttaraju, 22 years,
D.1 to 5 are R/o K.Kamanagatta,
Hirisave hobli,
Channarayapatna Taluk.
6. Smt.Kempamma,
W/o Rajanna @ Huchegowda, 60 years,
R/o Siddapura Palya,
Honnenahalli Post,
Bellur Hobli, Nagamangala Taluk,
Mandya District.
7. Smt.K.P.Jayalakshmi,
W/o B.Nagaraju, 58 years,
R/o D.Tumkur, Hirisave hobli,
Channarayapatna Taluk.
8. Smt.K.P.Nalinakshi @
Nanjamma, 56 years,
W/o Siddegowda (Retired
Cement Company Employee),
R/o Kuvempunagar, Behind RTO
Office, Tumkur City and District.
9. K.P.Balaramegowda,
S/o late Puttaswamygowda,
Aged about 65 years,
R/o Didga, Hirisave (H)
Channarayapatna Taluk.

PARTIES TO I.A.13

Plaintiffs/Applicants : Balakrishna K.P. and others

V/s

Defendants/Respondents : K.P.Puttaraju and others

ORDER ON I.A.No.13

The plaintiffs have filed I.A.No.13 seeking help of local Hirisave police to get protect their respective suit properties and to continue with their peaceful possession and enjoyment by restraining the defendants, their children, their agents from their highhanded interference pending disposal of the matter in pursuance of the interim order of injunction passed by this court in favour of the plaintiffs.

2) In the accompanying affidavit it is stated that, the suit schedule properties are separate and independent properties of the plaintiffs. Since defendants interfered and tried to trespass to the suit properties, interim application seeking temporary injunction was filed. This court after appreciating prima facie case and balance of convenience was pleased to order temporary injunction in favour of the plaintiffs. In spite of restraint order by this court, the defendants by forming unlawful assembly has stolen coconuts which were in the plaintiff's go-down for which they have registered criminal case in Cr.No.124/2017 for the offence punishable under Sec.447, 188, 379 R/w Sec.34 of IPC

before police. Some of the stolen coconuts have already been seized by Hirisave Police. After the said incident, the defendants are instigating their children to obstruct the plaintiffs peaceful possession and enjoyment over the suit properties. Recently another criminal case has also been registered against the defendants. About 4 days back when the plaintiffs were taking away their coconuts in the vehicle, the defendants and their children have wrongfully stopped them, attempted to knock off their coconuts. Somehow the plaintiffs have managed to take away the coconuts. When the plaintiffs were out of station, the defendants trespassed into their properties and mischievously taken away some coconuts and agricultural proceeds. The children of defendants have intensified their high handedness stating that they are not parties to the suit and order of the court is not binding upon them. For which the plaintiffs were constrained to file police complaint. A week ago, the defendants have illegally dug a long trench by trespassing into a suit properties and caused damages to the standing crops despite order of injunction. Despite their strong objections, the defendants are interfering with lawful possession and enjoyment of the plaintiffs. The plaintiffs are unable to protect the suit properties without the aid of local police and therefore have sought for police aid for enforcing the order of temporary injunction of this court.

Further states that the order of injunction has not been challenged by the defendants 1 to 5 and 7 to 9. Defendant No.6 had challenged the order in MFA.No.9460/2017 before Hon'ble

High Court of Karnataka and the same has been dismissed for non-prosecution on 10.06.2019. Therefore has sought to allow the application.

3) The defendants 1 to 4 have filed their objections stating that there is no partition in the family of plaintiffs and defendants and none of the family members are in separate possession and enjoyment of the family properties. When the defendants were taking coconuts grown in the land in their possession, the plaintiffs only to harass the defendants have lodged false complaint before the police. The plaintiff is a politician and influential person. The order of temporary injunction granted by the court has been challenged before Hon'ble High Court of Karnataka. The same has been dismissed for technical reasons and another application has already been filed before the Hon'ble High Court. During the pendency of the petition before Hon'ble High Court, the application filed by the plaintiffs, if entertained will cause lot of inconvenience to the defendants. Even though the suit properties are in possession of the defendants, the plaintiffs by creating documents have filed this suit only to trouble the defendants. If police aid is given, it will affect the defendants who are in lawful possession of the suit properties. Hence, has prayed to reject the application.

