

IN THE COURT OF THE
SENIOR CIVIL JUDGE AND J.M.F.C., CHITTAPUR

Present: **Sri. MOHAMMED MOINUDDIN** B.A., L.L.B.
(Spl), Senior Civil Judge and JMFC, Chittapur

Dated this on 14th Day December, 2021

O.S. NO.32/2019

PLAINTIFF:- Ashok S/o Devappa Dahihande

(By Sri. SNS. Advocate)

Vs.

DEFENDANTS: Tarachand S/o Kundalmal Mantri & Others

(Defendant Sri. JAM. Advocate)

PARTIES TO IA No.2

Ashok

Applicants/Plaintiffs

V/s

Tarachand & Others

Opponents /Defendants

PARTIES TO IA No.6

Tarachand & Others

Applicants/Plaintiffs

V/s

Ashok

Opponent /Defendant**COMMON ORDERS ON IA NO.I AND VI**

The plaintiff has filed IA NO.I U/O XXXIX rule 1 and 2 of CPC and defendant has filed IA NO.VI U/O XXXIX rule 4 of CPC. Thereby, the plaintiff has prayed to issue temporary injunction order against the defendant restraining him from alienating the suit property in any manner in favor of anybody till disposal of the suit. Whereas, the defendant has prayed to vacate the temporary injunction already granted and reject the IA NO.I filed by the plaintiff.

2. The plaintiff in support of IANO.I has sworn to the effect that, he has filed the top noted suit against the defendant for recovery of amount of Rs.8,77,000-00 which was received by him on various dates. IN this regard the defendant has also executed necessary documents. However, the plaintiff has come to know in the first week of 2019 that, the defendant is negotiating with villagers to sell the suit schedule property which is the only source available for plaintiff to recover the suit amount from the defendant. Hence, the plaintiff has contended that, he has made out prima facie case for grant of temporary injunction order restraining him from alienating the suit property till disposal of the suit. Otherwise, he will be put to much loss and untold hardship. Hence, he has prayed to allow the application.

3 On the other hand the defendant has submitted that, the plaintiff is his regular customer and used to purchase goods from him on credit basis. IN this regard the plaintiff has not paid any amount to him from three months and there is a huge due from the plaintiff to him. But the

scheming plaintiff has stolen the signed cheque and got filled it for suit amount and filed this bogus suit on said negotiable instrument. Therefore he has argued that, the plaintiff is not entitled for any relief much less the interim relief of injunction. The suit itself is not maintainable and there is no prima facie case infavor of plaintiff. The balance of convenience lies in favor of defendant rather than plaintiff. Hence, the defendant has prayed to vacate the temporary injunction issued against him and reject the application with cost.

4. The following points arises for consideration:
 1. Whether the plaintiff has made out prima-facie case?
 - 2, In whose favour the balance of convenience lies?
 3. Who will be put to untold hardship?
 4. Whether the defendant has satisfied that, the interim order needs to be vacated?
 5. What order?

5. I have heard the argument form both sides and perused that available material. My finding to the above points is as under:

POINT NO.1: In affirmative.

POINT NO.2: in favour of plaintiff

POINT NO.3: Comparative hardship is more to the plaintiff

POINT No.4:-In Negative

POINT NO.5: IA.No.I is allowed and IANO.VI is rejected for the following:

REASONS

6. **POINTS NO.1 TO 3:-**These three points are interconnected each other as such they are taken together for commons discussion to avoid repetition.

8. Admittedly a cheque issued by the defendant for Rs.3,00,000-00 and three promissory notes for Rs.3,00,000-00, Rs.1,00,000-00 and Rs.1,77,000-00 in all three negotiable instruments for total of Rs.8,77,000-00 allegedly signed by the defendant are with the plaintiff. The defendant also admitted that, he and plaintiff are well acquainted with each other as the plaintiff was his regular customer. Under such circumstances prima facie the burden lies on the defendant to prove that the plaintiff has stolen the cheque from his shop. For that matter he has to wait till conclusion of trial of the suit.

7. The plaintiff has filed this suit for recovery of Rs.8,77,000-00 with interest from the defendant and his claim is based on some relevant documents. Now having regard to the nature of suit and defense taken by the defendant and available materials I am of the opinion that, the plaintiff has made out a prima facie case for grant of temporary injunction order against the defendant. Since, the plaintiff has raised a serious question which has to be answered after full fledged trial. Therefore, I hold that, the plaintiff has proved the existence of prima facie case.

8. Indisputably the suit property is standing in the name of defendant in public records and conclusion of trial will take its own time if in the meantime the defendant succeeded in creating charge or alienating the suit property to third person then there will be no property available for the plaintiff to seek recovery of the amount if he succeeded in the suit. Therefore, to avoid multiplicity of proceedings and to protect the interest of plaintiff it is just and necessary to restrain the defendant from alienating the suit

schedule property in any manner in favor of anybody till disposal of the suit.

8. Hence, for the discussion made above I am of the opinion that, the balance of convenience lies in favor of plaintiff and he will be put to irreparable loss and untold hardship if the application is rejected. ON the other hand the defendant will not be put to hardship or loss if he is directed to refrain from dealing with suit property. Hence, I answer the above point No.1 in affirmative and points No.2 and 3 in favor of plaintiff.

9. **POINT No.4:-** But there is no materials or prima facie proof to show that, the plaintiff has stolen/taken the cheque or any other document from the shop of the defendant. When such being the case where is the scope to vacate the interim injunction order issued against him. Of course, the defendant is having privilege to take any number of contrary defense but he has to establish the same with prima facie materials. If the temporary injunction granted by this court is vacated then there is chance of the defendant alienating the suit property which

is as per available materials the only source to satisfy the claim of plaintiff. Therefore, at this juncture there is no scope to grant the relief prayed for by the defendant at IA NO.VI. Hence, I answer this point in Negative.

10. **POINT No.5**:-In the result I proceed to pass the following;

O R D E R

The IA NO.II filed by the plaintiff U/O XXXIX rule 1 and 2 of CPC is allowed. Thereby, the defendant and all persons claiming through him is hereby restrained from alienating the suit property in any manner in favor of anybody till disposal of the suit.

Consequently, the IA NO.VI filed by the defendant U/O XXXIX rule 4 of CPC is rejected.

I direct the parties to bear their own cost.

(Dictated to the steno directly on lap top typed by him corrected by me, then pronounced by me in the open court on this 14th Day of December, 2021)

(MOHAMMED MOINUDDIN)
Senior Civil Judge
& JMFC, Chittapur