

IN THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT HANGAL

Present: Smt.Fakirawwa Kelageri B.A.,LL.B.,
Civil Judge and JMFC., Hangal.

O.S No.312/2018
Dated this the 4th day of February, 2020

Plaintiff : Mohammed Jafar S/o Abdulganisab Mulla
Age: 56 years, Occ: Agriculturist, R/o
Adur, Tq: Hangal, Dist: Haveri.

(By Sri.M.M.Uppin, Advocate)

- Versus -

Defendant : Chamansab Abdulganisab Mulla, Age: 71
years, Occ: Agriculturist, R/o Adur, Tq:
Hangal, Dist: Haveri.

(By Sri.M.S.Hullur, Advocate)

PARTIES IN I.A. No.I

Applicant/
Plaintiff : Mohammed Jafar S/o Abdulganisab Mulla.

- Versus -

Opponent/
Deft. : Chamansab Abdulganisab Mulla.

ORDER ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 & 2
OF C.P.C.

The plaintiff has filed this application seeking the relief of temporary injunction restraining the defendant, his agents,

attorneys, servants or anybody on their behalf from interfering the possession and enjoyment of plaintiff to suit schedule properties, till final disposal of the suit on merits.

2. The applicant/plaintiff has sworn to an affidavit in support of his application the applicant has stated that, the suit properties bearing GP No.497/1 red tiled house and open site situated within the limits of Hangal taluk measuring East-West: 89 feet, North-South: 36 feet in total 3204 Sq.ft., and suit schedule B property GP No.497/A/1 Zink sheet shed and open site measuring East-West: 100 feet, North-South: 54.45 feet in total 5445 Sq.ft., are ancestral properties of plaintiff and defendant. After the demise of father of plaintiff, the partition was effected in the year 2002 and the suit properties were fallen to the share of defendant. The defendant managing the affairs of the family and out of love and affection the suit properties were orally gifted in favour of plaintiff on 17-09-2007 and the defendant has voluntarily filed vardi to the concerned Gram Panchayat, Adur to enter the name of plaintiff and accordingly as per resolution No.8 dated 13-12-2007 and resolution No.3 dated 11-08-2008 the name of plaintiff was entered as per the gift the defendant has divested his supervision dominion over the suit properties and hence he become the absolute owner of the suit schedule properties.

3. Further defendant stated that, he being the absolute owner of the suit schedule properties and same are in his actual

possession and enjoyment. Further the defendant has filed the suit for declaration and consequential relief of injunction before this court in OS No.131/2011, the said suit was transferred to Hon'ble Prl. Senior Civil Judge Court and renumbered as OS No.67/2018, after full fledged trial the Hon'ble Senior Civil Judge dismissed the suit on 06-07-2018 on the ground that, the defendant is not the owner of the suit schedule properties. Further in the said suit the defendant pleads that the suit properties were temporarily gifted to him and the said suit bearing OS No.131/2011 was long standing proceedings and came to be ended in the month of July 2018. The defendant without challenging the said judgment and decree with the help of his sons who are physically and financially strong started obstructing the peaceful possession with the assertion that the suit schedule properties are belongs to their ownership and obstructing his possession. Further the defendant with the help of his sons demolished/dismantled the suit schedule B property on 14-12-2018, for that the plaintiff lodged the complaint before the Adur police station, as the defendant being the highly influenced person managed the Adur police not to register the case against him. Further he has made out prima facie case against the defendant and balance of convenience is also in his favour and if the Ad-interim injunction is not granted the irreparable loss will be caused to him. Hence the plaintiff prays to grant temporary injunction till disposal of the suit.

4. On the other hand the defendant though appeared before this court through his counsel, he has filed his written statement, but not filed any objection to the present application.