4) Heard arguments of both the counsels and perused the materials on record.

5) The points that arise for my consideration are;

1. Whether the plaintiffs have made out appropriate case for granting police aid for enforcing the order of temporary injunction passed by this court on 28.10.2017 ?

2 What order?

6) My findings on the above points are as under:

Point No.1: Negative

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

-:REASONS:-

7) **Point No.1:** The plaintiff has filed this suit for declaration that plaintiff No.1 is the lawful owner in possession and enjoyment of 'A' schedule properties and plaintiff No.2 is the lawful owner, in possession and enjoyment of 'B' schedule properties and also have sought for permanent injunction restraining the defendants and their agents from interfering with plaintiffs peaceful possession and enjoyment over the suit schedule properties.

8) The case of the plaintiffs is that, 1st plaintiff is the father of 2nd plaintiff. The defendants are the brothers and sisters of 1st plaintiff. The father of 1st plaintiff had died on 19.09.1996.

During his lifetime he got divided the joint family properties through oral partition. For mutating the revenue documents with respect to their respective allotted shares and to avoid the future complications, a palupatti dt.12.06.2000 was got executed. Even prior to palupatti, all the sharers were in separate possession and enjoyment of their respective shares allotted in oral partition. Even self acquired properties were also included in the list of partition to avoid future complications. From the date of partition and the partition deed, the 1st plaintiff is in absolute possession and enjoyment over 'A' schedule properties. Revenue records have been mutated in the name of all the sharers including 1st plaintiff vide M.R.No.23/2000-01 with respect to land of K.Kamanagatta and M.R.No.48/2000-01 with respect to lands of Didga village.

The plaintiff No.1 has self acquired 'B' schedule properties and other properties under the registered sale deeds out of his own income and therefore they are his self acquired properties. As per the family arrangement between the plaintiffs, they got entered into memorandum of partition dated 20.01.1998 wherein suit 'A' schedule properties were allotted to 1st plaintiff and suit 'B' schedule properties were allotted to 2nd plaintiff. The revenue documents are standing in their respective names. The defendants are not at all having any right, title, interest, possession or whatsoever over the suit properties and are well aware of the above stated facts. In spite of it they have started to interfere with the plaintiff's peaceful possession and enjoyment over the suit

properties and are obstructing the peaceful cultivation by the plaintiffs.

9) The defendants 1 to 4 in their written statement have denied factum of family partition and other averments of the plaint. Further states that the partition deeds dt.12.06.2000 and 20.01.1998 are created documents and none of the defendants have signed it. When the father of the plaintiff was alive, the plaintiff No.1 being the elder son was looking after the affairs of the family along with their father. After the death of their father, plaintiff No.1 was manager of the family. Out of sufficient family income, about 65 to 70 acres of land has been purchased in the name of family members at various villages like Kamangatta, Didga, Mavinahalli, D.Tumkur, Mellahalli and also Salagame village and Karikyathanahalli village of Hassan Taluk, house and site properties have also been purchased at Hassan City. Since there was huge properties, to avoid legal complications, katha of some of the properties were mutated in the name of joint family members and for the same reason the plaintiff has obtained the signatures of the defendants on some of the documents. There is no such partition in the family as contended in the plaint and nobody is having separate possession and enjoyment. The plaintiff by misusing the trust of the defendants, has retained about 50-60 acres of land in the name of his wife and children. Due to the difference in the family when the defendants have sought for partition in the family properties, the plaintiff has filed

this suit with created documents in order to defeat the share of the defendants.

10) This court while passing orders on I.A.No.1 filed under Order 39 Rule 1 and 2 of CPC has granted injunction in favour of the plaintiffs vide its order dated 28.10.2017 which is as follows;-

“I.A.No.1 under Order 39 Rules 1 and 2 of CPC is hereby allowed.

Temporary injunction order is granted restraining the defendants and their agents from interfering with peaceful possession and enjoyment of the suit properties till disposal of the suit.

No order as to cost.”

The plaintiffs by filing the present I.A.No.13 under Sec.151 of CPC have sought for police help for implementation of the said order stating that the defendants and their children are interfering with the plaintiffs' peaceful possession and enjoyment over the suit properties.

