

KAHV310008432018



Presented on : 05-10-2018
Registered on : 05-10-2018
Decided on : --
Duration :

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL**

**PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Civil Judge & J.M.F.C.,
Hangal.**

O.S.No.235 of 2018

DATED THIS THE 30th DAY OF JUNE 2022

Plaintiffs : 1. Sri. Yallappa S/o Shivappa Mugdur

(By Sri.R.S.Talawar – Adv.)

V/s.

Defendants : 1. Sri. Prakash S/o Beerappa Hanaknalli

(By Sri. G.S.Kurubar – Adv.)

PARTIES TO I.A.No.I

**Applicants/
Plaintiffs**

:1. Sri. Yallappa S/o Shivappa Mugdur
Age: 60 years, Occ: Agriculturist,
R/o: Ramapur village, Tq: Hangal.

- V/s -

Opponents/

Defendants: 1. Sri. Prakash S/o Beerappa Hanaknalli
Age: 28 years, Occ: Cooli,
R/o: Ramapur village, Tq: Hangal.

**(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.**

**ORDERS ON I.A.No.I FILED UNDER ORDER XXXIX
RULE 1 AND 2 OF C.P.C**

The applicant/plaintiff No.1 has filed this application U/o XXXIX Rule 1 & 2 of C.P.C., by seeking to restrain the defendants, their agents, servants or anybody acting under them from interfering with peaceful possession and enjoyment of the suit schedule property till the disposal of suit by way of ad-interim temporary injunction.

2. In response to suit summons, the defendants had appeared through their counsel and among them, the defendant No.2 has filed written statement and same has been adopted by rest of the defendants though a memo dated 6-1-2020.

3. I have heard the arguments of counsel for the plaintiff and the defendants and perused the materials made available on record at this stage.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

- 1. Whether the applicant has made out prima faice case?**
- 2. Whether balance of convenience is lies in favour of the plaintiffs?**
- 3. Whether irreparable loss will be caused to the plaintiffs if injUNCTION is refused?**
- 4. What order?**

5. The findings of this court on aforesaid 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 final order for following:-

REASONS

6. **Points No.1 to 3:-** All these points are taken together for common discussions to avoid repetition of facts. The applicant/plaintiff No.1 in the affidavit annexed to the application by reiterating similar facts pleaded in the plaint has specifically deposed to the effect that, he is the

husband of the plaintiff No.2 and the defendant No.2 is mother of the defendant No.1 and 3 and they have been permanently residing at Ramapura Village of Hangal Taluk. It is further deposed that, the suit schedule property originally Government or Gramatana property and the plaintiffs have been residing thereon from past 30 years constructing red tiled house thereon and there exist house of the defendants towards western direction of the suit schedule property in which they have been residing. The defendants property is also belongs to the Government. It is further contended by the applicant that, he has left some portion as backyard to store fire wood, agricultural implements, and using as cattle shed for more than 30 years. Though the property in GPC No.45/A stands in the name of himself and property in GPC No. 45/A1 stands in the name of the plaintiff No.2, however, both properties are united together and one and the same. The suit schedule properties are in actual possession and enjoyment of the plaintiffs. It is further deposed that, names of the plaintiffs find a place in the occupants column in the property extract in respect to suit schedule property and similarly, in the ownership column, name of the Gramatana has been find a place. Moreover, there is an existence of 6 feet open space which bifurcate the properties of the plaintiffs and the defendants and same has been enjoying by the

plaintiffs which runs south to north. Such being the facts, the defendants having no manner of right and interest over the said 6 feet open space, had with the help of some people started to dig and excavate the suit house of which wall is in a dilapidated condition and also the defendants are causing obstruction to repair the said wall. Despite request of the plaintiffs and even to the advice of the elders of the panchayat, the defendants had not heeded to their words and continued to interfere in peaceful possession and enjoyment of the suit schedule property which constrained the plaintiffs to file this suit along with present application. On said grounds, it is prayed to allow the application.

7. As stated earlier, the defendant No.2 has filed written statement and same has been adopted by the defendant No. 1 and 3, wherein they denied entire case of the plaintiffs in toto in respect to facts that suit of the plaintiffs is not maintainable and hand sketch relied by them is against the actual state of affairs of the suit schedule property and they have not all in possession of the property with in the description narrated thereon. It is further asserted that the Grama Panchayat has never ever issued titled deed in respect to suit schedule properties in favour of the plaintiffs and thereby specifically contended

that there is no reasons to allot the two properties to a single family. It is further denied that there is existence of 6 feet space running towards to south to north to divide the plaintiffs and the defendants properties to which the defendants have been causing interference in peaceful possession and enjoyment of the same.

