

IN THE COURT OF SENIOR CIVIL JUDGE
AT MADDUR

:PRESENT:

Smt. K.Srividya, B.A.L., LL.M.,
Senior Civil Judge,
Maddur.

O.S. No.56/2017

DATED : THIS THE 15th DAY OF FEBRUARY 2021

Plaintiffs : Smt. B.T.Rathnamma and Others.

-V/s-

Defendants : Sri. B.T. Srinivasa and Others.

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I.A. No.VIII

Applicants : Smt. B.T.Rathnamma and Others. (Plaintiffs)

-V/s-

Opponents : Sri. B.T. Srinivasa and Others. (Defendants)

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ORDERS ON I.A. VIII

I.A.8 application is filed by the plaintiffs under Order 39 Rule 1 & 2 r/w/sec 151 of CPC to temporarily restrain the defendant No.2, her agents or anybody claiming under her from alienating the suit schedule property, till the disposal of the suit. It is accompanied by affidavit. Objection is filed by defendant 2 to 4.

2. In the affidavit accompanying the application, the plaintiffs/applicants state that, the suit is filed for the relief of partition and separate possession with respect to suit schedule property. The Hon'ble Court has allowed IA-V filed under order 39 rule 1 and 2 of CPC. But, at the time of filing the IA-V item No.1 schedule wrongly mentioned as Sy.No.12/½ instead of Sy.No.12 &. Now, the defendant No.2 is trying to alienate the said property during the pendency of the suit. Hence, prayed for allowing the application.

3. The defendant 2 to 4 have filed objection to I.A.8. Apart from usual denial of averments mentioned in the

affidavit accompanying the application contend that, plaintiffs have already obtained temporary injunction order in respect of Sy.No.12/ ¼ which is item No.1. The plaintiffs by filing the present application cannot seek similar relief. The plaintiffs does not have prima facie case. Hence, prays for rejection of the application with cost.

4. The following points arise for my determination:

POINTS

- (1) Whether the plaintiffs/applicants prove prima facie case lie in their favour ?***
- (2) Whether the balance of convenience lie in favour of the plaintiffs ?***
- (3) Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction order is not granted in their favour ?***
- (4) What order ?***

5. Heard the Counsel for plaintiffs Sri.H.Suresha. and counsel for defendant No.2 to 4 Sri.B. Ramakrishnegowda.

6. My findings on the above points are 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

7. Point No.1 : It is well settled principle that, the plaintiff claiming temporary injunction order should satisfy all the 3 ingredients i.e. prima-facie case, balance of convenience lie in his / her favour and if the temporary injunction is not allowed he / she may suffer irreparable loss and injury which cannot be compensated in terms of money. With this notion, we have to look into whether the petitioner / plaintiff establishes all the 3 ingredients.

***In Dalpat Kumar V/s Prahlad Singh, AIR
1993 SC 276 the Apex Court has held:***

“Prima-facie case is not to be confused with prima-facie title, which has to be established, on evidence at the trial. Only prima-facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits”.

In the above said citation the Apex Court has held that prima-facie case means the Court has to look into whether the plaintiff has case to go for trial. With this notion we have to look into whether the plaintiff establishes prima-facie case.

8. There is no dispute about the relationship between the parties and the suit schedule property is agricultural property.

9. The plaintiffs Counsel argued that, the suit is filed for partition and separate possession inadvertently while filing IA-5 application, item No.1 schedule was wrongly described. The defendant No.2 by misusing the said aspect is trying to alienate item No.1 to third party during the pendency of the suit. Hence, prima facie case established. Per contra, counsel for defendant No.2 to 4 argued that, already temporary injunction order granted in favour of the plaintiff, similar relief cannot be granted. Hence, prays for rejection of the application.

10. The plaintiffs contend that, themselves and defendants No.1 to 4 are in joint possession and enjoyment of the suit schedule properties and they are entitled for a share in suit schedule properties. Per contra, defendant No.2 contends that, there does not exists joint family between the plaintiffs and the defendants.

11. Perused the Court records. The suit is filed seeking partition and separate possession of suit schedule properties. Since, the relationship of the plaintiffs with the defendants is not in dispute, whether the plaintiffs are entitled for share in suit schedule properties or not is a matter that has to be determined in full fledged Trial. At this stage, the plaintiffs have prima facie case to go for trial. With, this observation, **Point No.1 is answered in the Affirmative.**

12. Point No.2 : So far as balance of convenience is concerned, this court would like to rely on decision of Apex Court cited above wherein, the Apex Court has discussed

the concept of balance of convenience which is reproduced hereunder:

“Balance of convenience” - means the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, is the injunction is refused and compare it with that it is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, on injunction would be issued”.

Wherein, the Apex Court has held that while considering balance of convenience the Court has to weigh the possibility of injury to the applicant. Based on the affidavit and documents produced by the applicant. With this notion, we have to look into whether the plaintiff / applicant satisfies the said ingredient.

13. So far as balance of convenience is concerned, the plaintiffs to support their contention have produced the following documents:

(1) Xerox copy of sale agreement dated 22.05.2018.

14. Perused the document produced by the plaintiff. The document reveals the defendant No.2 has entered into sale agreement with respect to item No.1 of suit schedule property with third party. Hence, the balance of convenience at this pre-trial stage, tilt in favour of the plaintiffs. Hence, based on above said observation, **Point No.2 is answered in the Affirmative.**

15. Point No.3 : So far as irreparable loss and injury are concerned, the Apex Court cited above has discussed the concept of irreparable loss and injury which is reproduced hereunder:

“Irreparable loss or injury” – means the Court has to further satisfy that non-

interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession”.

Wherein, the Apex Court has held that while considering irreparable loss & injury the Court has to look into if temporary injunction order is not granted whether the applicant would suffer irreparable injury which cannot be compensated in terms of money. With this notion, we have to look into whether the plaintiff/applicant satisfies the said ingredient.

16. So far as irreparable loss and injury is concerned, if temporary injunction order is not granted then, there is every possibility of leading to multiplicity of suits. On the other hand, if temporary injunction is granted no loss would be caused to the defendant No.2 who can always alienate the suit schedule property after final disposal of the suit. With this observation, **Point No.3 is answered in the Affirmative.**

17. Point No.4 The record reveals the plaintiff was granted IA-5 application which was filed under order 39 Rule 1 and 2 of CPC by restraining the defendants from alienating the suit schedule properties during the pendency of the suit. However, on perusal of IA-5 the schedule of item No.1 is wrongly described as Sy.No.12/¼. In the plaint the schedule is described as Sy.No.12/¼. There is inadvertently typographical error in describing item No.1 in IA-5. This appears to be misused by the defendant No.2 by entering into sale agreement with respect to item No.1 of suit schedule property. If temporary injunction order as sought in the present application is not granted, then there is every possibility of leading to multiplicity of suits. Hence, based on findings in points No.1 to 3, this court proceeds to pass the following:

ORDER

I.A.VIII filed under Order 39 Rule 1
and 2 r/w Sec.151 of CPC by the
plaintiffs is hereby allowed.

The defendant No.2, her agent or anybody acting under her is temporarily restrained from alienating the item No.1 of suit schedule property till the disposal of the suit.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 15th day of February, 2021)

(K. SRIVIDYA)
Senior Civil Judge,
Maddur.