

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AT
CHINCHOLI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
Prl. Civil Judge,
Chincholi.

DATED THIS THE 17TH DAY OF JANUARY-2023.

O.S.No.84/2018

Plaintiff : Raghavendrarao @ Nagendrappa
@ Nagendrarao.

V/s

Defendants : Yallappa and 15 others.

I.A.No.I

Applicant : Raghavendrarao @ Nagendrappa
@ Nagendrarao.

V/s

Opponents : Yallappa and 15 others.

**ORDER ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 and 2 OF
CPC**

The plaintiff/applicant has filed this I.A No.I U/o 39 Rule 1 and 2 of CPC and praying this court to restrain the defendants, their men, agents and associates from interfering with his peaceful possession and enjoyment over the suit schedule

property bearing Sy.No.120 of Marpalli village measuring 7 acre 30 guntas, including 5 guntas of karab land.

2. In the affidavit accompanying to the present I.A., it is alleged by the plaintiff that, his ancestors were previously in possession and enjoyment of the suit schedule property as its owners his father Shivappa had inherited the suit property from his ancestors and after the death of said Shivappa the revenue records of the suit property mutated in to the name of the plaintiff and eversince he being the owner of the said property is in exclusive possession and in enjoyment of the said property.

The plaintiff alleged that, the defendants are nowhere concerned to the ownership or possession of the suit schedule property. He further alleged that, inspite of the said fact the defendants are interfering with his possession over the suit property by colluding with each other. Further, he alleged that the defendants are powerful persons and continued to interfere with his possession over the suit property by using money, political and muscle power.

It is further alleged by the plaintiff that, on 25-05-2018 the defendants have come near the suit property with some gunda elements and tried to interfere his possession over the suit property and also tried to invade in to the suit property. The plaintiff further alleged that, he protected his possession over the suit property with great difficulty and requested the defendants not to interfere time again. He also alleged that, the defendants are challenged and threatened to disposes him from the suit land once or other day. The plaintiff also alleged that, on 05-07-2018 the defendants have once again come near the suit property and tried to interfere with his peaceful possession with an intention to disposes him.

The plaintiff further contending that, the prima facie case and balance of convenience lies in his favour and if the temporary injunction order is not past in his favour he will be put great hardship. Therefore, the plaintiff prays to allow this I.A.

3. Per contra, the defendants have filed their Written Statement on 18-08-2018 along with a memo and praying to

treat their Written Statement as their objection to the present I.A.

In their Written Statement the defendant No.1 to 16 have denied the plaint allegations and further contending that, the entire land in Sy.NO.120 of Marpali village was given in favour and for the development of Maruthi Temple, Marpalli by the Nizam's of Hyderabad. They further contending that, the plaintiff is not at all the resident of said Marpalli village rather, he is residing at Karkamukali (Kanakapur) village and therefore neither the plaintiff nor his ancestors are nowhere concerned to the ownership and possession of the suit property. They further contending that, the entire land in the suit survey number is being managed by the defendants as the members of a Temple Development committee and some years ago the plaintiff was providing oil for the use of said Temple during spiritual ceremonies and now he is not supplying oil to the temple and nowhere participating in the activities of the said temple.

The defendants specifically contending that, the plaintiff is neither the a owner nor in possession of the suit property

rather, they themselves as the members of the Temple development committee are the owners and in possession of suit property. It is further case of the defendants that, some among them have already filed a suit in O.S.No.80/2018 against the plaintiff with respect to the suit property and the plaintiff filed this suit by suppressing the said fact in order to defraud the defendants.

It is also contended by the defendants that, the plaintiff is not at all the owner and in possession of the suit property and thus, the present suit for mere injunction is not maintainable without seeking the relief of declaration. Therefore, the defendants not only praying to dismiss the suit with cost but, also have set up a counter claim and praying to declare the Temple Development committee is the owner in possession of the suit property and to restrain the plaintiff from interfering with their possession in the suit land and seeking for rectification of revenue records.

4. In light of the rival contentions raised by both the parties in the present I.A. the following points are arisen for my consideration;

1. Whether the plaintiff has made out a prima-facie case in his favour?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable injury would be caused to the plaintiff, if an order of temporary injunction is not granted in his favour?
4. What order?

5. I have heard both the sides on the I.A. perused the I.A, objections along with all other materials produced before me.