8. In addition to afore said assertions and denials, the defendants in their additional objections have independently asserted that, the plaintiff No.1 basically resident of Savikeri Village and his wife, the plaintiff No. 2 is the resident of Ramapura Village and their marriage solemnized about 20 years ago and subsequently, the plaintiff No.1 has been residing along with his wife in her Ramapura Village. As a result of driven out the plaintiff No.1 from his wife's house due to his frequent quarrel with her, he has requested the defendant No.2 to permit him to reside in the cattle shed house situated abutting to the property in V.P.C.No.3 belongs to the defendant No.2 and accordingly, the plaintiffs have occupied said cattle shed house on the basis of license only for the period of some days. It is mainly contended that, the description of the suit schedule property asserted by the plaintiff is actually pertains to the property in V.P.C.No.3 belonging to the defendant No.2 and same is bounded east by Government

School and compound wall, west by property of Sri. Husensaba Dyamanakoppa, north by Government road, and south by land of Sri. Gurulingappa Puttappa Nimbannanavar. The suit schedule property asserted by the plaintiff is not all in existence and there are no documents to prove the existence of the suit schedule property. The defendants have been in possession and enjoyment of the suit schedule property asserted by the plaintiffs from past 40 to 45 years and the plaintiffs being men of money and political power have filed false suit in order to grab the suit schedule property. On aforesaid grounds, it is prayed to dismiss the application with costs.

9. I have perused the application, its accompanying affidavit, pleadings of the both sides and including materials available on record at this stage. The plaintiffs have filed the present suit against the defendants for the relief of permanent injunction. Along with the suit, the plaintiff No.1 has maintained instant application under order 39 Rule 1 and 2 of C.P.C., seeking to restrain the defendants or anybody acting under them from interfering in peaceful possession and enjoyment of the suit schedule properties by way of ad-interim temporary injunction.

10. It is settled law that the grant of temporary injunction is of discretionary and equatable relief and same shall be granted only when the applicant has able to establish prima facie case, balance of convenience as well as irreparable loss and injury caused to the applicant if the injunction is refused. It is equally settled principle of law that, the applicant need not to establish that he has every chance of success in the suit. What is to be proved that, the applicant has arguable case to go on for trial.

11. Bearing in mind said settled principles of law regarding temporary injunction, it is necessary to analyze facts and circumstances involved in the suit. It is specific contention of the plaintiffs that the suit schedule property originally Grama Panchayat property in which they have constructed red tiled house and residing thereon from past 30 years. Moreover, property in V.P.C.NO. 45/A and 45/A1 separately standing in the name of the plaintiff No.1 and 2 respectively and both are one and same properties, however the concerned Grama Panchayat has given two separate numbers. It is further case of the plaintiffs that, there exist 6 feet vacant space belongs to the plaintiffs which separates their and defendants property is in possession and enjoyment of the plaintiffs to which the defendants alleged had started to dig and excavating the house of the

plaintiff and thereby interfering in peaceful possession. On the other hand, the defendants have mainly contended the suit schedule properties in VPC No's. 45/A and 45/A1 not all in existence within the descriptions narrated in the suit schedule and thereby contended that the descriptions of the suit schedule property actually pertains to defendant No.2 property in V.P.C.No.3. It is another core defense of the defendants that the plaintiffs in order to knock of the suit schedule property said to have filed false suit with wrong descriptions.

12. In the contest of said assertions and denials, on perusal of the plaint, written statement and relief claimed in the instant application, it is clearly and apparently forthcoming that the plaintiff has sought to restrain the defendants from interfering in peaceful possession and enjoyment of the suit schedule property. To prove prima faice case, the plaintiffs have relied on several documents filed along with list dated 11-1-2022 in the form of sketch prepared and issued by the PDO of Aladakatti Grama Panchayat which contain the descriptions of the suit schedule properties including the defendants property in V.P.C.No. 3 of Ramapura Village and photographs and compact disc. The defendants have also produced true copies of tax assessment extracts and Panchayat resolution.

