

IN THE COURT OF THE PRL. 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 and JMFC, Bangarpet.

Dated this the 1st day of September, 2018.

OS 141/2018

Plaintiff:- Sri. Kempanna, 75 years,
S/o late Chikkanna,
R/at Guttahalli Village,
Kasaba Hobli,
Bangarpet Taluk.
(By Sri. PR- Adv.)

V/s

Defendants:- 1. Sri. Muniyappa @ Munimari,
S/o Late Munishamappa, 60 years,

2. Sri. Narayanaswamy, 50 years,
S/o Krishna Modaliyar,

3. Sri. Manjunatha, 37 years,
S/o Ramanna Modaliyar,

4. Sri. Raghuram @ Raghu, 45 years,
S/o Venkateshappa Modaliar,

5. Sri. Erappa, 55 years,
S/o Late Sonnappa,

6. Sri. Munivenkatappa, 55 years,
Venkatagiriyappa,
7. Govindappa, 55 years,
S/o Venkatagiriyappa,
8. Venkatesh, 43 years,
S/o Late Byapanna,
9. Sri. Manjunatha, 43 years,
S/o Late Byapanna,
10. Smt. Kalyanamma, 65 years,
W/o Late Byapanna,
11. Sri. Munivenkatappa @ Donniga,
61 years, S/o Gujiramanna,
12. Sri. Narayanappa, 61 years,
S/o Booramakanahalli Narayana,

All are R/at Guttahalli Village,
Karamangala Post,
Bangarpet Taluk.
(D4 to 8, 10, 11 Sri. SNR-Adv.)

PARTIES TO IA.No. 1

Applicant : Kempanna
V/s

Opponent : Muniyappa @ Munimari and others

ORDER ON IA No. 1

The plaintiff has filed IA.No.1 U/o 39 rule 1 & 2 R/w Sec. 151 of CPC praying to pass an Ex-parte order of temporary injunction against the defendants restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by putting up any construction in the suit schedule property till pending disposal of the case.

2) The plaintiff has sworn in his affidavit that he has filed the suit against the defendants for permanent injunction. The plaintiff has purchased a portion of suit schedule property through an

registered sale deed dated: 21-10-2002 and he is in peaceful possession and enjoyment of the same. Revenue documents have been changed in his name. The defendants are tried to encroach the vacant possession by dumping the building material to put up construction. When same was questioned by plaintiff, the defendants tried to assault him and warned him. When the plaintiff approached the police, they advised him to approach the jurisdictional court. If the application is not allowed, the plaintiff will be put to great hardship and injury. Hence this application.

3) Per contra, the defendants have filed a memo a prayed for written statement contents may be treat as objections to IA No. 1. The defendant No. 4 to 8, 10 and 11 filed their written statement by denying the plaint averments and further submits that, the plaintiff has filed OS 255/1996, OS 79/2016, OS

51/2017 against the defendants and he is having habit of filing false cases against the defendants. The suit is hit by res-judicata. The defendants submits that, they are having absolute ownership in actual physical possession and enjoyment of their properties situated at Guttahalli village, Bangarpet Taluk. The plaintiff given wrong boundaries to the suit schedule property towards western side, Northern side and also Southern side to cause wrongful loss to the defendants. The defendant No. 8 to 10 have filed OS 191/2018 against the plaintiff and another for permanent injunction in respect of their property Sy. No. 44/5. Hence they prayed for reject the application of the plaintiff.

4) Heard arguments by both side.

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

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?

6) My findings to the above points are as under –

Point No.1 :- in Partly Affirmative

Point No.2 :- In favour of both parties

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 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, the plaintiff has filed the suit against the defendants for permanent injunction. The plaintiff has purchased a portion of suit schedule property through an registered sale deed dated: 21-10-2002

and he is in peaceful possession and enjoyment of the same. Revenue documents have been changed in his name. The defendants are tried to encroach the vacant possession by dumping the building material to put up construction. When same was questioned by plaintiff, the defendants tried to assault him and warned him. When the plaintiff approached the police, they advised him to approach the jurisdictional court. If the application is not allowed, the plaintiff will be put to great hardship and injury.

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9) So far as grant to temporary injunction is concerned it should be a small step 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 than 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 plaintiff has filed several documents to show that, he is in possession over the suit schedule property. The plaintiff has produced the documents like original RTC extracts, copy of sale

deed dated: 21-10-2002, copy of encumbrance certificates, copy of mutation extracts, copy of police complaint, copy of police endorsement, original police endorsement

18) Per contra the defendants have produced the documents i.e. certified copy of order sheet, plaint and written statement, IA, in OS 79/16, certified copy of order sheet in OS 51/2017, Xerox copy of order of in MA 11/2016, copy of summons in OS 255/96, copy of plaint in OS 255/96.

19) From the scan of the documents it is very clear that, the plaintiff and defendants are having prima facie case and balance of convenience and hardship lies in favour of plaintiff and defendants through the documents.

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 was posted for evidence after framing the issues. 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 both parties. 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 property pending disposal of the suit. At this stage I am of the considered opinion that, both parties 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 both parties to maintain status-quo in balance of convenience pending disposal of the suit. Under these circumstances I hold that, both the parties made out prima facie case in respect of the suit schedule property. Hence, I answered **Point No.1 in the partly Affirmative**. Further I hold that, the balance of convenience and hardship in favour of plaintiff and defendants, hence I answered **Point No.2 in favour of the both parties**.

23) **POINT No.3** - In view of the findings on the 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 and 2 R/w Sec. 151 of CPC is hereby partly allowed.

Further it is ordered that both parties are maintaining status-quo till 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 and typed by her, corrected signed & then pronounced by me in the open Court on this 1st day of September, 2018.)

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