

**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 23rd day of March, 2019.

O.S. 174/2018

Plaintiff:- Smt. Rathnamma, 52 years,
W/o Muniyappa
R/at Marati Hosahalli village,
Budikote Hobli, Bangarpet Taluk.

(By Sri. TR - Adv.)

V/s

Defendant:- Sri. Ramoji Rao, 40 years,
S/o Late Girimoji Rao,
R/at Marati Hosahalli village,
Budikote Hobli, Bangarpet Taluk.

(By Sri NN Adv.)

PARTIES TO IA.No. 2

Applicant: Smt. Rathnamma
(Plaintiff)

V/s

Opponent : Sri. Ramoji Rao
(Defendant)

PARTIES TO IA.No. 4

Applicant: Sri. Ramoji Rao
(Defendant)

V/s

Opponent : Smt. Rathnamma
(Plaintiff)

COMMON ORDRES ON IA NO. 2 AND 4

The plaintiff has filed IA. No. 2 U/o 39 rule 1 & 2 R/w sec. 151 of CPC praying to pass an Ex-parte order of temporary injunction against the defendant from interfering with the peaceful possession of the plaintiff's over the suit schedule property.

On the other hand the defendant filed IA No. 4 U/o 39 rule 1 and 2 R/w sec. 151 of CPC for the relief of temporary injunction against the plaintiff for restraining the plaintiff from interference of the written statement schedule property which is in peaceful possession of the defendant.

2) In an annexed affidavit and objection to IA No. 4 the plaintiff has stated that, she is the absolute owner of the suit schedule property. The suit schedule property has gifted by her husband through the registered gift deed dated: 26-11-2016 on the date of gift deed the plaintiff became an absolute owner of the suit schedule property and she has been in peaceful possession over the suit schedule property. The revenue records also stands in the name of the plaintiff and she has paying the tax to the Govt. Hence she prays for temporary injunction against the defendant as not to interfere with the possession of the plaintiff over the suit schedule property.

3) On the other hand the defendant counsel filed objection and affidavit, by stating that the suit schedule property originally belongs to defendant and the defendant purchased the written statement counter claim schedule property from one Vimala bai under the registered sale deed dated: 12-05-2003. On the date of purchase of the property the

defendant become an absolute owner and he has been in peaceful possession over the suit schedule property. Though the plaintiff has no manner of rights over the suit schedule property, she is interfering with the peaceful possession of the written statement counter claim schedule property. Hence the defendant filed objection.

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. Whether the defendant has made out prima facie case ?
3. If, so in whose favour balance of convenience and hardship lies?
4. 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 | :- | In the partly affirmative |

Point No.4 :- As per final order
for the following :

REASONS

7) **Point No. 1 to 3** :- These points are intermixed with each other as such they are taken up together for discussion in order to avoid repetition of the facts. I have already set out in the brief as to what the facts of the plaintiff and what the objection of the defendant. In the nutshell the facts of the plaintiff are that the suit schedule property originally belongs to father-in-law of the plaintiff. After the death of father-in-law the suit schedule property came to the name of the husband of the plaintiff. After got katha by the husband of plaintiff he gifted the property in favour of plaintiff. The husband of the plaintiff he gifted the property in favour of the plaintiff. The husband of the plaintiff obtained licence from the concerned authority and also he has constructed the building in the suit schedule property. After

constructing the building the husband of plaintiff gifted the property in favour of the plaintiff on 26-11-2016. On the basis of the gift deed the revenue records stands in the name of the plaintiff and also she has been paying tax to the Govt. and also she has been in peaceful possession over the suit schedule property.

8) On the other hand the defendant has taken specific contention is that the written statement schedule property purchased by the defendant from one Smt. Vimala bai under the registered sale deed dated: 12-05-2003. On the date of the sale deed the revenue records stands in the name of the defendant over the written statement schedule property and also the defendant has been in peaceful possession over the written statement schedule property.

9) The plaintiff has produced several documents to support the case of the plaintiff, the plaintiff produced original registered gift deed in

favour of the plaintiff and she has produced the assessment extract which shows the name of husband of the plaintiff and also she has produced the licence to construct the building in the suit schedule property. Further she produced E-katha which is shown in the name of the plaintiff and also schedule. Further she filed several tax paid receipts to show that she has been in peaceful possession over the suit schedule property and also she has paid tax to the Govt. Further produced endorsement which shows that the plaintiff filed a complaint against the defendant before the Superintendent of Police over the interference of the possession of the plaintiff over the suit schedule property by the defendant.

10) On the other hand the defendant counsel also produced several documents in Xerox. In the said documents the Xerox copy of sale deed to show for the purpose of title over the written statement schedule property and also he has produced Mutation register and assessment and

demand register extract to show that the written statement schedule property is belongs to the defendant and he has been in peaceful possession over the suit schedule property. Further the defendant has produced several tax paid receipts to show that the defendant has been paying tax to the Govt. and also he produced one Encumbrance certificate.

11) 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 be 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.

12) 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.

13) 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.

14) 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.

15) 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.

16) 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.

17) 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.

18) 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.

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.

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 V/s. 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. 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 plaintiff, if grant the defendant would be caused. The same principle applies to defendant also. As per documents produced by the both parties it is very clear that the plaintiff and defendant both have prima facie case and the property is different but both parties are not produced site sketch. Therefore only on the basis of documents both parties are having prima facie case in favour of them. 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, the plaintiff and the defendant 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 defendant to maintain status-quo in balance of convenience pending the disposal of the suit. Under these circumstances I answered **Point No.1 and 2 in the partly Affirmative.** Further I hold that, the balance of convenience and hardship in favour of plaintiff and the defendants, hence I answered **Point No.3 partly in favour of the plaintiff and defendant.**

23) **POINT No.4** - In view of the findings on the Point No.1 to 3, I proceed to pass the following:

ORDER

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

I.A. No. 4 filed by the defendant U/o 39 Rule 1 and 2 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 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 23rd day of March, 2019.)

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