

IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC,
BANGARPET.

PRESENT: - Sri. A.C. DAYANANDMURTHY,
B.A., LL.M.

Addl. Civil Judge and JMFC, Bangarpet.
C/c Prl. Civil Judge & JMFC., Bangarpet

Dated this the 1st day of August 2018

O. S.161/2018

Plaintiff :- : K.N. Chandraiah, 53 years,
S/o, late K.Nanjappa,
R/at.Kesarnahalli villge.
S.G. Kote Post,
Bangarpet Taluk.
(By Sri. AMR.- Adv.)

-V/s-

Defendants :- 1.Nanjevaddey, 67 years,
S/o.late Channabasavaiah,

2. Shivarudramma, 58 years,
S/o.Nanjevaddey.

Both are R/at No.3127,
Basaveeshwara Nilaya,
Muniyamma layout,
Bangarpet.

(Exparte)

Orders on I.A.1

The plaintiff has filed I.A.No.1 under order 39 rule 1, 2 & 3 read with section 151 of CPC to grant ex-parte temporary injunction in favour of the plaintiff restraining the defendants from putting up construction over the schedule property in the interest of justice and equity.

2. In support of the application, the plaintiff has filed affidavit contending that he is the absolute owner in peaceful possession and enjoyment of site property bearing site no.16, measuring east-west- 30 ft. north-south-50 ft bearing municipal katha no.2690/5299, formed in alienated survey no.74/1B Bangarpet village, situated at Muniyamma layout, Bangarpet town. Originally schedule property is a part of sy no.74/1b totally measuring 2 acres 26 guntas and the same belonged to one Muniyamma and she has formed residential sites and sold to different persons. Accordingly Muniyamma has sold suit schedule property in favour of one Sugga Rangaiah under a registered sale deed dated 20-10-1982. On the same day physical possession of the schedule property was delivered to Sugga Rangaiah and thereby he became the absolute

owner of the schedule property. As there was a mistake in the sale deed dated 20-10-1982 in mentioning boundaries, the same was corrected by way of registered rectification deed dated 8-3-1983. The said rectification was made as per the approved plan and available boundaries and however the same is not a subject matter of this suit. That being the absolute owner of schedule property, Sugga Ramaiah has sold the schedule property in favour of one B.S. Parameshwara under a registered sale deed dated 4-11-1991 and delivered vacant possession of the schedule property to B.S. Parameshwara, thereafter he has sold the schedule property in favour of one K.N. Baavaraja under a registered sale deed dated 22-6-1998, thereby K.N. Basavaraja has become the absolute owner of the schedule property. In turn plaintiff has purchased the schedule property from Basavaraja under a registered sale deed dated 6-12-2006. In pursuance of said registered sale deed dated 6-12-2006 katha of schedule property has been duly changed in the name of plaintiff and he has been in peaceful possession and enjoyment of the schedule property.

3. The plaintiff further stated that the defendants are not having any right over the suit schedule property. On 17-6-2018 the defendants along with their henchmen came near the schedule property and attempted to dig illegal foundation in the schedule property, with great difficulty the plaintiff has resisted the illegal acts of defendants. Hence he has prayed to allow the application.

4. The defendants have not filed any objections.

5. Heard the arguments.

6. The points that would arise for my consideration are:

1. Whether the plaintiff has made out prima facie case?
2. If, so in whose favour balance of convenience and hardship lies?
3. What order?

7. My findings to the above points are as under

Point No.1	:-	In the Affirmative
Point No.2	:-	In favour of plaintiff
Point No.3	:-	As per final order
		for the following ;

REASONS

8. **Point No. 1 and 2** :- These two points are intermixed with each other as such they are taken up for together for discussion in order to avoid repetition of the facts. I have already setout in the brief as to what the case of the plaintiff and what the case of the defendants. In the nutshell the case of the plaintiff is that, he is the absolute owner in peaceful possession and enjoyment of site property bearing site no.16, measuring east-west- 30 ft. north-south-50 ft bearing municipal katha no.2690/5299, formed in alienated survey no.74/1B Bangarpet village, situated at Muniyamma layout, Bangarpet town. Originally schedule property is a part of sy no.74/1b totally measuring 2 acres 26 guntas and the same belonged to one Muniyamma and she has formed residential sites and sold to different persons. Accordingly Muniyamma has sold suit schedule property in favour of one Sugga Rangaiah under a registered sale deed dated 20-10-1982. On the same day physical possession of the schedule property was delivered to Sugga Rangaiah and thereby he became the absolute owner of the schedule property. As there was a mistake in the sale deed dated 20-10-1982 in mentioning boundaries, the same was corrected by way of registered rectification

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9. The plaintiff further stated that the defendants are not having any right over the suit schedule property. On 17-6-2018 the defendants along with their henchmen came near the schedule property and attempted to dig

illegal foundation in the schedule property, with great difficulty the plaintiff has resisted the illegal acts of defendants.

10. So far as grant to temporary injunction is concerned it should be a small steps during the progress of suit or proceeding towards the preservation of its subject matter which could be property or any other right has now gained enormous importance and some times, it becomes even more important then the final result of the suit or proceedings with the change of the time the dilemma of the judicial Court or tribunal is that initially it has treat the truth and falsehood as per and has to give the same treatment, protection and hearing until it concludes its investigation, find out which is right or wrong, false or true. This process takes a long time during which by some interim measure, the subject matter of the dispute between the parties has to preserved and it is dis-anxiety for preservation of the property on the part of the judicial Court, which is misused and abused by the side which has come before the Court with a wrong or false case or a doubtful case which has been filed only to take a chance.

