

KAHS810009332022



Presented on : 30-05-2022
Registered on : 30-05-2022
Decided on : --
Duration :

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT SAKALESHAPURA, HASSAN
Presided Over by SUDEER
O.S./119/2022**

**IN THE COURT OF CIVIL JUDGE & JMFC,
AT SAKALESHPURA**

**Present: SRI.SUDEER, B.A.LL.M.
Civil Judge & JMFC,
Sakaleshpura.**

Dated this 27th Day of October 2022

O.S.No. 119/2022

1. Syed Shaheed **.....Plaintiff**

V/s

1. Jamshad Pasha **.....Defendants**

I.A.No.II

1. Syed Shaheed,
S/o. Syed Murthuja,
Aged about 58 years,
R/at : Veerji Mohala,
Channaveerappa Fruits Mandi,
Santhepete,
Hassan Taluk & District.

....Plaintiff/Applicant

V/s

1. Jamshad Pasha,
S/o. Late. S.K. Ameer Jhan,
Aged about 60 years,
R/at : Azad Road,
Sakaleshpura Town,
Hassan District.

2. N. Srinivas,
S/o. Late. Nanjundappa,
Aged about 65 years,
Mallikarjuna Nagara Badavane,
Sakaleshpura Town,
Hassan District.

.....Defendants/Opponent

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Plaintiff by Sri. S.P - Adv

Defendants by Sri. S.G - Adv

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-: ORDER ON I.A.No.II :-

The learned counsel for plaintiff has filed I.A.No.II U/Order 39 Rule 1 and 2 CPC to restrain defendants and their agents, representatives & supporters from trespassing on the eastern & western side and interfering with the peaceful possession and enjoyment of the suit schedule property bearing Sy.No. 302/2, measuring 00-07Gs of Malalli Village, Kasaba Hobli, Sakaleshpura Taluk till pending disposal of suit.

2. The said application is accompanied by the affidavit of the plaintiff stating that the plaintiff has filed suit for permanent injunction. It is stated that plaintiff had purchased the suit schedule property from erst while owner under registered sale deed dated 02/04/2002. The revenue records has been transferred in the name of plaintiff and he his paying taxes to the concerned authority. It is stated that plaintiff has constructed shops in the suit schedule property. The plaintiff is in peaceful possession and enjoyment of the suit schedule property as absolute owner. The defendant no.1 is the owner of Sy.No. 302/5 measuring 00-01Gs which lies on the eastern of the suit schedule property. The defendant no.2 is the owner of Sy.No. 302/1 measuring 00-06Gs which lies on the western of the suit schedule property. Now defendants without right, title or interest over the suit schedule property are trying to trespass and interfere with the plaintiff peaceful possession & enjoyment of the suit schedule property. The defendants are both politically & financially influenced persons. The plaintiff had approached jurisdictional police station to lodge compliant against

defendants, but police advised to approach the court being dispute civil in nature. Hence, plaintiff had filed this suit. It is further stated that plaintiff has made prima facie case, balance of convenience lies in his favour. If IA is not allowed plaintiff will be put to irreparable loss and untold hardship. Accordingly, plaintiff prays to allow I.A.No.II.

3. The learned counsel for defendant has filed objections to I.A.No.II filed U/O 39 Rule 1 and 2 of CPC.

The suit of the plaintiff is false, vexatious and not tenable either in eyes of law or on facts. The averments made in plaint are not based on sound principles of law and are founded on misconceptions and instituted with the intention to mislead the Court. It is not denied that plaintiff is the owner of the suit schedule property. It is also not denied that defendant no.1 is the owner of land measuring 00-01Gs in Sy.No.302/5 and defendant no.2 is the owner of land measuring 00-06Gs in Sy.No. 302/4. It is contended that defendants have not interfered with the plaintiff peaceful possession & enjoyment of the suit schedule property. It is

contended that defendant no.1 has encroached upon 00-0.17Gs of land in Sy.No. 302/2. But plaintiff by giving wrong boundaries has filed the suit in which he is not in possession. The plaintiff by suppressing true facts has filed this false suit. No cause of action to file the suit. If the TI is granted this defendants will be put to irreparable loss and injury and same is not granted no prejudice will be caused to the plaintiff. Hence prays to dismiss the interim application with exemplary costs.

4. Heard arguments of learned respective counsels on I.A. Perused the materials available on record.

5. Points that arise for consideration and determination are as under :-

:- P O I N T S :-

- 1. Whether applicant has made out a prima-facie case?**
- 2. Whether balance of convenience lies in favour of applicant?**

3. Whether irreparable loss will be caused to applicant if Temporary Injunction is not granted?

4. What Order?

6. This Court answers above said points 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...

-: R E A S O N S :-

7. Point No.1 :- It is the specific contention of the plaintiff that he is in peaceful possession & enjoyment of the schedule property as absolute owner. He had purchased suit the absolute owner from erst while owner under registered sale deed dated 02/04/2002. The revenue records has been transferred in the name of plaintiff and he has put commercial shops in the suit schedule property. Now defendants being adjacent land owners are trying to trespass and interfering with the plaintiff peaceful possession &

enjoyment of the suit schedule property. Hence, plaintiff filed the present suit for permanent injunction against the defendants restraining them from trespassing and interfering with the plaintiff possession and enjoyment of the suit schedule property along with interim application.

8. Per contra it is the contention of the defendants that, It defendant no.1 is the owner of land measuring 00-01Gs in Sy.No.302/5 and defendant no.2 is the owner of land measuring 00-06Gs in Sy.No. 302/4. These defendants does not dispute that plaintiff is the owner of the suit schedule property. It is further contended that defendant no.1 has encroached upon 00-0.17Gs of land in Sy.No. 302/2. But plaintiff by giving wrong boundaries in which he is not in possession has filed this false suit. Hence he is not entitled for the relief claimed and prays to dismiss the interim application with costs.

