



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

Dated on this 08th day of April, 2022.

PRESENT:

Sri. MANJUNATHA R. B.A.L. LL.B.,
Civil Judge & JMFC.,
Nagamangala.

O.S. No.275/2021

PLAINTIFF : Sri. Bommaraju.

V/s

DEFENDANT : Sri. Mahesha.

IA No-I

**Applicant/
Plaintiff** : Sri. Bommaraju.

V/s

**Opponent/
Defendant** : Sri. Mahesha.

* * *

ORDERS ON IA No.I

The plaintiff has filed this application under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC., seeking temporary injunction restrain the defendant, his agents or servants or anybody on his behalf causing any interference to the plaintiff

possession and enjoyment over the suit schedule property till pending disposal of the suit.

2. The reasons ventilated in the affidavit accompanying to application that, the plaintiff has filed the instant suit against the defendant for the relief of Permanent injunction in respect of the suit schedule property. He has stated that, the defendant is stranger to the suit property. Originally, the suit property was an ancestral property and same was fallen to his share under the registered partition deed 06-05-2002 and got it change of khatha into his name as per partition deed. He is in possession and enjoyment of the suit property, all the revenue records are stands in his name. As such he is an absolute owner of the suit property by virtue of partition deed and he is paying tax to the concerned authority in respect of the suit land. The defendant absolutely have no manner of right, title, interest in or over the suit property and he never in possession and enjoyment of the suit property. In spite of repeated requests made by him, the defendant did not stopped his illegal acts of interference. But, the defendant took a law into his hands and doing illegal acts and he is not entitle to do so. In fact the defendant had been to the suit property on 01.10.2021 and trying to causing interference into the suit property. For which, he made a complaint to the police against the defendant, but they have not taken any action so far. As such the interference of this Hon'ble court has become very much essential to protect the lawful and

settled possession of the suit schedule property. Otherwise, the defendant takes the law into his own hands and doing illegal acts. He has made out a prima-facie case against the defendant and the balance of convenience lies in his favour rather than defendant. If the injunction order is not granted he will be put to much hardship and great injustice, which cannot be compensated in terms of money. If the order of injunction is granted no harm will be caused to the other side. Hence, prays to allow the application.

3. In response to the summons the defendant has appeared before the court through his counsel and filed written statement and adopted its contents as objection to the IA No.I by filing memo. In the written statement it is contended that, the relationship between the parties mentioned in para 2 of the plaint is admitted. It is true that, the plaintiff is an absolute owner and in possession of the suit schedule property and it is also admitted that, originally suit schedule property is an ancestral property and plaintiff had acquired it through the registered partition deed dated 06.05.2002. Further it is contended that, the defendant has filed the suit in O.S. No.223/2020 for the relief of permanent injunction against the plaintiff and others. The defendant is an absolute owner and in possession of the Land bearing Sy.No.19/P1 to an extant of 1 Acre 13 guntas, situated at Huruliganganahalli village, Honakere Hobli, Nagamangala Taluk bounded on East by - Land of Kakanna, West by -

Samakahalli Village Gadi, North by - Land of defendant and South by - Land of sons and wife of Chowdegowda namely Devamma, B.C Siddalingegowda and B.C. Ashoka and the Land bearing Sy.No.19/P2 to an extent of 1 Acre situated at Huruliganganahalli village, Honakere Hobli, Nagamangala Taluk bounded on East by - Land of Kakanna, West by - Samakahalli Village Gadi, North by - Land of Javaregowda and South by - Land of defendant. The defendant has irrigated above properties through drip irrigation in order to grow the vegetables crops and he has installed pipes in the above properties and he has seeded capsicum plants in the above properties. The plaintiff and others have no manner of right, title, interest much less possession over the above properties of the defendant and they have illegally trespassed to the above properties and illegally demolished capsicum plants and the pipes in the above properties. Hence, the defendant in this case has constrained to file the suit in O.S. No.223/2020 on the file of this Hon'ble court for the relief of permanent injunction.

4. It is further contended that, the plaintiff with a malafide intention filed this suit and the defendant has not at all denied the right, title and possession of the plaintiff over the suit schedule property and this defendant has not at all interfered with the suit schedule property of the plaintiff. The plaintiff has filed this suit with a malafida intention to used as a weapon against the defendant in order to grab the above

properties of the defendant. Hence, the suit of the plaintiff is ill motivated and prejudiced the interest of the defendant. The plaintiff has not at all approached the court with clean hands and he has suppressed the real facts and filed this false suit to grab the above property of the defendant. Hence, sought for rejection of the said application.

5. Heard the arguments of learned counsels appearing for the parties and perused the materials on record.

6. Now the following Points would arise for my consideration:

- 1. Whether plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for ?*
- 2. Whether the plaintiff has shown that balance of convenience lies in her favour?*
- 3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A. is not allowed?*
- 4. What order?*

7. Having gone through the pleadings and documents produced by the parties at this stage, as well as the arguments canvassed by them, my findings on the above Points are as under:-

Point No.1 to 3 : In the **Affirmative.**

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

REASONS

8. **Point No.1 to 3 :** Since these points are interlinked with each other and they form part of the same transaction, hence they are taken up together for common discussion to avoid the repetition of facts.

9. The learned counsel appearing for the plaintiff as well as defendant have argued vehemently by reiterating the contentions taken in the course of their respective pleadings.

