

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

AT: SRINIVASAPUR

Dated this the 8th day of April 2019

:PRESENT:

SHRI. NAGESH NAIK. M.A.,LL.B
Addl. Civil Judge & JMFC.,
Srinivasapur

O.S. NO:6/2018

Plaintiff:

Ranga Reddy,
S/o Late K.P.Venkatashami,
Aged about 40 years,
R/o Bayapalli Village,
Ronur Hobli, Srinivasapur
Taluk, Kolar District.

(By Sri.T.V.S., Advocate)

V/s

Defendant:

B.V.Rama Reddy,
S/o. Late Kolluru Venkatashami,
Aged about 50 years,
R/o Bayapalli Village,
Ronur Hobli, Srinivasapur
Taluk, Kolar District.

(By Sri.M.P., Advocate)

CAUSE TITLE ON I.A NO.I

Applicant: Ranga Reddy

V/s

Opponent: B.V.Rama Reddy

ORDER ON I.A. No.I

The plaintiff/applicant has filed this IA.No.1 under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. with prayer to restrain the defendant, his agents, relatives, heirs, coolies, representatives, contractors, assignees or anybody acting on his behalf from digging any foundation on the suit schedule property until disposal of the suit.

2. *In the affidavit annexed to the IA-I, the applicant/plaintiff has prays to consider his plaint as part and parcel of his affidavit. He has stated in the plaint that, he is the absolute owner and in peaceful possession and enjoyment of the suit schedule property. He has acquired the said property on the basis of pavathi varasu. The plaintiff father K.P.Venkataswamy*

had acquired said property on the basis of Anubava. The grandfather of the plaintiff and plaintiff has raised the two bettada bevu trees in the said property. Now the said trees are aged about 20 years and plaintiff is taking the leaves from the said trees every year. After the death of plaintiff's father, the revenue documents of the suit schedule property are mutated in the name of plaintiff. The demand register and assessment register extracts are stands in the name of plaintiff. The plaintiff has paid taxes to the concerned authority. The plaintiff and their family members are continuous to be in possession of the suit schedule property for more than 60 years. However the plaintiff's elders are not obtained any documents in respect of the said property. The defendant is totally strangers to the suit schedule property and he has no right over the said property. The defendant is trying to dig the foundation in the middle of the said property in the absence of plaintiff. At the time of digging foundation the plaintiff and his family members are not in station. The defendant is trying to construct cattle shed in

the middle of the said property. The plaintiff has made complaint before the police and panchayath authorities. They have advised to defendant to not to dig any foundation or construction in the said property. However defendant is again trying to put up foundation on the said property. The defendant is very powerful person in the locality backed with ruling political party leaders. Whereas the plaintiff is aged person and he has no support in the locality. Hence he has prays to allow the application.

3. *The defendant has not filed written objection to IA.No.1. He has orally objected and prays to dismiss the application by contending facts stated in the written statement. As per the written statement it is the case of the defendant that, he is the absolute owner in possession of property bearing Kaneshumari No.70 measuring East-west 27 yards, north-south 12 yards, bounded on East by: Gramanatha, West by: Chikkanarayanappa's vacant land, north by: Sarkari*

Gramanatha, South by: Venkatappa's vacant land. His father had acquired the said property during his life time through registered sale deed dated 24-06-1974 from the family members of the Thippanna. From the date of sale deed he and his father are continuous to be in possession of the said property. His father Venkataswamy was illiterate and he has no legal knowledge to effect the katha in his name. His father was installed bore well in the said property about 25 years ago. There is no water in the bore well. He erected stone pillars on the southern side of the said property. The plaintiff is not in possession of the said property at any point of time. The plaintiff is trying to grab the property on the basis of fabricated document. With these grounds, he has prays to dismiss the application.

4. *Heard the learned counsel for both parties and perused the materials placed on record.*

5. Now, the Points that would arise for the consideration of this court are as under:-

1. Whether the plaintiff proves that he has prima facie case in his favour?
2. Whether the balance of convenience lies in his favour?
3. Whether the plaintiff proves that he would be subject to loss and hardship in the event of not allowing the I.A.?
4. What Order?

6. The findings of this court on the above points are as under:-

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per the final order,

for the following:-

:R E A S O N S:

7. POINT NO.1:- The plaintiff has filed this suit for permanent injunction against the defendant in respect of suit

schedule property. The plaintiff has produced demand register extract, tax paid receipt and photographs. He has filed this application to restrain the defendant from digging foundation on the suit schedule property till the disposal of suit.

