

IN THE COURT OF THE CIVIL JUDGE & JMFC.,

BYADGI

Dated this the 18th day of July, 2019

Present

Sri. Rajesh.N.Hosamane., B.Sc.ML.

Civil Judge & JMFC

Byadgi

OS.No.142/2018

Plaintiff: Smt.Sharifabi D/o. Fakrusab Hittalamani, Age: 50 years, Occ: Agri & Household Work, R/o: Byadgi, Tq: Byadgi, Dist: Haveri.

- Vs. -

Defendants: 1) Smt.Lata W/o. Annappa Eli, Age: 50 years, Occ: Agri & Household work, R/o: Nehru Nagar, Byadgi and others.

I.A.No.9

Applicant Smt.Sharifabi D/o. Fakrusab
(Plaintiff) Hittalamani, Age: 50 years, Occ:
Agri & Household Work, R/o:
Byadgi, Tq: Byadgi, Dist: Haveri.

- Vs. -

Opponent 1) Smt.Lata W/o. Annappa Eli, Age:
(Defendants) 50 years, Occ: Agri & Household
Work, R/o: Nehru Nagar, Byadgi
and others.

ORDER ON I.A.No.9 FILED U/Sec.151 OF CPC

This is an application filed by the plaintiff for directing the Byadgi Police to give necessary aid in the enforcement of temporary injunction order Dated 07.09.2018.

2. The counsel for defendants filed objections to IA.No.9 and contended that, the application filed by the plaintiff is false, frivolous and not maintainable in the eye of law and on facts.

3. On the basis of application and objections, the following points arise for my consideration:

POINTS

1) *Whether the I.A.No.9 filed U/Sec. 151 of CPC by the plaintiff is deserves to be allowed at this stage?*

2) *What order?*

4. Heard both sides and perused the materials available on record. My answers to the above points are as under:

Point No.1 : In the Negative

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

REASONS

5. Point No.1: It is submitted by plaintiff in his affidavit filed along with IA.No.9 that, she is owner in possession of RS.No.74/4. The suit way is laid towards Northern side bund of defendant's property bearing RS.No.74/1+2+3/A1 and RS.No.74/1+2+3/A2 and

continued towards the Eastern side lands belongs to the same survey number. The defendants are obstructing the plaintiff to use and enjoy suit way in order to spoil and cause damage to her crops. Therefore, she filed the present suit for permanent injunction and also filed interim application for seeking exparte temporary injunction restraining the defendants from causing obstruction to the suit way. Accordingly on 07.09.2018, the Court has granted exparte temporary injunction and same is continued till today.

6. It is further submitted by the plaintiff that, on 02.12.2018, when the plaintiff is going to her land through the suit way, the defendants were put their Motor bikes across the suit way and prevented plaintiff to access through the suit way by disobeying the injunction order of this Court. The defendants belongs to majority community and politically influential persons. Therefore, in order to stop the inadvertent acts of defendants she approached Byadgi Police for protection, but due to the influence of defendants, the Police have not taken any action against the defendants. Therefore, she filed the present

application to direct the Byadgi Police to give aid in the enforcement of temporary injunction order dated 07.09.2018. Hence prayed to allow the application.

7. The counsel for defendants in their application denied the averments of IA.No.9 and affidavit. He further submitted that, there is no suit way as alleged by plaintiff and it is never existed in the land of defendants. The plaintiff never used any suit way to reach her land. When there is no suit way how can the defendants obstruct the plaintiff in using the said way. Plaintiff never approached Byadgi Police since there is no question of disobedience of the order of this Court. Even if, the defendants have disobeyed the order of the Court, the plaintiff can very well file an application U/Order 39 Rule 2A and get the remedy there only. Therefore, the present application filed by the plaintiff is not tenable. Hence, prayed to dismiss the application with costs.