11. It is pertinent to note that, injunction is an equitable relief. For grant of order of injunction by the Court, it should always be kept in mind that, its origin is from equitable jurisdiction and before passing the order claim must be tested and the particulars of the normal requirements with the application praying for the injunction and have a good prima facie case, chance of suffering irreparable injury and balance of convenience is in his favour and other particulars connected with the matter the Court should have extra cautious approach in testing the prima facie case, for a certain amount of extra rigor avoid the abuse of the trust of the Court.

12. It is pertinent to note that, it is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. The exercise of the discretion should be in a judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of the Court to that effect. It is well settled that, while granting injunction plaintiff must show –

- i. Existence of prima facie case,

- ii. Balance of convenience and
- iii. The injury must be of an irreparable loss that can not be compensated in terms of money.

13. The first rule is that, the applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the Court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the Court by leading evidence or otherwise that he has a prima facie case in his favour.

14. Prima facie case, however, should not be confused with a case proved to the hilt. It is no part of the Court's function at that stage to try neither to resolve a conflict of evidence nor to decide complicated

questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other word, the Court should not examine the merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the Court is to be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by them.

15. The plaintiff should come before the Court with clean hands. If he suppresses material facts, documents then he is not entitled for the relief of injunction and further points of balance of convenience, irreparable injury even not required to be considered in such case.

16. It is pertinent to note that, the existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the Court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is

no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the Court must be satisfied that refusal to grant injunction would result in 'irreparable injury' to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is absolutely necessary to protect rights and interests of the applicant. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

17. It is pertinent to note that, the third condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the Court must be satisfied that the comparative mischief, hardship or inconvenience

which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

18. At this stage, we are concerned that, the prima facie case made out by the parties to which Court has to relay on the documents produced by the plaintiff. The plaintiff has produced documents to show that, certified copy of layout plan with Xerox copy, covering letter dated 30-5-2018 issued by KUDA with Xerox copy, Xerox copy of conversion certificate, original regd sale deed dated 20-10-1982 with Xerox copy, original regd. Rectification deed dated 8-3-1983 with xerox copy, original regd. Sale deed dated 4-11-1991, original regd sale deed dated 22-6-1998, original regd. Sale deed dated 6-12-2006, demand register extract with Xerox copy, tax paid challans with xerox copies and digital photographs with CD.

19. Per contra defendants have not appeared before the court nor produced any documents from their side.

20. From the scan of documents and facts of the case it is very clear that, as per the documents and facts of the case the plaintiff has a prima facie case and balance of convenience in favour of him.

21. It is well settled law that, while deciding interim application, the Trial Court should not hold mini trial for which, I place the decision reported in **(2001) SCC 568 in case of Anand Prasad Agarwalla Vs. Tarakeshwar Prasad** wherein it was held that, the Court should not hold any mini trial at this stage. It is pertinent to note that, U/o.39 Rule 1 and 2 of CPC primarily concerned with the preservation of the property in dispute till legal right are adjudicated; injunction is a judicial process for which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court on exercise power of granting ad interim injunction is to preserve the subject matter of the suit in statue quo for the time being. It is well settled law that, the grant of injunction is discretionary relief.

22. It is pertinent to note that, the decision reported in **(2000) 9 SCC 572 in case of State of Karnataka Vs. State A.P.** wherein the Hon'ble Supreme Court of India held that, - injunction being a discretionary remedy, the Court may grant an order of injunction even if all the necessary ingredients are established and those ingredients are prima facie case of infraction of legal rights. Such infraction cases, irreparable loss and injury to the plaintiff and the injury is such nature that it cannot be compensated by way damages.

2321. The present legal rights of the parties are not yet adjudicate as the matter was posted for plaintiff evidence. The Preservation of the properties is dispute till legal rights are adjudicated, injunction is required. It is in nature of preventive relief to a litigant to prevent future possible injury. If injunction is not granted in such a case undue hardship would be caused to the plaintiff. Under these circumstances in order to protect the properties during the pendency of the suit it is necessary to issue temporary injunction to

maintain status-quo in respect of suit schedule properties pending disposal of the suit. At this stage I am of the considered opinion that, the plaintiff has made out prima facie case and balance of convenience, hardship lies in favour of plaintiff. In order to protect property during the pendency of the suit it is necessary to direct the defendants to maintain status-quo in balance of convenience pending disposal of the suit. Under these circumstances I hold that, the plaintiff made out prima facie case in respect of the suit schedule properties. Hence, I answered **Point No.1 in the Affirmative**. Further I hold that, the balance of convenience and hardship in favour of plaintiff, hence I answered **Point No.2 in favour of the plaintiff**.

24. **POINT No.3** - In view of the findings on Point No.1 and 2, I proceed to pass the following:

ORDER

I.A. No. 1 filed by the plaintiff U/o 39 Rule 1, 2 & 3 R/w sec. 151 of CPC is hereby allowed.

Further it is ordered that, the defendants are hereby restrained from putting up construction over the schedule property till pending disposal of the suit.

In view of the facts and circumstances of the case, parties are directed to bear their own costs.

(Dictated to the steno, directly on computer, typed by her, corrected signed & then pronounced by me in the open court on this 1st day of August, 2018.)

(A.C. DAYANANDMURTHY)
Addl. Civil Judge and JMFC,
Bangarpet.