10. Upon hearing the arguments advanced by the counsel for the plaintiff and defendant on application and on perusal of the records reveals that the plaintiff has filed the present suit against the defendant for the relief of permanent injunction in respect of the suit schedule property. The plaintiff has claiming the ownership and possession of the suit schedule property under the partition deed dated 06-05-2002. In the said partition the suit schedule property was allotted to the share of plaintiff. As such he is in possession and enjoyment of the suit schedule property. The defendant never denied the right and possession of the plaintiff over the suit schedule property. But, he has contended that, in the partition deed dated 06-05-2002 he has also acquired the properties in the same survey number and when the plaintiff and others causing interference to his

properties he has filed the suit for the relief of permanent injunction before this court in respect of his properties. Counter blast to the said suit the plaintiff has filed this suit with a malafide intention.

11. The plaintiff in support of his case, he has produced the copy of the partition deed dated 06-05-2002. On perusal of the said document it clearly reveals that, the plaintiff and his brothers have partitioned their ancestral properties and in the said partition suit schedule property was allotted to the share of plaintiff and remaining extent of the suit survey number has been allotted to the defendant and his another brother. As per the partition deed the revenue entries got mutated in the name of plaintiff. The RTC extract produced by the plaintiff clearly shows that, the plaintiff got changed the revenue records of the suit schedule property in his name and he is in possession and enjoyment of the suit schedule property.

12. The defendant never disputes the partition deed and also he never dispute the allotment of the suit schedule property to the share of plaintiff and also his revenue records. All the documents produced by the plaintiff clearly reveals that, the plaintiff is claiming the property as per the partition deed dated 06-05-2002. The boundaries and extent of the suit schedule property mentioned in the partition deed dated 06-05-2002 are similar with the plaint boundaries. At this stage the defendant in order to disbelieve the case of the

plaintiff, he has not produced any material documents before this Court. The partition deed clearly reveals the ownership and possession of the plaintiff over the suit schedule property. The revenue records produced by the plaintiff clearly establishes that, he is in possession and enjoyment of the suit schedule property. The defendant has not denied the ownership and possession of the plaintiff over the suit schedule property and he has also denied his interference over the suit schedule property.

13. The plaintiff is apprehended about the interference of the defendant. The mental apprehension has to be met out by this court. In this regard I rely upon the judgment reported in **1991(1) K.L.J. 536 between Laxman V/s. M.P. Krishnappa**, wherein it is specifically stated that,

“ SRA 1963 - S.36 Injunctory decree - Basis for grant of – Threatened invasion of it can be basis no need for binding whether threat is real or not - where party seeking preventive relief of injunction on the basis of possession has established fact of his possession, he is entitled to relief ” and it is further held in Para 3 of the aforesaid decision is that “ An aggrieved person comes to the court complaining of interference of the defendant may be at a particular point of time has not caused interference, but once the fear stores heavily in the mind of the aggrieved person there shall be no difficulties for court to grant injunction especially when it is found that particular person is in possession.”..

14. Further, in a decision reported in **1998(5) Kar.L.J. 168 Romeo M.F. Aquinas and Others V/s. Florina Mothias and Another**, wherein it is held as hereunder:-

“ The right is not disputed by both the parties. Now the plaintiffs’ allegation was that there was an interference or at least apprehended that there is likelihood of interference. For a man to live in peace he resorts to Court and seeks an order of injunction. When the defendant admits the claim of the plaintiffs, nobody will be prejudiced by granting the decree for injunction. Once the matter has been seized by the Court it is for the court to grant the relief, the parties desire to get and when the relief is available on the basis of the averments made in the plaint and grantable on the basis of the written statement there can be no impediment for granting such a relief at all. A man may not know the mind of another. When the fear is in the minds of plaintiffs the Courts must dispel the fear and when admissions are made they should be made matured into a decree. The mere fact that there is a defence raised by the defendants that he has no intention of obstruction does not dispel the threat of interference that has been caused in the mind of the plaintiff ”.

15. The principles reiterated in the above decision squarely applicable to the case on hand. The plaintiff has proved prima-facie case in his favour. The documents produced by the plaintiff clearly reveals that, he is in possession and enjoyment of the suit schedule property and the defendant has not claiming his right and possession over the suit schedule property. The contention raised by the defendant is to be considered only after full pledged trial and not at this stage. Law is fairly well settled that when an application for temporary injunction is filed by a plaintiff, he has to prove the prima-facie case. The documents produced by the plaintiff clearly establish that, he has got prima-facie case and there is no doubt in the plaintiff case. The documents produced by the plaintiff is mutually corroborative and are

reliable to hold that, he is in possession and enjoyment of the suit schedule property. With regard to balance of inconvenience, if the order of injunction is issued against the defendant no hardship or injury will be caused to him. On the other hand, if the defendant has succeeded in his attempts the whole purpose of filing the suit is frustrated. The plaintiff will be put into great hardship and injury if this application is rejected. On the other hand, no hardship or injury will be cause to the defendant. The plaintiff has proved the prima-facie case and also balance of convenience lies in his favour. Hence, considering all these aspects, this court in the touchstone of reasons ventilated above, I answer Point No.1 to 3 in the **Affirmative**.

16. **Point No.4** : In view of my findings on Point Nos.1 to 3, I proceed to pass the following:

ORDER

The I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant, his agents or servants or anybody on his behalf are hereby restrained from causing any interference to the plaintiff possession over the suit schedule property till disposal of the suit.

[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of 08th day of April, 2022]

(Manjunatha R.)
Civil Judge and JMFC.,
Nagamangala.

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