

Exparte Order on I.A No.1

This is a suit filed by the plaintiff for relief of permanent injunction against defendants in respect to suit schedule properties.

2. Plaintiff has filed I.A. No. 1 U/o. 39 Rule 1 and 2 of CPC and R/w. Section 151 of CPC praying for an order of temporary injunction restraining the defendants from interfering and put-up illegal construction over the suit schedule properties.

3. The perusal of the records shows that, the plaintiff has prima-facie case to pass exparte temporary injunction order as below. It is the specific case of the plaintiff that, Plaintiff and defendant no. 1 are brothers and suit schedule properties are their ancestral property. On effect of partition deed dated: 20-06-2020. Property situated towards Sha – Mill Road, measuring East – West 3.65 meters, North – South 3.65 meters is allotted to the share of plaintiff and property situated towards eastern side of plaintiff's property measuring East – west 5.18 meters and North – South 3.65 meters is allotted to the share of defendant and out of said properties on the eastern side North south measuring 5 feet road was reserved for genral use. But the defendants are trying to put-up construction in the eastern side of plaintiff's property including the road. Hence sought to allow the application.

4. Plaintiff has produced copy of partition deed dated: 20-06-2020, Municipality E Katha Extract, Photo and C.D. of suit properties. These all documents clearly disclose that the plaintiff is owner and in possession over the suit schedule properties. Photographs disclosing the construction.

5. Hence plaintiff sought to restrain the defendants from interfering plaintiff's peaceful possession and enjoyment and put-up further construction in suit schedule properties. If that is done it would effect the rights of plaintiff. Therefore at this stage the balance of convenience lies in favour of plaintiff and irreparable injury would be caused to the plaintiff, if an order of injunction as below is not granted.

6. As the order is passed without hearing the Defendants, the interest of the Defendants should also be protected by imposing suitable conditions on the Plaintiff and the Plaintiff should not misuse this order of injunction. ***In the ruling reported in ILR 1994 KAR 2817 in the case of LIC V/s. LIC Employees Housing Co-operative Society Limited,*** it is held that whenever the order of temporary injunction is granted the parties must be put on terms. This court is of the opinion that this principle has to be followed more strictly when an ex-parte order of injunction is passed. Therefore, the necessary conditions are also imposed on the Plaintiff in this order while granting the order of temporary injunction against the Defendants.

8. Hence, this court proceed to pass the following:

ORDER

By way of granting Ex- parte Temporary Injunction, the defendants are hereby restrained from interfering and put-up illegal construction over the suit schedule "A" property road till next date of hearing.

This order of injunction will not affect any third party rights created in favour of the financial institutions on the property and to enforce the said rights by the sale of the property if the said persons are entitled to do so as per law.

Issue emergent notice of IA.No.1 to the defendants and the ex-parte order of T.I against defendant after the plaintiff complying with the order XXXIX Rule 3 of C.P.C.

The office is directed not to issue the certified copy of this order sheet

**till the plaintiff complying order
XXXIX Rule 3 of C.P.C and paying
the required process fee to issue
process to the defendants as above.**

Call on –

II Addl. Civil Judge and JMFC
Channarayapatna