

KAKP410030752022



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

PRESENT: Smt. Gouramma.
LLB,L.L.M.,
Addl., Civil Judge & J.M.F.C.,
Gangavathi,

O.S.No.258/2022

Dated on this the 10th day of January 2023.

Bojja Rajakumar V/s Bojja Srinivas

Order on I.A. No.I

APPLICANT/PLAINTIFF:-

Bojja Rajakumar S/o Late Bojja
Satyanarayana, Age: 49 years, Occ:
Agriculturist, R/o: Chapparadahalli,
Hosapete, Tq: Hosapete, Dist: Koppal.

(By Sri.K.K., Adv.,)

// Versus //

RESPONDENT/DEFENDANT:-

Bojja Srinivas S/o Bojja
Satyanarayana, Age: 52 years, Occ:
Agriculturist, R/o Basapattana village,
Tq: Gangavathi, Dist: Koppal.

(Exparte)

Orders on I.A. No.1

The plaintiff/applicant has filed the present application seeking to pass an ad-interim injunction order restraining the defendant/respondent, his men, agents, servants and all legal claimants under him from interfering with the peaceful possession and enjoyment of the suit property.

2. The application is supported by way of an affidavit, sworn by the applicant in which it is stated that, he is the absolute owner and in lawful possession and enjoyment of suit schedule property. The applicant submits that, he has acquired the said land during the partition between himself and his family member. The oral partition was effected during life time of his father. Hence, himself, defendant and other members of his family have acted on the will and wish of his father, accordingly reduced the oral partition in writing in 2016. Thereby memorandum of partition was executed between them. The suit land fallen to his share, since

the time of oral partition himself and other members of his family were enjoying respective shares of properties.

3. Further, he has reiterated that, since the time of oral partition all his family members were enjoying respective properties, according to their shares without any interference. Under this circumstances, the defendant has no right, title or interest over the suit land and also the bore-well existing in the suit land. in spite of this the defendant is causing interference in his possession and enjoyment of suit property. Further it is stated that, on 10/7/2022 when he was engaged a agricultural work and enjoying the flow of the water from suit schedule land, at that time, the defendant has illegally trespassed into the land and try to remove the pumpset and pipe lines connecting the said pipelines. But, with the help of neighbors the defendant could not succeeded in his illegal acts. Therefore, the

defendant being a powerful and backed by politicians and anti social elements may cause a interference in suit property. Therefore, it is necessary to restrain him from interfering with suit schedule property. Further stated that, he has got prima-facie case, balance of convenience in his favour and if application is not allowed he will be put to great loss and hardship. Hence, on these grounds amongst other grounds sought for grant of prayer as sought in the application.

4. In spite of service of emergent notice on this application and suit summons to defendant, he has failed to appear before the court. Accordingly, this application heard exparte.

5. Heard plaintiff counsel.

6. The following points would arise for my consideration :-

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable loss or injury if T.I. is not granted.
4. What order?

7. My answer to the above point is as under

Point No.1 In the affirmative

Point No.2 In the affirmative

Point No.3 In the affirmative

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

REASONS

8. **Point No.1 :-** This suit is filed by the plaintiff for relief of permanent injunction restraining the defendant from interfering with possession and enjoyment over the suit property.

9. In the application of these kinds, court bound to consider three important factors primarily whether prima-facie case made out by the applicant, balance of convenience lies in whose favour and who

will sustain irreparable loss in case order of injunction is granted or declined.

10. Keeping all the principals of law in mind now let us discuss the facts of circumstances and application of law to the case on hand.

11. It is the specific case of the applicant/plaintiff that, the suit property is his absolute property since the same has been fallen to his share in partition took place among his family members. In order to show that, the suit land has fallen to his share, he has produced unregistered partition deed. After careful perusal of the contents of said deed it is forthcoming that, the suit land has fallen to share of the plaintiff. Further, it is also mentioned in the partition deed that, in the said land there are 3 pumpsets and he is having exclusive right over the those pumpsets. Therefore, by looking into the contents of said partition deed at this stage, it appears that, the said property has fallen to the share of the

plaintiff and he was put in possession of the same by virtue of partition deed entered into between the plaintiff and other family members. Further, the boundaries mentioned to be suit property and boundaries mentioned to the suit property in partition deed corroborates the each other. Further, the plaintiff in order to show that, the defendant has purchased the landed property to the extent of 20 guntas in Sy.No.52/A of Dasanal village has produced copy of registered sale deed. The said deed was executed between defendant and his vendor by name Smt.Malliyamma. The boundaries in the sale deed also corroborates with the plaint suit land. Further in order to show that, land to the extent of 10 guntas was sold to one Mr.Gottipatti Subbarao has produced MR bearing No.55. The said document reveals that, in the said 20 guntas of land, 10 guntas was sold to said Gottipatti Subbarao. Hence, the contention of the plaintiff that, the land to the extent of 10 guntas was

fallen to his share in partition after selling to said Gottipatti Subbarao appears to be sustainable. That apart, the plaintiff in order to show that, he is carrying out agricultural work in suit property has produced RTCs pertaining to suit property which are standing in his name from 2008-09 till 2022-23. After perusal of the said documents, the name of the plaintiff is forthcoming in column No.12 of RTCs, which has got presumptive value in the eyes of law pertaining to possession of suit property. At this juncture, these documents shows that as on today the plaintiff is in possession of suit properties. At this stage, the defendant has failed to show anything which would otherwise dis-entitles the plaintiff for the relief claimed in the application. Hence, by considering contentions of rival parties and documents produced by them, at this juncture it appears to the court that the plaintiff has got prima-facie case, which is fit for a trial in his

favour. **Accordingly, I answer the point No.1 in the affirmative.**

12. **Point No.2:-** The plaintiff has produced partition deed and RTCs pertaining to the suit lands which are standing in his name till the year of filing of the suit. Therefore, at this stage, it appears that, plaintiff is doing agricultural work in suit property. The point of balance of convenience is a one which is to be considered as a one to whom it would cause a more inconvenience if temporary injunction is granted rather than in whose favour there is a balance of convenience. Hence, balance of convenience is to be looked from the prospective of both the parties. In this case, the plaintiff has established prima-facie case and at this stage, he has also shown possession over the suit properties, hence, balance of convenience also does lies in his favour. **Accordingly, I answer the point No.2 in the affirmative.**

13. **Point No.3:-** At this stage, court has opined that plaintiff has establish prima-facie case in his favour thereby restraining the respondent/defendant from interfering with possession and enjoyment of the suit property till the disposal of the suit. Further in the opinion of the court if at all application is dismissed, plaintiff will be put to great hardship and loss rather than the defendant. If at all defendant is restrained from interfering with the suit property till further order, no much hardship and loss will be cause to him per contra, plaintiff will be put to greater loss and hardship which cannot be compensated in terms of money. **Accordingly, I answer the point No.3 in the affirmative.**

14. **Point No.4:-** In view of my answers given on the above points, as per the above discussions, I proceed to pass the following:

ORDER

IA.No.I filed by the

applicant/plaintiff Under Order XXXIX Rule 1 and 2 R/w.Sec.151 of CPC is hereby allowed.

The respondent/defendant, his men, agents, servants or any other person claiming through him or acting on his behalf are restrained from interfering with possession and enjoyment over the suit property till further orders of the Court.

No order as to costs.

(Dictated to the Stenographer directly, typed by her on computer, corrected, signed by me and then pronounced in open Court on this 11th day of January 2023)

(Smt. Gouramma.)
Addl., C.J., & JMFC, Gangavathi