

**IN THE COURT OF III ADDL.SR.CIVIL JUDGE & J.M.F.C., AT
RANEBENNUR****PRESENT**

Sri.Saravanan.S.
B.B.M., LL.B.,
III Addl. Senior Civil Judge and J.M.F.C.,
Ranebennur, D.K.

DATED THIS 20TH DAY OF APRIL 2018.**O.S.NO.178/2018****(OLD NO.133/2010)**

PLAINTIFFS/APPLICANTS: - Nagappa S/o Yallappa Katenahalli,
 and others.

(By Sri.B.B.Talawar,Advocate)

-V/S-

OPPONENT/DEFENDANT :- 1. Chikappa Tirakappa Motebennur
 (since dead by his Lrs).

1(a) Smt.Nagavva W/o chikkappa
 Motebennur. And others.

(By Sri.M.M.Karur, Adv for D1(a) to (h))

(By Sri.S.L.Patil, Adv for D2,7 & 8 & 10)
 (D9 Dead)

(D3 to 6 Dismissed)

(By Sri.P.R.Hittalamani, Adv for D11 & 12)

:: COMMON ORDERS ::**ON I.A.NO.VII AND VIII FILED BY THE APPLICANT/PLAINTIFFS
U/O.39 RULE 1 & 2 OF C.P.C.**

This is an I.A.No.VII and VIII filed by the
 Applicant/Plaintiffs U/O.39 Rule 1 and 2 of CPC to restrain the

defendants NO.11 and 12 /respondents from alienating or transferring or creating any third party right in respect of the suit B schedule property pending disposal of the suit, In the IA VIII it is prayed that, to restrain the defendants NO.11 and 12 /respondents, their men, heirs, servants or any one claiming under them from trespassing, interfering and disturbing the peaceful possession and enjoyment of the petitioner over the petition 'B' schedule property in any manner pending disposal of the above suit.

2. This is a suit for declaration injunction in respect of the suit property, it is stated in the accompanying affidavit, that the plaintiffs as absolute owners in possession of the landed properties comprised in S.No. 182/4/measuring 3.21 acres, in S.No.182/2 measuring 3.21 acres respectively situated at kajjari village, Ranebennur taluk as detailed in the petition 'B' schedule.

3. The defendant No.11 and 12 in whose name the aforementioned suit B schedule properties are presently standing, as they are making all the efforts to alienate the same by taking advantage of the name entered in the revenue records pertains to the above two items of properties to third parties to deprive the right of the plaintiffs from claiming their title and protection against the defendants. Therefore, they prayed to

restrain them from alienating ,creating third party right over the suit b schedule property till disposal of the suit.

4. It is also sworn in the affidavit annexed to the IA VIII that,they sought for the relief of declaration and permanent injunction against the defendant NO.1 to 10. that the defendants NO.2 to 10 by colluding each other,even after they got the knowledge of the pending of the suit , they have sold the suit B schedule property to the defendants NO.11and 12 to deprive the plaintiffs from claiming thier right over the suit properties. That based on such illegal sale deeds,they came to the suit properties and the defendant NO.11 and 12 have tried to disposses the plaintiffs from the suit properties with the aid of goonda elements.However,they managed to retain thier possession.Since the properties in questio are transferred pendente lite,it is hit under section 52 of Transfer of Properties Act under the Doctrine of lis pendency. The suit item NO.2 and 4 of the B schedule have been purchased by the defendant nO.1 and 12 through registered sale deeds, as the plaintiffs are in actual possession of the suit properteis as on today,they prayed to restrain the defendants NO.11 and 12 and their men from causing such obstruction and illegal dispossession from the suit properties by way of temporary

injunction.

5. He further contended that, there is an imminent danger to the petition 'B' schedule property in the hands of respondents. Further if the respondents are allowed to continue their illegal acts, they will not hesitate to take law into their hands. He stated that there is an imminent threat by the respondents. Hence there is a danger to his legal right as well as to his property in the hands of the respondents. Hence a speedy remedy is required. Hence this application under order XXXIX Rule 1 and 2 and Sec. 151 CPC is filed for an ad-interim exparte temporary injunction order.

6. They further contended that, they have made out a prima facie case and balance of convenience is in his favour. If injunction is granted in thier favour no hardship will cause to the respondents. On the other hand if injunction is refused the will suffer heavy loss and hardships.

7. On the other hand, the learned counsels for the defendants have not filed objection to the I.A.No.VII and VIII,

8. Heard on both sides.

9. Now the points that will arise for my consideration are:-

- 1) Whether the Applicant/Plaintiffs has got a prima-facie case?

