

IN THE COURT OF THE CIVIL JUDGE & JMFC, CHITTAPUR

Present
Subhashchandra Rathod
B.A. LL.M.
Civil Judge & JMFC.,
Chittapur.

O. S. NO: 67/2015

Dated on this the 19th day of August - 2019

Plaintiff: Smt. Ambubai W/o Shivaji (D/o Krishna,
Age: 45 years, Occ:Agrl., R/o: Itaga villae,
Tq: Chitapur.
(By Sri. S. N. J. Advocate)

Vs.

Defendant: M/s Orient Cement Limited,
Through its General Manager (Project),
Chittapur.
(By Smt. V. S. K. Advocate)

ORDER ON I.A.I

The plaintiff/applicant has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC praying to issue temporary injunction order against the defendant restraining him from illegally taking up construction work over the suit property.

2. In the accompanying affidavit of the application, it is stated that, the suit property is land measuring 1 acre out of 14 acres 34 guntas in land bearing Sy. No. 100 situated at Itaga village

bounded by to East: Land of Kashappa Salli, West: Land of Anasubai, North: Land of Devendrappa Bommanalli and South: Land of Gorabai. The plaintiff is absolute owner of the suit land, it is being an ancestral property inherited by plaintiff from her ancestors and fallen to her share as per compromise decree passed in O.S. No.228/2011 on the file of Civil Judge Senior Division, Chittapur. Since the date of compromise decree the plaintiff is in peaceful possession and enjoyment of the suit land without any interference by any body. Further it is stated that the defendant is no way concerned with the suit property. The defendant to establish the new company, has purchased the surrounding lands to the suit land and taking up construction of factory unit. That the defendant being influential and big company, highhandedly with the help of police and political persons forcing the plaintiff to sell the suit land to them at low price. When the plaintiff denied, the defendant on 11th July-2015 has highhandedly entered into the suit land and started digging the mud, without purchasing the same or consent of the plaintiff to put up the structure in the suit land, which amounts illegal interference by the defendant over the suit property. Further it is submitted that in spite of repeated

request made by the plaintiff and nearby villagers the defendant is bent upon to take-up construction on some portion of the suit land for which they have started digging the mud in the suit land illegally and forcibly. The defendant have not right over the suit land whatsoever, but with an ulterior motive and to have wrongful gain or interfering into the peaceful possession of the plaintiff over the suit land. Hence, the plaintiff/applicant prays to allow the I. A. No. I and pass the ex-parte temporary injunction order as prayed for.

3. On the other hand, the defendant has filed written statement and filed memo adopting written statement as objections to I. A. No. I. In the written statement, the defendant denied entire case of the plaintiff and it is contended that, the defendant company is establishing new factory and has purchased the land surrounding suit land Sy. No.100. It is taking the construction works of Cement factories is true. But it is denied that the defendant is influential and big company highhandedly with the help of police and political persons forcing the plaintiff to sell the suit land to them at low price. Further it is contended that, when the plaintiff is not the owner and possessor of the suit land, there arise no question of

forcing the plaintiff to sell the suit property. It is also denied that the defendant company started digging mud in the suit property to put structure in the suit land. In fact the recent revenue records shows that the Sy. No.100 is Kariz khata, Govt. land of Itaga village. It is denied that the plaintiff is having possession over the suit land. Hence prays to reject the application.

4. Heard both side and perused the documents on record.

5. The points arise for consideration are as follows:

1. *Whether the plaintiff has made out grounds to grant temporary injunction as sought in the I. A. No. I ?*
2. *What order?*

6. My answer on the above said points are as follows:

Point No.1 : In the Negative

Point No.2 : As per final order for following;

R E A S O N S

7. **Point No.1:** I have gone through the pleadings, affidavit accompanying I. A. No.I and also the documents on record. During the course of hearing the counsel for the plaintiff argued reiterating facts stated in the affidavit accompanying I. A. No. I and plaint. On the other hand the counsel for the defendants argued reiterating facts in the written statement. In addition, the counsel

for the plaintiff also submits that, the defendant have denied entire case of the plaintiff and also the compromise decree passed by Hon'ble Senior Civil Judge, Chittapur. The defendant denied the entire case of the plaintiff and have not taken any specific contention, hence prays to allow the application. On the other hand the counsel for the defendant submits that, the land bearing Sy. No. 100 situated at Itaga village is the government land and at present the ROR of the Sy.No.100 shows the name of Government of Karnataka. Therefore, the plaintiff is not owner and possessor of the suit property. Further submits that the Deputy Commissioner Kalaburagi has granted Sy.No.100 to the defendant on lease in respect of Sy. No. 100/2 for 30 years in the year 2015-16 and agreement also registered on 06-05-2016 and also taken possession of the land. Therefore, prays to reject the application.

8. The present suit is for the relief of perpetual injunction and on one side the plaintiff claiming that, she is in possession of the suit property on the other hand the defendant claiming that, defendant company is in possession of the suit property. Therefore, before considering and adjudicating on the application, it is appropriate to refer the position of law regarding grant or refusal of temporary

prohibitory injunction and the guiding principles. Order XXXIX of CPC first part says in any suit, it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, or that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. Second part says, injunction may be granted to restrain repetition or continuance of breach. Under this order the Court may by an order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until disposal of the suit or until further orders.

9. The guiding principle, with respect to grant of temporary prohibitory injunction are laid down by the Hon'ble Supreme Court of India in ***Seema Arshad Zaheer and Others v Municipal***

Corporation of Greater Mumbai and Others, reported in (2006) 5 SCC 282, the Hon'ble Supreme Court of India has observed, at para No.30. that, the discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff; (I) existence of a prima-facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiffs rights is compared with or weighed against the need for protection of the defendants rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs' conduct is free from blame and he approaches the Court with clean hands."

10. The present suit is for the relief of bare injunction. The contention of the plaintiff is that, suit property fallen to her share as per compromise decree of Hon'ble Senior Civil Judge, Chittapur passed in O. S. No. 228/2011 and since then she is possession

and enjoyment of the same. The document relied by the plaintiff shows that the compromise decree has been passed as per compromise entered into between the plaintiff and others in respect of Sy. No.100 measuring 4 acres 38 guntas, including other properties and thereafter the name of plaintiff is also mutated in respect of Sy. No.100/1 and the name of plaintiff is appearing in ROR for the year 2014-15. But the ROR of Sy. No.100/1 for the year 2015-16 shows that, the name of government of Karnataka is appearing for entire land measuring 14 acres 34 guntas in Sy. No.100. This fact goes show that, at present the suit property is not standing in the name of plaintiff. The entire property in Sy. No. 100 of Itaga Village is standing in the name Government of Karnataka.

11. The defendant denied the title of ownership and possession of the plaintiff over the suit property, therefore at this stage it is difficult to hold that the plaintiff is in possession of the suit property as pleaded in the plaint. To decide, who is in possession of the suit property, it requires a detail trial. At this stage the material on record are not enough to hold that, the plaintiff is in possession of the suit property. Therefore, this court is of the

opinion that, the plaintiff has not made out prima facie case and balance of convenience in her favour. Hence, Point No.1 is answered in the Negative.

12. **POINT No.2:** For the above said reason and findings on point No.1, I proceed to pass the following;

ORDER

I.A. No. I filed by the plaintiff U/O XXXIX
Rule 1 & 2 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and pronounced by me in the Open Court on this the 19th day of August- 2019)

Civil Judge & JMFC, Chittapur