

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 30th day of March 2023.

Bojja Rajakumar V/s Bojja Srinivas

Order on I.A. No.III

APPLICANT/DEFENDANT:-

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

(By Sri.U.R.V., Adv.,)

// Versus //

RESPONDENT/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.,)

Orders on I.A. No.III filed under order 39 rule 4 r/w
151 of CPC

The defendant/applicant has filed the present application seeking to vacate/set aside the temporary injunction order on I.A.No.1 dated 11/1/2023 against him.

2. The application is supported by way of an affidavit. It is sworn by the applicant in which it is stated that, the plaintiff has filed the above suit against him for relief of permanent injunction in respect of suit schedule property. In the said suit the plaintiff has filed interim application under order XXXIX Rule 1 & 2 of CPC against him and got exparte temporary injunction order on 11-01-2023. But, the suit of the plaintiff itself is not maintainable, as such the I.A. No.I filed by the plaintiff is also not maintainable.

3. Further it is submitted in support of the application that, the plaintiff has produced fake partition deed dated: 03-06-2016 and also forged his

signature and his sister and mother's signatures over the same. Further it is submitted that, by producing forged documents he got T.I. order against him. It is by him that, the said partition deed is not acted upon till now since it is incomplete and forged documents. Hence, the injunction order granted on the basis of said document is not sustainable. It is further contended by the applicant that, the plaintiff has not produced any document in support of his claim at the time of filing the I.A.No.1. But, he being aggrieved by the said order has produced sale deed and ROR of the suit schedule property which is exclusively belongs to him. Therefore, the plaintiff/respondent is no way concerned to the his family.

4. Further, the sister of the plaintiff and defendant by name Nagamani has also sworn an affidavit in the same tune as that of applicant. With above reasons, it is submitted by applicant that, the plaintiff by obtaining Exparte T.I. order from this court

is making obstructions in his property and also obstructing to cultivate his land and he has removed wires and damaged his pumpset. Hence, he is not able to cultivate the land which as resulted in drying of crops. Therefore, on these grounds amongst other grounds sought to vacate or set aside the orders on I.A.No.1 dated 11/1/2023.

5. The plaintiff/respondent has prayed to consider the contents of application (I.A.No.1) filed U/o 39 rule 1 & 2 of CPC., as objection to the present application. Hence, when we look into the contents of I.A.No.1 it reveals that, the plaintiff 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 between himself and other members of his family, all are enjoying respective shares of properties.

6. 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 in 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 tried to remove the pumpset and pipe lines connecting the said pipelines.

But, with the help of neighbors, he has resisted the same. Hence, the defendant could not succeeded in his illegal acts. Further stated that, he has got prima-facie case, balance of convenience in his favour. Therefore, prays to reject the application.

7. Heard arguments of counsel for both the parties.

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

1. Whether the applicant/defendant has made out a grounds to vacate the temporary injunction order on I.A.No.1 dated 11/1/2023 against him ?

2. What order?

9. My answer to the above point is as under:

Point No.1 In the negative

Point No.2 As per final order for the following

REASONS

10. **Point No.1 :-** This suit is filed by the plaintiff seeking relief of permanent injunction.

To consider the present application it is necessary for the court to re-look into some past proceedings of the case. The plaintiff has filed the suit against the defendant. He is admittedly none other than his brother. Along with the suit, plaintiff/respondent had filed application U/o 39 rule 1 & 2 of CPC., (I.A.No.1). Hence, suit summons & emergent notice on I.A.No.1 was issued against the defendant. But he remained absent, after due service of notice. Hence , the suit proceeded exparte. Hence, on the basis of submission of the plaintiff counsel, the court has decided to take up the matter with regard to I.A.No.1. This court by considering the material placed on record by the plaintiff/respondent has restrained the defendant and his legal or any persons claiming through him from interfering with suit property vide its order dated

11/1/2023. Further that, when the matter was posted for plaintiff evidence, the present application is filed. The court has allowed the application filed by defendant to set aside the exparte order and permitted him to participate in the proceedings. When this happened the applicant/defendant has filed this application seeking to vacate the above said order.

11. We have seen past proceedings of the case. As we are dealing with this present application it is necessary for us to better understand the relevant provisions of law. Accordingly, the relevant portion of Order 39 Rule 4 of C.P.C., is reproduced here for immediate and ready reference.

