

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

SRINIVASAPUR

Dated this the 4th day of January 2019

:PRESENT:

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

O.S. NO:320/2017

Plaintiff:

Siddiq Sabi,
S/o Hussain Sabi,
Aged about 55 years,
R/at Bayyapalli Village,
Ronur Hobli,
Srinivasapur Taluk.

(By Sri.N.V.K. Advocate)

V/s

Defendants:

Haseen Sabi,
S/o. Hussain Sabi,
Aged about 40 years,
R/at Bayyapalli Village,
Ronur Hobli,
Srinivasapur Taluk.

(By Sri.K.S.S Advocate)

CAUSE TITLE ON I.A NO.I

Applicant:

Siddiq Sabi

V/s

Opponents: Haseen Sabi

ORDER ON I.A. No.I

The Plaintiff/applicant filed by the IA.No.1 under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. with a prayer to restrain the defendant, his agents, servants or anybody acting on his behalf from putting up any construction towards the northern side of the suit schedule property pending 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. The suit schedule property originally belongs to the joint family property of the plaintiff. In the year of 1995 the said property was divided between the brothers of the plaintiff. The B schedule property has fallen to the share of the plaintiff. The katha and demand register of the property is in his name. The plaintiff has put up as residential house in the suit schedule property with help of Government by mortgaging the*

same in favor of Government. In the schedule of the partition deed it is mentioned that, 10 feet space between plaintiff and defendants house were left as a road for ingress and egress of their houses. The defendant is having no right, title, interest over the said property. The defendant is put up construction in the middle of the road on the northern side of suit schedule property. If the defendant has constructed building on the northern side of the said property plaintiff will be put into great hardship or loss. Hence he prays to allow the application.

3. *The defendant filed for objection and denied the case of the plaintiff and further contended that, the application filed by the plaintiff is not maintainable either in law or on facts. The defendant is the absolute owner and in peaceful possession of property bearing Sl.No.1, assessment No.46, property No.72/3 measuring East-West 22 feet, North-South 36 feet including residential house and vacant space, bounded on East by: Rasul Sabi property, West by: Siddiq Sabi house, North by: Khasim*

Sabi property, South by: Sukur SAbi property. The defendant has acquired said property under partition in the year of 2000. Thereafter the defendant had filed application before Arikunte Grama Panchayath and effected the katha his name. The Panchayath document clearly shows that, there is no road existence towards defendant's house property. The defendant has constructed house about 22 years back and left the vacant space towards western portion measuring East-West 7 feet and North-South 12 feet. The defendant is constructed bathroom towards the western side of his house property. The said construction is reached up to the lintel level and he has invested huge amount. The road is existing towards the northern side of the defendant's property. The said road was ended near the defendant's house and there is no any continuation of road towards North to South. The defendant has not encroached the any property towards the northern side of his property. The plaintiff and defendant's are own brothers and they are not in good terms. The plaintiff has filed false suit with instigation of

villagers. With these grounds, the defendants have prays to reject the application.

4. The counsel for plaintiff has filed written arguments and prays to allow the application. 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 to restrain defendant, his agents, servants, family members, any persons on behalf of defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The plaintiff has filed this application to restrain the defendant from putting up construction on the northern side of suit schedule property. This prayer itself shows that, defendant is not constructing building on the suit schedule property. This suit is not for declaration of easmentary rights. The prayer sought by the plaintiff in this application is contrary to the suit relief. Admittedly defendant has already put up construction in the said property. The plaintiff has produced unregistered palu patti, demand register extract, tax paid receipts, photographs,

these documents will not helpful for the plaintiff to show that, defendant has constructed building on the road. The said road is not subject matter of the suit. Hence at this stage, I have not found any prima facie case in favour of the plaintiff.

8. *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.*

9. *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.

10. *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 applicants 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.*

11. *At this point of time, I would like to place reliance on the decision relied by the defendant reported in **(2010) 1 SCC 689 – Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and anther. 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**.*

12. 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.*

13. *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 favor at the trial. In the present case, it could be seen that, there is dispute by both the parties in respect of existence of road near their respective property. This suit is not filed for declaration of easmentary rights. Admittedly the defendant is not constructing building in the suit schedule property. The said*

road is not the subject matter of the suit. The applicant/plaintiff has failed to made out prima facie case in his favor. 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.

14. 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 to 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 no sufficient materials on record to hold that the balance of convenience lies in favor of applicant/plaintiff. In view of my above discussion, I answered point Nos.2 and 3 are in the **NEGATIVE**.

15. 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 4th day of
January, 2019.)*

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