5. Heard the arguments and perused the entire materials available on records.

6. Now the points that arise for my consideration are as follows:

- 1) *Whether the plaintiff has made out prima-facie case?*
- 2) *Whether the balance of convenience lies in favour of plaintiff?*
- 3) *Whether the irreparable loss will be caused to the plaintiff, if the T.I is refused?*
- 4) *What order?*

7. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per the final order
for the following:

REASONS:

8. **Point No.1 to 4** : In order to avoid repetition of facts, I have taken these points together for common discussion. I have

perused the plaint averments and the documents produced in this case.

9. On proper appreciation of pleadings of couple parties and documents, it is not in dispute that plaintiff and defendant are sons of Abdulganisab Mulla.

10. It is his specific contention of the plaintiff is suit properties are ancestral properties of plaintiff and defendant. After the death his father, the partition was effected and the suit properties were fallen to the share of defendant. Out of love and affection, the defendant orally gifted the suit properties in favour of plaintiff on 17-09-2007 and the defendant has voluntarily filed vardi to the concerned Gram Panchayat, Adur to enter the name of plaintiff and accordingly the name of plaintiff was entered to suit properties.

11. In order to prima facie case, the plaintiff has produced tax assessment registers pertains to bearing VPC No.497/1, 497/A1 situated at Adur village, certified copy of decree in OS No.67/2018(old No.131/2011) and 4 photo copies but produced CD.

12. In present suit the defendant has filed written statement. The defendant is the absolute owner and in possession and enjoyment of suit property. Till today there is no petition has taken place between plaintiff and defendant and they are tenant

in common. Further contented that in OS No.67/2018, the defendant has not proved that as per the oral gift being reduced in writing on 09/08/2008 in presence of witness by the defendant in favour of the plaintiff said plaintiff has become absolute owner and is in possession of suit properties and the Hon'ble Appellant Court has answered on this point in negative. Therefore, the plaintiff is not absolute owner and is in possession of suit properties.

13. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. At this stage, this court makes it very clear that, this court is looking towards prima facie case and not prima facie title. It is well settled principles of law that at the time of disposing the temporary injunction application, the court cannot go into the prima facie title and only to consider whether the plaintiff has made out a prima facie case for interim relief.

14. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused, and injury and prejudice

likely to be caused to the defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status-quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief of granted in favour of party to prevail future possible injury.

15. The power to grant temporary injunction is at the discretion of the court, this discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

16. The first rule is that, the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that, there is a bonafied dispute raised by the applicant, that there is a strong case for trial which needs investigation and decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precede for a grant of temporary injunction.

17. In order to ascertain the prima facie case, this court has carefully perused the documents produced by the plaintiff. On perusal of tax assessment register in respect of VPC No.497/1 and 497/A1, it could be seen that, name of plaintiff has been

entered to owners column and prima-facie shows that, the plaintiff is in possession and enjoyment of suit property.

18. As per case of plaintiff, the defendant is trying to interfere with the peaceful possession and enjoyment of suit property. Considering above said fact, in case ad-interim injunction is granted no hardship and injury would be caused to other side. Purpose for granting temporary injunction is to preserve property till rights of the parties in suit decided. In view of all these facts, it can be held that, at this stage, the plaintiff has made out prima facie case. On considering this aspect, at this stage it can be held that, the plaintiff has proved balance of convenience lies in his favour. Further it is established by plaintiff in case ad-interim injunction as prayed by him is not granted, he will be put to hardship and injury on the other hand no hardship and injury would be caused to defendant. Hence, I points No.1 to 3 in the Affirmative.

19. **Point No.4:** In view of the discussions, this Court proceeds to pass the following:

ORDER

*I.A.No.1 filed by the plaintiff U/O 39 Rule 1
and 2 of CPC is hereby allowed.*

*The defendant, his agents, attorneys,
servants or anybody on his behalf are restrained*

from interfering the possession and enjoyment of plaintiff to suit schedule properties till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on Computer, corrected and then pronounced by me, in the open Court on this the 4th day of February, 2020).

(Smt.Fakirawwa Kelageri)
Civil Judge & JMFC., Hangal.