

IN THE COURT OF CIVIL JUDGE AND J.M.F.C., AT :
JEWARGI

Present:

SRI. SANTOSH SRIVASTAVA,
B.A.L, LLB
C/C Civil Judge & JMFC
Jewargi.

O.S. No. 63/2022.

Dated this the 18th day of January-2024.

Plaintiff:

Smt. Shamshad Begum W/o Syed Jafar Hussain,
Age: 40 Years, Occ: Agriculture,
R/o: Andola village, Tq: Jewargi,
Dist: Kalaburagi.

(By Sri. B.B., Advocate)

//VERSUS//

Defendants:

1. Smt. Rajshree W/o Dattatraya Ijeri,
Aged about: 40 years, Occ: Agriculture,
2. Mallappa S/o Ningappa Katger,
Aged about: 55 years, Occ: Agriculture,
3. Ashok S/o Saidappa Ijeri,
Aged about: 35 years, Occ: Agriculture,
4. Marlingappa S/o Ningappa Katgeri,
Aged about: 60 years, Occ: Agriculture,

All are R/o Andola village, Tq: Jewargi,
Dist: Kalaburagi.

(By Sri.B.G., Advocate)

PARTIES TO I.A.No.I

Applicant/

Original Smt. Shamshad Begum W/o Syed Jafar Hussain.

Plaintiff:

//Vs//

Opponent/

Original Smt. Rajshree W/o Dattatraya Ijeri, & others

Defendants:

: ORDER ON I.A.No.I :

1. The plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC praying this court to grant temporary injunction against the defendants, their henchmen, agents, or persons claiming under them from interfering into the plaintiff peaceful possession and enjoyment over the suit property i.e. agricultural land Sy.No.208/5 measuring 5 acres 08 guntas of Andola village, Tq: Jewargi, bounded by: East-Land of Maheboob, West-Land of Farjana, North-Land of 1st defendant and South-Land of Basavaraj, till disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of the I.A. wherein he has submitted that the plaintiff is the owner in possession of the suit property in pursuance of partition deed bearing document No.6537'20-21 dated: 11/01/2021, her name was also entered in the ROR o suit property an she is enjoying the same as an absolute owner without any bodies interference much less of defendants. The defendants are no way concerned to

the family and property of plaintiff in any manner. But the defendant No.1 is owner of property abutted towards northern side of suit property and others defendants are relatives of defendant No.1. The defendants in collusion with each other and without having any rights and interest over the suit property are trying to encroach northern portion of the suit property. The plaintiff along with her family members were doing agricultural work over the suit property on 08-04-2021, meantime defendants together without having any rights and interest over the suit property are trying to encroach northern portion of suit property with an intention to dispossess the plaintiff from suit property. Plaintiff as well as her family members requested the defendant not to do. But they flatly refused to do so. However, plaintiff protected her possession over the suit property with the help of adjacent land owners. But defendant went away by saying that they would come once again with the more men and dispossess her from suit property. Plaintiff is under apprehension about her dispossession from suit property. Hence, prays to allow the application.

3. On the other hand the defendants is being not filed objection to the said I.A.No.I.
4. Heard the arguments of both the sides and perused the materials placed on record.

5. The following points that would arise for my consideration are as follows:

1. Whether the plaintiff has made out prima-facie case in their favour at this stage of the suit?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable loss in the absence of temporary injunction order?
4. If so, what order?

6. My answers to the above said points are as under:

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

: R E A S O N S :

7. **Point No.1:** The suit of the plaintiff is for perpetual injunction in respect of suit schedule property and at this stage plaintiff submits that he is owner and possessor in respect of suit schedule property by virtue of partition deed in respect Agricultural land Sy.No.208/5 measuring 5 acres 8 guntas bounded by East land of Mahebbboob West land of Farjana North land of 1st defendant and South land of Baswaraj and to show that he has produced partition deed and suit property is placed in page no in page no 3 of partition deed and copy ROR is also placed wherein the name of the plaintiff reflects in the same and since the plaintiff has already examined the same is marked as EX.P-1 and EX.P-2 and

now the defendant has filed an memo stating that that the contents of memo be adopted as objection to I.A-No.1, so therefore the same is looked into the defendant submits that Saidanna was the owner and possessor of land Sy.No.206 measuring 9 Acres 31 guntas and he purchased on 15/9/1972, and since then he enjoyed the possession of land now the defendant no -1 being the widow is enjoying the possession of suit land. And also has counter – claim in respect of property Sy.No.206 measures 9 Acres and 31 Guntas situated at Andola village bounded by East-land of Sri. Syedh Khasim Hussain West- land of Bagavantray Dhandagund North-land of Siddawaa South-land of Musa Hussain and counter claim has in respect of the property Sy.No 206.

