

KAHS810016042022



Presented on : 23-08-2022
Registered on : 23-08-2022
Decided on : --
Duration :

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT SAKALESH PURA, HASSAN
Presided Over by SUDEER
O.S./199/2022**

**IN THE COURT OF CIVIL JUDGE & JMFC,
AT SAKALESH PURA**

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

Dated this 17th Day of January 2023

O.S.No. 199/2022

1. H.D. Rajegowda **.....Plaintiff**

V/s

1. H.T. Somshekara **.....Defendant**

I.A.No.I

1. H.D. Rajegowda S/o Doddegowda,
Aged about 75 years,
R/at : Hetturu Village,
Hetturu Hobli,
Sakaleshpura Taluk.
....Plaintiff/Applicant

V/s

1. H.T. Somashekara S/o H.M. Thammegowda,
Aged about 52 years,
R/at : Hetturu Village,
Hetturu Hobli,
Sakaleshpura Taluk.

.....Defendant/Opponent

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Plaintiff by Sri. S.P - Adv.

Defendant by Sri. A.V.K - 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 defendant and his agents, representatives & supporters from encroaching and interfering with the peaceful possession and enjoyment of the suit schedule property bearing Sy.No. 78/3, measuring 1As-26Gs of Hethur Village, Hethur 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 the suit schedule property is the ancestral property and plaintiff acquired rights over the suit schedule property in the family

partition, subsequently revenue entries pertaining to suit schedule property was made in the name of plaintiff. The plaintiff is in possession and enjoyment of the schedule property as absolute owner. The defendant without any right he is trying to encroach & interfere in the plaintiff peaceful possession & enjoyment of the suit schedule property. The defendant is both politically & financially influenced person. The plaintiff had restrained the illegal act of the defendant, but defendant has left the place stating that he will not keep quiet until he takes possession of suit property. Hence, plaintiff had filed this suit. It is further stated that plaintiff has made prima facie case, balance of convenience lies in her favour. If IA is not allowed plaintiff will be put to irreparable loss and untold hardship. Accordingly, plaintiff prays to allow I.A.No.I.

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. The defendant denied the entire averments given in the pleadings in toto. It is contended that property in Sy.No. 78/6 (Old Sy.no. 78/5) measuring 2As-28Gs including 00-04Gs karab land is the ancestral property and same was acquired by the defendant in the family partition, subsequently revenue entries is made in the defendant vide M.R.No. 7/1997-98 and defendant is the absolute owner of the said property. It is contended that plaintiff is not in actual possession & enjoyment of the suit schedule property. The plaintiff without cause of action has filed this false suit. It is stated that as on the date of filing this suit the plaintiff is not in possession of the suit schedule property, hence interference by defendant does not arise at all. No cause of action to file the suit. If the TI is granted this defendant 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. The counsel for defendant also filed written note 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...

:- REASONS :-

7. Point No.1:- It is the specific contention of the plaintiff that suit schedule property was acquired by in the family partition and subsequently revenue entries was made in the name of plaintiff. He is in possession & enjoyment of the suit schedule property as absolute owner and he has cultivated coffee plant. Now, the defendant without right is interfering in is peaceful possession and enjoyment of the suit schedule property. Hence, plaintiff filed the present suit for permanent injunction against the defendant restraining him 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 defendant that he is the owner of the property in Sy.No. 78/6 (Old Sy.No. 78/5), same was acquired by him in the family partition. Thereafter revenue entries were made in his name and he is in peaceful possession & enjoyment of the said property as absolute owner. It is contended that plaintiff is not in actual possession & enjoyment of the suit schedule property. The

plaintiff has filed false suit based on false documents. Hence prays to dismiss the interim application with cost.

9. Considering the pleading and documents on record. The plaintiff in support of his case he has produced, RTC, mutation extracts, Tax paid receipt, Tax Ledger Extract, complaint acknowledgment, photos & CD, Atlas Map, Hadubast Sketch, Appeal Copy.

10. On the contrary the defendant has produced Form No.53, mahazar copies, sketch, notices, proceedings details and revenue report.

11. On perusal of documents produced by plaintiff. It clearly shows that suit schedule property Sy. No. 78/3 was acquired by the plaintiff in the family partition. The revenue entries pertaining to said land has been made in the name of plaintiff vide M.R.No. 54/1982-83 and plaintiff name reflects in the mutation & RTC extract. On the other hand defendant has not produced any documents to establish that plaintiff is not in possession of the suit schedule property. On the other hand plaintiff has produced, revenue

records & tax paid receipt to show the possession of the land. To show the boundary Atlas sketch is produced. According to Section 133 of Karnataka Land Revenue Act there is a presumption in regard to the entries subject to rebuttal. A presumption of truth attached to the revenue records can be rebutted only on the basis of evidence of impeccable integrity and reliability.

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 in possession of the suit property. And the present suit is filed by the plaintiff for permanent injunction against the defendant and plaintiff has to prove his possession and alleged interference caused by the defendant 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 tress pass the suit property and damage the boundary stone and obstruct 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 defendant. No hardship and injuries would be caused to the defendant 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 & interfering with the plaintiff peaceful possession & enjoyment of the suit schedule property and causing damage to the coffee plants & trees 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 17th Day of January 2023)

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