- 2) Whether the balance of convenience lies in favour of the Plaintiffs?
- 3) Whether the Plaintiffs suffers irreparable loss and injury if the Temporary Injunction is refused?
- 4) What Order?

10. My answers to the above points are:-

Point No.1 :- In the affirmative
Point No.2 :- In the affirmative
Point No.3 :- In the affirmative
Point No.4 :- As per my final order

Below for the following: -

:: R E A S O N S ::

11. **POINTS NO.1 :-** Before going to discuss on the merit of the application filed by the Petitioner, it is to bear in mind the concept of word prima facie case. Here, it is per the dictum of the Hon'ble Apex Court, that, is **Prima facie case**; The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs Investigation and a decision on merits and on the facts before the Court there is a probability of the applicant being entitled to the relief Claimed by them.

12. In this case, I have completely gone through the entire suit file. This is the suit filed by the Applicant/Plaintiffs for the

relief of This is a suit for the declaration and for consequential injunction in respect of the suit property. The evidence on both side has commenced, at this stage, the present applications are filed by the petitioners/plaintiffs.

13. The contention taken by the petitioner/plaintiff That the properties inherited from one Phakkiramma by virtue of inheritance, since the said Phakkiramma was the original owner and was in possession of the suit B schedule properties, thereafter, due to her demise, the plaintiffs being her Legal heirs have inherited the same. The suit property was bearing original S.No.182 of Kajjari village, later on it was divided into 8 phodis and separate phodi numbers have been allotted. That the defendants NO. 1 to 10 knowing these facts, in spite of the knowledge of the actual possession and enjoyment of these Item NO.2 and 4 of the suit B schedule along with the other properties which are mentioned in the suit B schedule, they come to the suit properties and tried to dispossess the plaintiffs as they said to have purchased the suit schedule aforementioned item properties which bears the Syno. 182/2 and 182/4.

14. This is a suit for declaration injunction in respect of the suit property, it is stated in the accompanying affidavit, that

the plaintiffs as absolute owners in possession of the landed properties comprised in S.No. 182/4/measuring 3.21 acres, in S.No.182/2 measuring 3.21 acres respectively situated at kajjari village, Ranebennur taluk as detailed in the petition 'B' schedule.

15. The defendant NO.11 and 12 in whose name the aforementioned suit B schedule properties are presently standing, as they are making all the efforts to alienate the same by taking advantage of the name entered in the revenue records pertains to the above two item of properties to third parties to deprive the right of the plaintiffs from claiming their title and protection against the defendants. Therefore, they prayed to restrain them from alienating ,creating third party right over the suit b schedule property till disposal of the suit.

16. It is also sworn in the affidavit annexed to the IA VIII that,they sought for the relief of declaration and permanent injunction against the defendant NO.1 to 10. that the defendants NO.2 to 10 by colluding each other,even after they got the knowledge of the pending of the suit , they have sold the suit B schedule property to the defendants NO.11 and 12 to deprive the plaintiffs from claiming their right over the suit properties. That based on such illegal sale deeds,they came to the suit properties and the defendant NO.11 and 12 have tried to disposses the

plaintiffs from the suit properties with the aid of goonda elements. However, they managed to retain their possession. Since the properties in question are transferred pendente lite, it is hit under section 52 of Transfer of Properties Act under the Doctrine of lis pendency. The suit item NO.2 and 4 of the B schedule have been purchased by the defendant NO.1 and 12 through registered sale deeds, as the plaintiffs are in actual possession of the suit properties as on today, they prayed to restrain the defendants NO.11 and 12 and their men from causing such obstruction and illegal dispossession from the suit properties by way of temporary injunction.

17. they further contended that, there is an imminent danger to the petition 'B' schedule property in the hands of respondents. Further if the respondents are allowed to continue their illegal acts, they will not hesitate to take law into their hands. He stated that there is an imminent threat by the respondents. Hence there is a danger to his legal right as well as to his property in the hands of the respondents. Hence a speedy remedy is required. Hence this application under order XXXIX Rule 1 and 2 and Sec. 151 CPC is filed for an ad-interim ex parte temporary injunction order.

18. They further contended that, they have made out a

prima facie case and balance of convenience is in his favour. If injunction is granted in thier favour no hardship will cause to the respondents. On the other hand if injunction is refused the will suffer heavy loss and hardships.

