

**IN THE COURT OF THE ADDL. CIVIL JUDGE &  
JMFC, BANGARPET.**

Present:- A.C.DAYANANDAMURTHY, B.A, LL.M.,  
Addl. Civil Judge & JMFC, Bangarpet.

**Dated this the 1<sup>st</sup> day of June, 2018.**

**O.S. 136/2017**

Plaintiff:- 1. Smt. Shilpa, 28 years,  
W/o Lokesh,  
  
2. Sri. Lokesh, 32 years,  
S/o Naraanappa,  
  
Both are R/at  
Chikkavalagamadhi Village,  
Bangarpet Taluk.  
(By Sri. AMR - Adv.)

V/s

Defendant:- 1. Sri. Siddappa, 55 years,  
S/o Venkateshappa,  
  
2. Sri. Nagaraj, 25 years,  
S/o Siddappa,  
  
Both are R/at  
Chikkavalagamadhi Village,  
Bangarpet Taluk.  
(By Sri. RG Adv.)

**PARTIES TO IA.No. 1**

Applicant : Smt. Shilpa and another  
V/s

Opponent : Sri. Siddappa and another

**ORDER ON IA 1**

The plaintiffs have filed IA. No.1 U/o 39 rule 1, 2 & 3 R/w sec. 151 of CPC praying to pass an Ex-parte order of temporary injunction restraining the defendants, their family members, agents, servants, or any others claim through or under them from interfering with plaintiffs' peaceful possession and enjoyment over the suit schedule property in any manner pending disposal of the suit.

2) In an annexed affidavit the 1<sup>st</sup> plaintiff has stated that, the plaintiffs have purchased the suit schedule property from the defendants under registered sale deed dated: 01-04-2010 and they are in peaceful possession and enjoyment of the schedule

property. The Govt. has sanctioned a house under “Basava Vasathi Yojane” and they have mortgaged 12 X 22 feet out of schedule property as per the norms of Govt. and constructed house in the same. On 28-05-2017 the defendants along with their henchmen came near the schedule property and attempted to interfere with peaceful possession of the plaintiffs over the schedule property. The plaintiffs resisted the same and defendants went away stating that, again they would come and dispossess the plaintiffs. If the application is allowed no prejudice would be caused to the defendants, on the other hand plaintiffs will be put to great loss and hardship. Hence this application.

3) Per contra, the defendants filed a memo and prayed for, to treat their written statement as objection to the IA. The defendants in their written statement stating that, the defendants have executed the sale deed in favour of plaintiffs on 1-04-2010 for

measuring East-West 50 feet, North- South 36 feet for a sum of Rs. 40,000/-. The plaintiffs managed to show the wrong boundary towards north as Venkataramaiah including the property retained by the defendants as road for ingress and egress to their house which is existing towards east of the plaintiffs' property. Further the plaintiffs also received a sum of Rs. 40,000/- from the defendants for relinquishing their rights in all other joint family properties. On the advise of panchayathdars the 1<sup>st</sup> plaintiff also executed a relinquishment deed on 09-08-2010. The defendants never interfered in possession of the plaintiffs and plaintiffs are blocking the road of defendants house by showing the wrong northern boundary in the suit schedule property. Hence they prayed for reject the application.

4) Heard arguments by both side.

5) Points that would arise for my consideration are as under –

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

6) My findings to the above points are as under

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

### **REASONS**

7) **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 brief as to what the facts of the plaintiffs and what the objection of the defendants. In the nutshell the facts of the plaintiffs is

that, the plaintiffs have purchased the suit schedule property from the defendants under registered sale deed dated: 01-04-2010 and they are in peaceful possession and enjoyment of the schedule property. The Govt. has sanctioned a house under “Basava Vasathi Yojane” and they have mortgaged 12 X 22 feet out of schedule property as per the norms of Govt. and constructed house in the same. On 28-05-2017 the defendants along with their henchmen came near the schedule property and attempted to interfere with peaceful possession of the plaintiffs over the schedule property. The plaintiffs resisted the same and defendants went away stating that, again they would come and dispossess the plaintiffs. If the application is allowed no prejudice would be caused to the defendants, on the other hand plaintiffs will be put to great loss and hardship.

8) Per contra, the defendants filed a memo and prayed for, to treat their written statement as

objection to the IA. The defendants in their written statement stating that, the defendants have executed the sale deed in favour of plaintiffs on 1-04-2010 for measuring East-West 50 feet, North- South 36 feet for a sum of Rs. 40,000/-. The plaintiffs managed to show the wrong boundary towards north as Venkataramaiah including the property retained by the defendants as road for ingress and egress to their house which is existing towards east of the plaintiffs' property. Further the plaintiffs also received a sum of Rs. 40,000/- from the defendants for relinquishing their rights in all other joint family properties. On the advise of panchayathdars the 1<sup>st</sup> plaintiff also executed a relinquishment deed on 09-08-2010. The defendants never interfered in possession of the plaintiffs and plaintiffs are blocking the road of defendants house by showing the wrong northern boundary in the suit schedule property.

9) 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.

10) 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.

11) 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.

12) 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.

13) 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.

14) 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.

15) 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.

16) 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.

17) 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 both the parties. The plaintiffs have filed several documents to show that, they are in possession over the suit schedule property. The plaintiffs produced Sale deed, Demand register extract, Assessment extract, Tax assessment list, certificate issued by secretary, Grama panchayath, Tax paid receipts, certified copy of Mortgage deed, RTC.

18) Per contra defendants have produced Tax paid receipt, release deed dated: 9-08-2010, colour photos, original partition deed.

19) From the scan of the documents it is very clear that, both parties are having prima facie case and balance of convenience and hardship lies in favour of both parties. The defendants submits that, under the partition deed the property came to

defendants. But while perusing the arguments urged by the both parties court feels that, both parties should maintain status-quo till disposal of the suit.

20) 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.

21) 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.

22) The present legal rights of the parties are not yet adjudicate as the matter is posted for 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 the injunction is not granted in such a case undue hardship would be caused to the plaintiffs. If grant the defendants would be caused. Under these circumstances in order to protect the property 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 plaintiffs and the defendants have made out prima facie case and balance of convenience, hardship lies in favour of both parties. 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 the disposal of the suit. Under these circumstances I answered **Point No.1 in the partly Affirmative**. Further I hold that, the balance of convenience and hardship in favour of plaintiffs and

the defendants, hence I answered **Point No.2 in partly in favour of the plaintiffs.**

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

**O R D E R**

I.A. No. I filed by the plaintiffs  
U/o 39 Rule 1, 2 and 3 R/w Sec.  
151 of CPC is hereby partly allowed.

Further it is ordered that, both  
the parties are maintaining status-  
quo till disposal of the suit.

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

(Dictated to the steno, directly on computer and typed by her, corrected signed  
& then pronounced by me in the open Court on this 1<sup>st</sup> day of June, 2018.)

(A.C. DAYANANDMURTHY)  
Addl. CJ and JMFC, Bangarpet.