8. It is further case of plaintiff that the Northern portion of suit property is being unlawfully interfered. Pertinently the defendant has not argued before this court even after giving twice the chance on different dates. And moreover as on this day no rejoinder is being filed by the plaintiff in respect of counter claim. And further no document is placed on record in respect of sy no 206 along with boundaries as stated by him. So as on this day the plaintiff is able to show that he has good case on hand by producing registered partition deed and copy of ROR reflecting the name of plaintiff. Now it is settle position of law is Partition is not 'transfer' the reason being, no conveyance is involved and in partition every one has antecedent title. Partition does not give title or create title. If the party to the partition has an

antecedent title to the property, it only enables him to obtain what is his own in a definite and specific form. In a partition, no one transfers title which he possesses in favour of a person who does not possess a title. Every one has an antecedent title. Therefore, no conveyance is involved, in the process as conferment of a new title is not necessary. It does not amount to transfer. Therefore, partition is not a transfer and by partition nobody acquires title to any property for the first time. Consequently the partition deed only recognizes an existing right, which each party to the deed has in the joint property and no right spring from the deed of partition which is held in AIR 2007 KARNATAKA 91. Now here in this case, this plaintiff does not claim ownership against co-owner but rather claims the temporary injunction against the person who is not related to the pedigree or family of this plaintiff. In such being the case a registered partition deed dons the character of title deed and comes to the rescue of this plaintiff in this case, now the fact is that. Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum and this ratio decidendi is held in **Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) through L.Rs. AIR 2012 SC 1727**. So therefore it is clear at this stage that plaintiff has made out prima facie case on the basis

registered partition deed and ROR and the record of rights though are not title deed but they helps in determining who is paying the revenue at-least at this stage the said document is sufficient to hold that it is a prima facie document to that as on the date of filing suit the plaintiff is in possession of suit property. On the other hand no document is furnished to counter the document filed by the plaintiff in respect of suit property moreover the defendant doesn't claim any right in respect of suit schedule property. He claims right and counter claim in respect of Sy.No.206. So to protect the suit property from getting further alienated and to avoid multiplicity of proceedings, this Court is of the opinion that, at this stage, the exparte order of temporary injunction need to be continued till disposal of the suit. Therefore, the documents produced at this stage certainly goes to show that the plaintiff has got prima-facie case to go for trial. Thus, I answer **point No.1 in the affirmative.**

9. **POINT No.2:** "The object of an interim injunction application is to protect the plaintiff against the injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty were resolved in his favour at the trial. The need for such protection has however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from him having been prevented from exercising his own legal rights for which he could not be. The Court must

weigh one need against another and determine where the balance of convenience lies. Discretion is best exercised when it is in conformity with the spirit of law with a view to sub-serve and not impede or defeat the ends of substantial justice." And the same is held in S. Guneshekharan vs Tamil Nadu Elementary school Teachers federation, Reported judgement of Hon'ble High Court of Madras. So presently the plaintiff right in respect of suit property cannot be denied, and the counter claim is in respect of Sy.No.206 and moreover no any document is filed and moreover the defendant has not filed counter claim under order 8 rule 6A, so that aspect is not included in this order and in this order only it is restricted to suit property only. Therefore, to avoid multiplicity of proceedings and to meet the ends of justice and looking to the documents furnished by the plaintiff at this stage, the balance of convenience leans in favour of the plaintiff. Hence, I answer **point No.2 in the affirmative.**

10. **POINT No.3:** At this stage reliance is placed on **Reebok India Company vs Gomzi Active ILR 2006 (KAR) pg 3961** A party would be entitled to relief under Order 39 Rules 1 and 2 provided it satisfies the Court that it has a prima facie case; that balance of convenience is in his favour and that irreparable loss and injury would be caused to him if interim relief is not granted. The aforesaid three phrases, as emphasized time and again, are 'not rhetoric phrases but elastic words to meet a wide range of situation in given set of facts and circumstances'. The burden is

always on the plaintiff/applicant to satisfy the Court that a prima facie case exists in his favour. The court must further satisfy itself that non-interference by the Court would result in irreparable injury to a party seeking relief. Irreparable injury means that the injury must be a material one, one that the Court cannot adequately compensate by way of damages. The Court is expected to exercise sound judicial discretion to find out the amount of substantial mischief or injury which is likely to be caused to one party if injunction is refused and compare it with mischief or injury that is likely to be caused to the other party if the injunction is granted. Grant of temporary injunction entails serious consequences on the party against whom it is issued. Therefore, it cannot be lightly ordered unless the requisite conditions and circumstances are established by the person who seeks protection.

(iii) Clear possibility of irreparable injury being caused to the plaintiffs if the temporary injunction is not granted. In addition the 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

Therefore it is clear from the above judgement that while deciding the interim injunction it should be noted that if there is merit on the face value of the plaint and documents pressed into service then by judicious exercise of power the relief can be granted in favour of plaintiff. So by looking to the averments of

plaint and in light of documents, plaintiff deserves interim injunction infavour of him. Therefore, to protect the subject matter on record and to avoid multiplicity of proceedings, I answer **point No.3 in the affirmative.**

11. **Point No 4:** In view of detailed discussion made while answering points No.1 to 3 and for the reasons thereunder, I proceed to pass the following;

: O R D E R :

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants, their agents, servants or anybody claiming through them are hereby restrained from interfering in the suit property temporarily, till disposal of the suit.

No order as to costs.

(Dictated to stenographer, transcribed and typed by him, script corrected and then pronounced by me in open court on the 18th day of January-2024).

(SANTOSH SRIVASTAVA).
C/c. CIVIL JUDGE, JEWARGI.