Rule 4. Order for injunction may be discharged, varied or set aside.- Any Order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an Order for injunction has been passed after giving to a party an opportunity of being heard, the Order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the Order has caused undue hardship to that party.

12. Having seen and understood the above provisions of law it is clear that, this court has got ample power to entertain the present kind of application and to set aside the order only when there are change in circumstances or court is satisfied that the order has caused undue hardship to the aggrieved party.

13. We have seen the progress of the case, therefore, the present case false in the second proviso to Order 39 Rule 4 of CPC. Therefore, the applicant/defendant has to establish that, there is change in circumstances or undue hardship has been caused to him which necessities this court to vacate the order dated 11/1/2023 against him. Then if that is the case, what is that, change in circumstance or

hardship caused to applicant which forces the court to vacate its earlier order. The answer for this question is negative. The answer is made in the negative because the applicant has not shown that there is change in circumstances or any such hardship has been caused which empowers the court to exercise its power. In this case in the applicant/defendant only contends that, the plaintiff/respondent has produced bogus Memorandum of Partition document and forged signature of his other family members and obtained temporary injunction order at the hands of this Court. Even, the sister of both the parties to the suit who without any authority has filed the affidavit and deposed in the same tune. But, the genuinity and forgery of signature was not the question suppose to be examined that the time while entertaining the application U/o 39 rule 1 & 2 of CPC.

14. Further, the defendant/applicant submits that, the plaintiff has not produced any RTC but,

Court has observed in its order dated 11/1/2023 about production of RTCs pertaining to suit property by the plaintiff. Having heard said contention of defendant counsel, when court has re-perused the materials on record, there were RTCs of suit land from the year 2008 to 2023 produced by the plaintiff. Hence, in that regard the said contention of the counsel for the applicant is not maintainable.

15. The another ground urged by the applicant is that, the plaintiff by obtaining the temporary injunction order is causing obstruction in his suit property and not allowing water to paddy crop. As result the crops are drying up. In this regard he has filed photographs. Further he filed copies of RTC's pertaining to suit land. Though in the RTC's the name of the defendant is appearing to the extent of 10 guntas of the land but he has not produced mother document for such mutation. But per contra the plaintiff/respondent has also produced photographs

pertaining to land of the defendant to show green paddy crops in the filed and thereby submits the he is not making obstruction in the paddy filed of the applicant which has resulted in the loss to him. Those photographs are not disputed by applicant/defendant. Hence, even no hardship has been established by him to vacate the temporary injunction. Therefore to exercise the power under Rule 4 of Order 39 of CPC it has to be established about change of circumstances. But in the opinion of the court the applicant has not established change of circumstances. Therefore, the both the grounds on which the present application is mainly filed are not sustainable.

16. In this case, the order which has passed by the court U/o 39 rule 1 & 2 CPC has attained the finality and was not challenged by the defendant. It is also not disputed fact that the said order was passed when the defendant did not appear. Therefore, in such a situation the second limb of proviso U/o 39 rule 4 will

be attracted. This being the situation of only thing to be seen is whether there is any change circumstances or a situation causing hardship to the applicant/defendant, which warrants for modification of interim order. Evidently, there is no such a situation established on the record. Though defendant/applicant contends that, this court has not considered genuinity of materials placed on record by the plaintiff. But as stated above that court has considered all the facts and materials thereon passed the order. In this case the application filed by the applicant does not satisfy requirements of second proviso order 39 rule 4 of CPC. Hence, I do not find a merit in the application. In this case, applicant/defendant except arguing on the genuinity of documents placed by the plaintiff has not shown change the circumstances which warrants for immediate vacation of order dated 11/01/2023. Therefore, in the opinion of the Court no

circumstances has been established by the applicant to vacate the temporary injunction. **Accordingly, I answer point No.1 in the negative.**

17. **Point No.2:-** In view of my answers given on the above points, as per the above discussions, I proceed to pass the following:

ORDER

IA.No.III filed by the
applicant/defendant Under Order
XXXIX Rule 4 r/w.Sec.151 of CPC is
hereby dismissed.

No order as to cost by considering
relationship of parties.

(Dictated to the Stenographer directly, typed by her on computer, corrected, signed by me and then pronounced in open Court on this 30th day of March 2023)

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