6. My answers to the above points are as follows,

Point No.1 : **In the Negative.**

Point No.2 : **In the Negative.**

Point No.3 : **In the Negative.**

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

REASONS

7. **POINT NO.1 to 3:** Since, it is found from the peculiar facts and circumstances involved in this I.A. and also the facts and circumstances involved in these points appears to be similar to each other, these 3 points are taken for common consideration in order to brief them and to avoid repetition of facts.

8. As it would be seen from the pleadings, it is evident that the plaintiff herein is claiming to be the absolute owner and in exclusive possession of the suit property having allegedly inherited the same from his ancestors. He alleged that, the defendants are strangers to the suit property and inspite of that they are interfering with his peaceful possession and enjoyment over the said property. On the other hand, the defendants herein are specifically denying the alleged title and possession of the plaintiff over the suit land and they further set up a plea that the entire land in Sy.No.120 is belongs to Maruthi Temple, Marpalli and they being members of the said temple development committee are in possession of the suit land. The

defendants also contending that, the suit of the plaintiff is not at all maintainable for the relief of mere injunction as he is not at all a owner and in possession of the said property. Therefore, they are praying to dismiss the suit as well as this I.A.

9. In support his case the plaintiff has produced the revenue records pertains to the suit land.

10. On perusal of the hand return revenue documents pertains to the suit property it is evident that, the Khata of the said property was stood in the name of the father of the plaintiff Shivappa. However, the column No.12 of the said revenue record would indicate that the suit property is a Enam land. Similarly, though the RTC's pertains to the year 1968 to 1973 disclose the name of the plaintiff herein, the RTC pertains to the year 1973-74 to 1977-78, 1978-79 to 1982-83 and 1998-1999 to 2002-03 would clearly indicate that the revenue records of the suit land jointly stood in the name of Sri. Maruthi Temple and the plaintiff. The said RTC's would also indicate that the name of one Abdul was entered in possessors column and

thereafter it was rectified with the consent of said Abdul Latif. But, the joint names of Maruthi Temple and the plaintiff continued in the revenue records of the suit property.

11. More importantly, the RTC's produced by the plaintiff from the year 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and till the date of filing this suit i.e., during the year 2016-17 would clearly indicate that the Khata of the suit property stood in the joint names of Maruthi Temple and the plaintiff. The column No.10 of the said RTC's would further clearly indicate that the Maruthi Temple as well as the plaintiff acquired the possession of the suit land through Inam.

12. Therefore, the documents produced by the plaintiff himself not only prima facie discloses that the plaintiff is not at all in exclusive possession of the suit property but also probabalise the case of the defendants that the suit land granted in favour of the Maruthi Temple, Marpalli. When the documents produced by the plaintiff himself would clearly

indicate that the revenue records of the suit land jointly standing in his name and Maruthi Temple, Marpalli, at this stage the plaintiff has failed to show prima facie case in his favour that he is in exclusive of the suit property. When there is no records available at this stage of the suit to ascertain the exclusive possession of the plaintiff over the suit land, it can be said without further discussion that the plaintiff has failed to prove that he has prima facie case in his favour.

13. When the plaintiff failed to show prima facie case in his favour, question of balance convenience lying in his favour does not arise at all. Therefore, if a order of temporary injunction is not granted in favour of the plaintiff no hardship will be caused to him. On the other hand, if a temporary injunction is granted in favour of the plaintiff, an irreparable loss would definitely cause to the defendants.

14. For the above said reasons, the Point NO.1 to 3 are answered **in the Negative.**

15. POINT No.4: In view of my discussion of point No.1 to 3,
I proceed to pass the following;

ORDER

The I.A No.I filed by the plaintiff U/o
39 Rule 1 and 2 R/W 151 of C.P.C is
dismissed.

No orders as to cost.

(Directly dictated to the Stenographer on Computer, print out taken by him,
corrected and then pronounced by me in open court this 17th day of
January-2023)

(Ravi Kumara V.)
Prl. Civil Judge.,
Chincholi.

Pronounced in the open Court vide separate Order

ORDER

The I.A No.I filed by the plaintiff U/o
39 Rule 1 and 2 R/W 151 of C.P.C is
dismissed.

No orders as to cost.

For compliance of Sec.89 C.P.C.

Call on 02-02-2023.

Prl. Civil Judge.,
Chincholi.