They have narrated the instances of interference stating that

* The defendants on the date of the order itself, at night by forming unlawful assembly have stolen the coconuts from the plaintiffs' go-down for which case in Cr.No.124/2017 has been registered against the defendants under Sec.447, 188, 379 R/w Sec.34 of IPC.

* It is also stated that about 4 days back while the plaintiffs were taking the coconuts in the vehicle, the defendants and their children have wrongfully stopped the vehicle with an intention to

knock off coconuts, but somehow they have managed to take away the coconuts.

* It is also stated that a week back the defendants have illegally dug a trench in the suit property.

* After the matter is posted for orders on I.A.No.13, the counsel for the plaintiffs has also produced copy of the FIR in Cr.No.85/2019 wherein it is alleged that some of the defendants have trespassed into the suit properties and obstructed their laborers from loading of coconuts to the tractor. They have also deflated the tractor tires.

With these instances the plaintiffs have sought for police aid for enforcement of temporary injunction passed by this court on 28.10.2017.

The plaintiffs have also produced certified copy of the order passed by Hon'ble High Court of Karnataka in MFA.No.9460/2017 (CPC) dt.10.06.2019 wherein the appeal challenging the order on I.A.No.1 dt.28.10.2017 has been dismissed for non-prosecution. The counsel for defendants 1 to 4 states that another application has been filed before Hon'ble High Court of Karnataka. With these facts it is for the court to consider whether the plaintiff has made out a prima facie case in his favour for grant of police aid.

11) The plaintiffs have relied on the decisions reported in *ILR 2001 KAR 462 in the case of Mahadevprasad M.S. and*

others V/s Mahadevaiah and others, wherein the Hon'ble High Court at para No.2 has held as follows;-

2. The Trial Court held that there is a provision under Order 39 Rule 2A for proceeding against the defendant for violation of the orders. But that is not sufficient to protect the possession, which he seeks to safeguard under the order of injunction granted in his favour by the Court.

Thereby has allowed the revision holding that police aid should be given.

Hon'ble High Court has granted police help to safeguard the possession.

12) The plaintiffs have also relied on the decisions reported in *ILR 2010 KAR 1197 in the case of Smt.Karisiddamma and others V/s Smt.Sanna Kenchamma*, wherein the Hon'ble High Court at para No.11 has held as follows;-

In the light of granting the temporary injunction order after hearing both the sides, if a party in whose favour the temporary injunction order is made, complains to the Court that the other side is obstructing her use of the road and that the police are not coming to her rescue, the Trial court is well within its limits to pass an order directing the police to give the necessary aid in the enforcement of the temporary injunction order. The Court can grant police aid exercising its inherent powers. Otherwise the interests of the litigants cannot be protected against a party, who violates the temporary injunction order.

In the said case, it was alleged that the defendants are unnecessarily obstructing the use of road and the police are not

coming to her rescue and therefore it was held that the trial court is well within its limits to pass an order directing the police to give the necessary aid in the enforcement of temporary injunction order by exercising its inherent powers.

13) The counsel for defendants 5 to 8 has relied on the decision reported in; *AIR 2006 Madras 186 in the case of Abdul Sukhure Bhai V/s Durai Kuppuswamy* wherein the Hon'ble High Court of Madras at para No.13 has issued the guidelines for grant of police aid which are as follows;-

13. The lower courts are frequently confronted with the question of issuing police protection. Since the issuance of police aid is often raised in one way or other, by the lower courts it is appropriate to issue the following guidelines:

****In appropriate cases, Civil Court has the power to issue suitable directions to police officials as servants of law to extend their aid and assistance in the execution of decrees and orders of Civil Courts or in implementing an order of injunction passed by it, (1992) TLNJ 120).*

****Ordering police protection has got serious consequences, impinging on the rights of the parties.*

****Police aid is not to be granted simultaneously with an order of injunction.*

****In cases where the lower Courts order police protection/police aid in the execution of decrees and orders of the Civil Courts or in implementing an order of injunction passed by it, the court is to record reasons as to how and why the case is the appropriate case to order police*

aid and for what purpose the police aid is ordered.