8. *The defendant has not filed objection to this application. However the counsel for defendant vehemently canvassed his arguments and prays to reject the application by contending the facts stated in the written statement. He has produced tax paid receipt, demand register extract, endorsements, registered sale deed dated 20-06-1974, encumbrance certificate and notification dated 26-11-2014.*

9. *The contention of the plaintiff that his father had acquired the suit schedule property on the basis Anubava and Katha and Pahani are standing in his name. After the death of his father he become the owner in possession of the said property. The plaintiff has not produced any documents to show that katha and pahani of the suit schedule property are*

standing in his father name. There is no document produced by the plaintiffs to show that he had obtained the suit schedule property on the basis of Pavathi Varsu. The mutation entry has not been produced by the plaintiff. This suit is filed by plaintiff on the basis of demand and Assessment register extracts. The demand register extract/Form 11, Assessment register extract/Form 9, does not confirm any right or title over the suit schedule property. The said documents are maintained only for the purpose of collecting revenues. There is no record produced by the plaintiff to show that the panchayath authority has granted the suit schedule property in favour of him. The defendant has denied the title and possession of the plaintiff over the suit schedule property. The Notification No.Grapp 809 GP 2014 dated 26.11.2014 issued by the Director, (Panchayath Raj) and Joint secretary, Rural Development and Panchayath Raj Department, Government of Karnataka, shows that the government has directed to issue Form 9, Form No.11A, Form No.11B, through digital signature only. In this case the

Panchayath Development officer, Arikunte Gram Panchayath had issued Form No.9 and Form No.11 to the suit schedule property without digital signature. The issuance of said Manual Forms itself has been banned by the government. Therefore plaintiff can not be said to be in possession of the suit schedule property on the basis of said documents.

10. *The defendants have produced endorsement issued by the said Arikunte Grama Panchayath on 25.11.2017, 09.02.2018, 31.10.2018. These endorsement shows that there is no reference about the grant of said property in the name of plaintiff. As per the plaintiff one Kolluru Venkatshami Property is situated on the northern side of suit schedule property. It means suit schedule property is situated on the southern side of the said Kolluru Venkatshami property. The said Kolluru Venkatshami is father of the defendant. According to the defendant his father had obtained said property through registered sale deed dated 24.06.1974. The schedule of the*

sale deed does not disclose either plaintiff or his father name on the southern side of the said property. The said deed was executed in the year of 1974. If at the plaintiff or plaintiff's father are in possession of southern side of the defendant's father property, the same would have shown in the said sale deed. One Venkatappa's vacant land shown to be situated on the southern side of the said property. It is not the case of the plaintiff that he had obtained the said property from Venkatappa. Prima facie there is no document produced by the plaintiff to believe his case. Therefore I have not found any prima facie case in favour of plaintiff at this stage.

11. *Hence, At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider*

whether the plaintiff has made out a prima facie case for granting interim relief.

12. *The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.*

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 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.*

14. *At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 – Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another. In the Hon'ble Supreme Court held in para 16 that:*

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has

made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

*The ratio laid down in the above decision clarifies that the plaintiff has to made out prima facie case in order to obtain temporary injunction. In view of above discussion and on the basis of pleadings and materials placed by both the parties, I am of the considered opinion that the plaintiff has failed to made out prima facie case in his favour. Accordingly, Point No.1 is answered in **Negative**.*

15. POINT NOS.2 & 3: *As these points are interconnected with each other, I have taken up together for consideration in order to avoid repetition of facts.*

16. *The object of interlocutory injunction is to protect the applicant against the injury by violation of his right for which he could not be adequately compensated if issues were resolved in*

his favour at the trial. In the present case, it could be seen that, there is dispute by both the parties in respect of title and possession of the suit schedule property and in the mean time the applicant/plaintiff has failed to made out prima facie case in his favour. Therefore at this stage, if the prayer of the plaintiff is allowed it may further make difficult the matter & it also may results in multiplicity of proceedings and irreparable situation may arise.

17. *The temporary injunction order can be passed on settled principles taking into account, the three basic grounds are prima facie case, balance of convenience and irreparable loss. But, in the case on hand, the plaintiff has failed made out grounds for prima facie case. Thus, in the present situation, if the prayer of the plaintiff is allowed, loss or hardship is going to be caused to other side. Therefore, there are sufficient materials on record to hold that the balance of convenience lies*

not in favour of applicant/plaintiff. In view of my above discussion, I answered point Nos.2 and 3 are in the **Negative**.

18. POINT NO.4: In view of my above discussion under point No.1 to 3, I proceed to pass the following:

:O R D E R:

**The I.A-I filed by the plaintiff/
applicant under order 39 rule 1 and 2 of
CPC is hereby dismissed.**

(Dictated to the Stenographer, on computer and computerized by her, corrected by me, and then pronounced in the open court on this the 8th day of April, 2019.)

**(NAGESH NAIK)
Addl. Civil Judge & JMFC,
Srinivasapur.**