8. The counsel for defendants argued that, the Court cannot provide Police Aid for enforcing the exparte temporary injunction order. He relied his argument on the decisions reported in:

(2016) 2 KCCR 1632
H.C.NARAYANA REDDY AND OTHERS
V/s

G.PRASAD REDDY AND OTHERS

On the basis of the exparte injunction order, the trial Court also considered the application and ordered for police protection to the plaintiff. Unless and until the defendants file their objection statement to the said application and unless and until the application is heard and disposed off on merits, the question of allowing the application and providing the police protection does not arise at all. So far as other merits of the case is concerned, as the application is to be heard by the trial Court and it has to be disposed of on merits, which is pending before the trial Court, this Court is not going to touch the merits of the case.

ILR (Kerala) 137
SADANANDA BAI
V/s
C.M.RAVI AND OTHRERS

15. A question arises whether the assistance of the police can be requested for to enforce an ad interim order of injunction. It has to be made clear that, such an order is only an ex-parte order passed by the court on satisfaction that the purpose of the injunction order would be defeated in the notice is directed to be issued to the opposite party. The position is different in the case of a final order passed in an injunction petition. As observed by Viswanatha Iyer,

J., in George Mirante's case (supra) it would be premature and dangerous to enforce the ex parte order of injunction when its continuance is opposed. Such orders are issued on the basis of the averments contained in the plaint and affidavit of the Plaintiff. The true picture emerges only after hearing both sides. It is for these reasons that were held that it is imperative that police should not be allowed to intervene or interfere at this stage in matters of possession which entail civil disputes, especially when the matter is one at the interlocutory stage of proceedings. I am in respectful agreement with the views expressed by Viswanatha Iyer, J., and hold that the court shall not interfere in the matter of an interim ex-parte order with a direction for police aid. Only a final order passed Under Rule 1 or Rule 2 of Order 39 can be enforced with the assistance of the police.

9. The counsel for plaintiff has relied his arguments on the basis of the decisions reported in

ILR 2010 Kar 1197
Smt. Karisiddamma And Others
V/s
Smt. Sanna Kenchamma

Section 151 CPC- Grant of Police Aid for implementation of injunction order-in-the light of granting 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 the party, who violates the temporary injunction order.

10. I have gone through the above said decisions cited by both the counsels. Both the counsels have produced citations in support of their respective cases. The decisions reported in 2016(2) KCCR 1632 is applicable to the case on hand. It is clearly observed in the above noted case that, unless and until, the defendants file their objections statement to the said application and unless and until the application is heard and disposed off on merits, the question of allowing the application and providing the police protection does not arise at all.

It is contention of the counsel for plaintiffs that, the defendants have parked their motor bikes on the suit way and obstructing the plaintiff. On the other hand the counsel for defendants contended that, there is no existence of suit way and therefore, the question of providing police aid does not arise. On perusal of affidavit filed in support of IA.No.9 that, the defendants have not at

all stopped the plaintiff by closing the road or by putting permanent structure on the road. They have parked motor bikes and vehicles on the road. Which is a common thing. The defendants may have come to their lands on motor cycles, so they have parked them on the road. But the defendants have not obstructed the defendant by totally closing the road. Only thing that, the defendants have put motor bikes on the road and hence, it cannot be said that, they are disobeying the order of temporary injunction. Moreover, the defendants have also filed their objections to application U/Order .151 of CPC. The Court can hear both sides and pass final order on the said application. Moreover, the plaintiff has not made out any grounds in her affidavit that, the defendants have obstructing her and disobeyed the temporary injunction order of the Court. Hence, I answer point No.1 in the negative.

11. Point No. 2: On the basis of discussion and observation made on point No.1 and the reasons assigned therein I proceed to pass following

ORDER

The application ie., I.A.No.9, filed U/Sec. 151 of CPC by the plaintiff for providing Police Aid for enforcement of temporary injunction order is hereby dismissed.

(Dictated to the Stenographer, transcription typed by her, revised and corrected by me, signed and then pronounced in the open Court on this 18th day of July, 2019)

**Civil Judge & JMFC.,
Byadgi.**