****Police protection/police aid may not be ordered by a non-speaking order. Order of Court for police aid might give room for the parties to take law into their own hands. The party having the order of the Court for police aid, might try to disturb the status quo either by trying to take possession or trying to dispossess the opponent.*

****Order of the Court for police protection is to specifically indicate in precise terms the purpose for which police protection is ordered.*

The Hon'ble High Court in the guidelines has held that in appropriate cases, civil court has power to issue suitable direction to police to extend aid in execution of orders of the civil court in implementing an order of injunction passed by it. It is also stated that the court has to record reasons as to how and why the case is the appropriate case to order police aid and for what purpose police aid is ordered.

14) In deciding the application I would like to rely on the decision of Hon'ble Supreme Court in the case of *Meera Chauhan V/s Harsh Bishnoi and Another*, wherein the Hon'ble Supreme Court has held as follows;

A bare perusal of Section 151 of the Code of Civil Procedure, it cannot be said to be in dispute that Section 151 confers wide powers on the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The power of Section 151 to pass order of injunction in the form of

restoration of possession of the code is not res integra now. In *Monohar vs. Hira Lal* [AIR 1962 SC 527] while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the court, this court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this court in the aforesaid decision that the inherent power under Section 151 of Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure.

At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order of the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.

(Emphasis supplied)

15) As per the above precedent law, the inherent power under Sec.151 of CPC must be exercised only in exceptional circumstances for which the code lays down no procedure. It is

also stated that when parties violate order of injunction or stay order or act in violation of the said order of the Court, the court can by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

16) In the case on hand, plaintiffs have narrated few of the incidents such as the defendants have taken away coconuts from the suit schedule property and have deflated the tyre of the tractor of the plaintiffs which was used for carrying the coconuts. It is also stated that the defendants have obstructed the laborers of the plaintiffs in loading the coconuts to the tractor. The defendants have dug trench in the suit schedule property.

The incidents narrated by the plaintiffs are mere aberrations of interference. There are no allegations of serious threats such as dispossession of the plaintiffs from the suit schedule properties which affects the position of the parties as they stood prior to issuance of the injunction order. The purpose of granting temporary injunction is to maintain status-quo over the suit properties till disposal of the suit. Mere instances of trespass and other mischief alleged against the defendants will not change the position of the parties as stood prior to issuance of injunction order. The said aberrations can be taken care of by

initiating action under criminal law.

Moreover the plaintiff in his application has not specifically mentioned for what purpose he is seeking police help. He has generally mentioned to get protect their respective suit properties and to continue with their peaceful possession and enjoyment over the suit properties and to restrain the defendants and their children from high handed interference, the plaintiffs are seeking police help. The relief sought is of such nature that it requires continuous supervision on regular basis. No such supervision can be made by granting police aid. There are 19 items of suit schedule properties and no police can be deployed to guard all the 19 items of suit properties anticipating interference by the defendants. The interference alleged does not go to the root, affecting the status of the parties as they stood prior to issuance of injunction. Also the proof required for getting police help is to be beyond all reasonable doubt. In the case on hand, except copies of FIR and oral assertions of the plaintiffs, there are no other materials to infer imminent necessity of police help.

17) More over with the same grounds, the plaintiffs have previously filed I.A.No.5 under Sec.151 of CPC seeking same relief sought in this I.A.13 and the same has been rejected by this court on 16.12.2017. The power under Sec.151 of CPC is to be exercised only in exceptional circumstances as mandated by Hon'ble Supreme Court in *Meera Chouhan's case* and no such exceptional circumstances has been made out in the present case

for granting police aid. The decisions relied upon by the plaintiffs are not helpful for their contentions. The incidents alleged are stray incidents which can happen for any lawful owner enjoying his property. Moreover the plaintiffs have already filed an application under Order 39 Rule 2A seeking action against the defendants for violation of injunction order. Under the circumstances the plaintiffs have failed to make out that this is appropriate case for granting police aid in implementing temporary injunction order dated 28.10.2017. Therefore, I hold **Point No.1 in the Negative.**

18) **Point No.2:** In view of the discussion made while answering the point No.1, I proceed to pass the following:

ORDER

***I.A.No.13 filed by the plaintiffs
under Sec.151 of CPC is hereby
dismissed.***

***Under the circumstances of the
case, no order as to cost.***

(Dictated to the stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this 11th day of November 2019)

(OONKAR MURTHY K.M.)
Principal Senior Civil Judge and JMFC
Channarayapatna