19. If the petitioners have encroached the portion of the Kolchar Government Higher Primary school property by putting up the concrete poles, as shown in the photographs, these facts will have to be determined only through full pledged trial, unless and until the evidence is taken on record on both the sides, these facts cannot be decided at this early stage. Therefore, the documents which placed on record by the Petitioners are prima facie proves their case that they are in peaceful possession and enjoyment of the suit B schedule property to an extent of 3.Acres 21 guntas and 3 Acres and 21 guntas respectively bearing its Sy nO.182/2 and 182/4 of Kajjari village of Ranebennur taluk. That there are no other materials are available on the respondents side disbelieve these prima facie materials available on record on behalf the petitioners, therefore, in my opinion, that the rival contentions taken by the parties requires trial and in the circumstances. I opine that, the Petitioner has made out strong case that requires trail, and the Petitioner has made out prima facie case, accordingly, I answer this point in the affirmative.

20. **Point NO.2 and 3:-** That to avoid the repetition of facts, these points are taken up together for the discussion. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that, pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, this Court has to exercise its sound judicial discretion in granting refusing the relief of ad interim injunction pending the suit. As per the guidelines of the Hon'ble Apex Court in catena of decisions, generally, before granting the injunction, the court must be satisfied about the following aspects:

“Ubi jus ibi remedium”. Whenever there is right there is remedy.

21. In the light of the result of the point NO. 1, once the Petitioners are able to make out the prima facie case, that another point that requires to be established the balance of convenience and comparative hardship to whom it will cause in the event of grant or refusal of the order of Temporary injunction. In this

respect, As I have gone through the materials placed on record, the Petitioners have placed sufficient documents to show that, they are the owners and in possession of the suit A schedule property, furthermore, that the B schedule lands suit B schedule property to an extent of 3.Acres 21 guntas and 3 Acres and 21 guntas respectively bearing its Sy nO.182/2 and 182/4 of Kajjari village of Ranebennur taluk.No one has better title than the plaintiffs do over the plaint A schedule. The plaintiffs are in the exclusive possession of the plaint A schedule property with right, title and interest.

22. He contended that the defendants have an eye over the plaint A schedule land and they are trying to trespass into plaint B schedule land and attempting to take forcible Possession of the plaint B schedule by hook or crook. The defendants along with their henchmen trespassed in to plaint B schedule land on 08-03-2010 and attempted to further will cause damage which cannot be remedied by any means of pecuniary jurisdiction, their such possession needs to be protected in order to keep the things as it is, otherwise, the things cannot be reversed at the time of adjudication of the matter in controversy between the parties. In the circumstances, keeping the interest of Petitioners' right over the suit property

23. Based on the sound principles laid down by the Hon'ble Apex Court and also placing reliance upon the ratio laid down by our own Hon'ble High court and also That in the given set of facts and circumstances of the case and submission of the learned Counsels for the parties, and also keeping the contentions raised by the respondents in respect of the disputed properties if at all there are some right which has been acquired by the defendants NO.2 to 10 or the present defendants NO.11 and 12 who are the respondents herein, and their such attempt to dispossess the petitioners forcibly under the strength of the alleged sale deeds, that such allegation as to the sale of the suit properties pendente lite as well requires to be investigated. So that, I am of the opinion is that, the balance of convenience lies in favour of the Petitioner and the hardship that will cause to the Petitioner if order of temporary injunction or status quo is refused and also cause irreparable injury which cannot be compensated in terms of money. It is also to be noted that, the respondents did not file objection despite sufficient opportunities given to them to resist these applications. **Accordingly I answer these two points in the affirmative.**

24. **POINT NO.4:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

The I.A.No.VII and VIII filed by the Applicant/Plaintiffs U/O.39 Rule 1 and 2 of CPC are hereby allowed

The Respondents are hereby restrained from causing any sort of interference with the plaintiffs' peaceful possession and enjoyment over the suit B schedule property till disposal of the suit.

It is also further restrained them from transferring, creating third party right over the suit B schedule property bearing its Sy NO.182/2 and 182/4 as described in the plaint B schedule till disposal of the suit.

In circumstances, the parties to bear the cost

(Typed by me directly in the laptop ,corrected by me and then pronounced in the Open Court on this 20th April 2018.)

**(SARAVANAN S.),
III Addl.Sr.Civil Judge,& JMFC
Ranebennur.**

(Order pronounced in the open Court vide separate order)

:: O R D E R ::

The I.A.No.VII and VIII filed by the Applicant/Plaintiffs U/O.39 Rule 1 and 2 of CPC are hereby allowed

The Respondents are hereby restrained from causing any sort of interference with the plaintiffs' peaceful possession and enjoyment over the suit B schedule property still disposal of the suit.

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In circumstances, the parties to bear the cost

**III Addl.Sr.Civil Judge & JMFC
Ranebennur.**