13. It is pertinent to refer to the contents of the sketch prepared and issued by the P.D.O of Aladakatti Grama Panchayat in respect to suit schedule properties bearing V.P.C.No's. 45/A and 45/A1. In the said sketch which depicts and disclose the descriptions of the suit schedule properties. The said description certificate, towards western direction of the suit schedule properties there situate property belongs to the defendants No.2 abutting to V.P.C No. 45/A which standing in the name of the plaintiff No.1. In the rough sketch in respect to V.P.C.No.45/A1, towards western direction there showed to exist the property of the plaintiff No.1 which is V.P.C.No.45/A. Both the sketch explains the description of the suit schedule properties substantiate the facts that both V.P.C.No. 45/A and 45/A1 are situated abutting to each other and also prima faice establish the facts regarding existence of V.P.C.No.3 belongs to the defendant No. 2 towards western direction of the suit schedule properties. Per contra, the defendants in their written statement and including in the hand sketch asserted as to non existence of suit schedule properties in V.P.C. No's 45/A and 45/A1 within the descriptions annexed to the plaint suit schedule and thereby asserted that the description of the suit schedule property is actually pertains to the V.P.C.No.3 belongs to the

defendant No.2. On categorical consideration of hand rough sketch relied by the defendants indicates the fact that they have shown the existence of the suit schedule properties bearing V.P.C. No's 45/A and 45/A1 at some other place contrary to the description of the suit schedule properties and as against rough hand sketch relied by the plaintiffs. However, to substantiate state of affairs and actual location of the suit schedule properties in term of rough hand sketch produced by the defendants along with the documents annexed to the list dated 16-4-2021, there is no corroborative documents at this stage to believe the same. The defendants would have approached the P.D.O of Aladakatti Grama Panchayat to issue and secure description certificates one that obtained by the plaintiffs to establish their contentions as to non existence of the suit schedule properties with in the descriptions narrated in the plaint schedule. There is no prima faice documents except rough hand sketch produced by the defendants to believe at this pretrial stage that V.P.C.No.3 belongs to the defendant No.2 is situated and located within the descriptions of the plaint schedule property. On the other hand, the descriptions certificates produced by the plaintiffs as per documents No. 1 to 3 annexed to the list with documents dated 11-1-2002 clearly and prima faice evident the existence of the suit schedule properties with in

the descriptions of plaint schedule and also falsify the hand sketch of the defendants. The defendants have not challenged the documents No. 1 to 3 which are nothing but descriptions certificate pertains to suit schedule properties and defendant No.2 property in V.P.C.No.3. If at all the suit schedule properties are really located in terms of the rough hand sketch relied by the defendants, the P.D.O of the Aladakatti Gama Panchayat does not show the existence of V.P.C.No.3 towards western direction of the suit schedule property.

14. In addition, on perusal of the photographs produced by the plaintiffs clearly reveals that the defendants have putting up construction over disputed property and already constructed to an extent of plinth. When the existence and non existence of the suit schedule properties is under serious dispute and as the plaintiffs have produced prima faice documents at this state to entertain the facts that the suit schedule property is in existence, the suit schedule property shall be preserved as it is till the disposal of the suit. Unless and until the contention and defense of the defendants are proved and established through cogent oral and documentary evidence during the trial and merits of the case, their case that the suit schedule properties not at all in existence within the

descriptions of the suit schedule can not be believed. The materials and documents relied by the plaintiff at this stage establish their prima facie case to on for trial and balance of convenience tilt in their favour. Moreover, irreparable loss or injury would results to them if temporary injunction is refused and very purpose of file the suit would be defeated. Accordingly, the point No. 1 to 3 are answered in the affirmative.

15. **Point No.4:-** In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

***I.A.No.I filed by the plaintiff
No.1 U/o XXXIX Rule 1 & 2 of
C.P.C., is hereby allowed.***

***Consequently, the defendants,
their agents, servants, or
anybody acting under them are
hereby restrained from
interfering in peaceful
possession and enjoyment of the
suit schedule properties till
disposal of the suit.***

No order as to costs.

(Dictated to Stenographer, directly typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 30th day of June – 2022)

(JANARDHANA S.K)
Civil Judge and JMFC.,
Hangal.

(Order pronounced in Open court as
under vide separate Order):

:O R D E R:

***I.A.No.I filed by the plaintiff
U/o XXXIX Rule 1 & 2 of C.P.C., is
hereby dismissed.***

No order as to costs.

***For appearance of parties
and compliance of section 89 of
CPC call on 03-03-2022.***

***Civil Judge and JMFC.,
Hangal.***