

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO.62/2016

Dated this 15th day of December, 2022

PLAINTIFFS: Pyarijan W/o Moulasab Tahasildar,
Age : 39 years, Occ : Agriculture &
Household work, R/o : Belagavi,
Tq : Belagavi, Dist : Belagavi and others.

Vs

DEFENDANTS: Basasab S/o Akbarsab Doddamani,
Age : 55 years, Occ : Agriculture,
R/o : Govanal, Tq : Savanur,
Dist : Haveri and others.

IA No.VIII

Applicants: Shareefabi W/o Bashyasab Doddamani,
(Defendant No.2)and others.

Vs

Opponents: Pyarijan W/o Moulasab Tahasildar,
(Plaintiffs) and others.

ORDER ON I.A. NO.VIII

The defendant No.2 and 3 have filed IA No.8 under order 39 Rule 1& 2 of Civil Procedure Code, for grant of ad interim temporary injunction against the plaintiffs, restraining them to dig the land Or erection of road Or canals over the suit properties till disposal of the suit.

2. Defendant No.3 Peerasab Bashasab Doddamani has sworn in an affidavit accompanying with IA No.8, wherein he stated that the plaintiffs filed this suit for partition and separate possession. They have filed written statement. During the pendency of this suit the plaintiffs illegally have been trying to dig the portion in suit schedule 2A property on 09.09.2021 by using JCB and laboures. They have resisted the said act of plaintiffs with the help of other. But the plaintiffs were influenced people have threatened them. They have been attempting to dig the same. If they have succeeded to dig the nature of suit will be changed. Hence, they prayed to grant the TI.

3. The plaintiffs filed objections by denying the contents of affidavit accompanying with IA No.8 and contended that they have not tried to dig as alleged. There is no evidence to prove the same. To harass the plaintiffs the defendants filed this application. There is no grounds to grant the TI. Hence, plaintiffs prays to reject the application.

4. The following points arise for my consideration:

- 1) Whether the applicants have made out a prima facie case?**
- 2) Whether the balance of convenience lies in his favour applicants?**
- 3) Whether irreparable loss will be caused to the applicants/defendants if Temporary Injunction is not granted?**
- 4) Whether the application is maintainable?**
- 5) What order ?**

5. My answers to the above points are as follows:

Point No. 1 to 4 : In the Negative.

Point No.5 : As per final order for the following;

:-REASONS:-

6. Point No. 1:- The defendant No.2 and 3 filed this application at the stage of cross of PW.1

7. The plaintiffs filed this suit for partition and separate possession against the defendant No.1 by contending that they are sons of Akbarsab Peerasab Doddamani, who died 23 years back. After his death the plaintiffs and defendant no.1 inherited the suit properties. But themselves calling as wife and son of defendant no.1 have been causing interference in their possession over the suit properties. The plaintiff denied the relationship between themselves and defendant No.2 and 3.

8. Per Contra the defendant no.2 and 3 contended that they are the wife and son of the defendant no.1, who is the brother of plaintiffs, but he has been absconded since long back and they doesn't know where is defendant no.1. Therefore, without declaring civil death of defendant no.1 suit is not maintainable.

9. When there is serious dispute about the relationship between the plaintiffs and defendant no.2 and 3, to ascertain the

relationship it requires full pledged trial. Therefore, at this stage the court cannot interfere that the plaintiffs and defendant No.2 and 3 have been in joint possession over the suit properties as tenants in common. Apart from that the defendant no.2 and 3 contended that they defendant no.1 has been absconded since long back. Therefore, it requires full pledged trial to ascertain whether the defendant no.1 alive or not.

10. Apart from that the defendant No.2 and 3 not counter claimed and it is not the specific case of the defendants that they are in possession over the suit schedule properties. If they are in joint possession as tenant-in-common they can not claimed TI against the co-sharers or co-owners. Therefore, application is not maintainable.

11. Apart from that the defendants cannot claimed temporary injunction U/O 39 Rule 1 and 2 of CPC, they can claimed injunction only order 39 Rule 1(1) of CPC. Therefore also application is not maintainable. Therefore the defendants failed to prove prima-facie case at this stage. Hence, this Court has **answered point No.1 and 4 in the Negative.**

12. Point No.2 & 3 :- Since the applicants has failed to make out a prima-facie case, in view of the above discussion and answer to point No.1. These points do not survive for consideration, as these points become redundant. In support of this view this Court is placing reliance on the decision of our ***Hon'ble High Court of Karnataka reported in ILR 1989 Kar. Page No.1701 (Shri Gowrishankara Swamigalu VS Sri Siddhaganga Mutt), held at para No. 25 which is extracted as under:-***

“25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the

very first stile itself , But if there was a prima facie case then other considerations governing the grant of injunction” would come into play and will also have to be evaluated before granting or refusing the injunction.

Therefore, this Court has answered point No.2 & 3 **in the Negative.**

13. Point no.5:- For the foregoing reasons, I proceed to pass the following;

ORDER

The I.A. No.8 filed U/o 39 Rule 1 and 2 of Code of Civil Procedure by the defendants is hereby rejected.

No order as to cost,

Any observations made above will not be having bearing on the main matter.

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 15th day of December 2022)

CJ & JMFC., Savanur.