9. Considering the pleading and documents on record. The plaintiff in support of his case he has produced sale

deed, mutation extract, Yadabala Sketch, Settlement Akarband, Tax paid receipts, License, Photos & CD.

10. On the contrary the defendant has produced RTC, Mutation Extract, Sketch.

11. On perusal of documents produced by plaintiff. It clearly shows that plaintiff is in possession & enjoyment of the suit schedule property as absolute owner. The revenue entries pertaining to said land has been made in the name of plaintiff vide M.R.No.18/2001-02 and his name reflects in the mutation & RTC extract. The photos discloses that shops are constructed in the suit schedule property. The defendant no.2 properties lies on the western side of the suit schedule property. The RTC produced by plaintiff pertaining to property bearing Sy.No. 302/1 measuring 00-06Gs of land it discloses that defendant No.2 is the owner. On the other hand defendants have not disputed the title and possession of the plaintiff over the suit schedule property. But the contention of the defendants is that plaintiff by giving wrong boundaries in which he is not possession has filed false suit. The defendants has produced RTC pertaining to property of

defendant no.2 it shows he is owner of the property bearing Sy.No. 302/4 measuring 00-06Gs. Mutation Extract No. H12/2013-14 discloses that property in Sy.No. 302/1 & 302/4 land measuring 00-06Gs in both the properties has been transferred in the name of defendant no.2. It is not in dispute that plaintiff is the owner of the suit schedule property bearing Sy.No. 302/2. It is not in dispute that defendant no.1 is the owner of the property bearing Sy.No. 302/5. It is not in dispute that defendant no.2 is the owner of property bearing Sy.No. 302/1. But the contention of the defendants is that towards west of the suit schedule property, property bearing Sy.No. 302/4 is situated, not Sy.No. 302/1 as shown in the plaint. As alleged by the defendants if property in Sy.No. 302/1 is not situated towards the west of the suit schedule property, but defendants have not dispute title and possession of the plaintiff over the suit schedule property bearing Sy.No. 302/2. On perusal of the documents produced by defendants it is clear that properties in Sy.No. 302/1 & 304/4 to the extent of 00-06Gs belongs to defendant no.2, as such

mentioning of wrong survey number in the plaint schedule column will not take away the legal rights of the plaintiff, the same is subject to rectification. The defendants have produced copy of survey sketch and argued that as per the survey report defendant no.1 has encroached upon 00-0.17Gs of land in Sy.No.302/2. Though the plaintiff is not in entire extent of suit schedule property he has falsely filed this suit by giving wrong boundaries. The matter of encroachment cannot be decided at this stage. By perusing the document produced by the plaintiff and the document produced by the defendants and the contention taken by the defendants in the objection statement will certainly establishes the fact that the plaintiff has got a prima facie case in his favour. Because a prima facie case is a case where the plaintiff establishes a triable case.

12. Under these circumstances it is necessary to mention that on perusal of the pleadings documents produced by the plaintiff it prima facie goes to show that plaintiff is the owner and in possession of the suit property. And the present suit

is filed by the plaintiff for permanent injunction against the defendants and plaintiff has to prove his possession and alleged interference caused by the defendants and to prove the same plaintiff has to adduce oral and documentary evidence and after full pledged trial plaintiff has to prove his case till then it is just and necessary to protect the right of the plaintiff. Therefore preserving the property till the matter in dispute are resolved is necessary. If TI is not granted as prayed in the IA No.II it may affect the rights of the parties more particularly that of the plaintiff. Further rejection of TI may leads to multiplicity of proceedings. Hence plaintiff has made out prima facie case against the defendant that he has been in possession of the suit property. **Accordingly Point No.1 is held in the Affirmative.**

13. Point No.2 and 3: It is the specific case of the plaintiff that defendant is trying to trespass the suit property and causing obstruction to the possession of the plaintiff. This court has already come to the conclusion that the plaintiff has made out prima facie case that he is in lawful possession.

Therefore the comparative hardship that may be caused to the plaintiff is greater than compared to the defendants. No hardship and injuries would be caused to the defendants therefore even the balance of convenience also lies in favour of plaintiff. The decision reported in AIR 2007 NOC 1071 “**Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. In the instant case, both the courts below held in favour of the plaintiff on ground of prima facie case, possession balance of convenience and irreparable loss and injury. HC declined to interfere.** If the said decision is considered it is the case of the plaintiff that he is in possession of suit property and his possession cannot be interfered without due process of law. Therefore principle laid

down in this decision is aptly applicable to the present facts of the case. Under these circumstances this Court has no other option expect come to the conclusion that the possession of plaintiff has to be protected during the pendency of the suit.

Accordingly Point No.2 and 3 are held in the Affirmative.

14. Point No.4 : For the forgoing reasons and discussions made above and finding on the above points, I proceed to pass the following:

ORDER

**I.A No.II filed by the plaintiff
under Order 39 Rule 1 and 2 CPC is
hereby allowed.**

**The defendant and his agents,
representatives & supporters are
restrained from trespassing on the
eastern & western side of the suit
schedule property and from
interfering with the plaintiff
peaceful possession & enjoyment of
the suit schedule property in any
manner till disposal of suit.**

**Under these circumstances, no
order as to costs.**

(Directly dictated to the stenographer, typed by her, corrected and signed by me and then pronounced in open Court on this 27th Day of October 2022)

**(SUDEER)
Civil Judge and JMFC
Sakaleshpura.**