

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

DATED ON THIS THE 2<sup>nd</sup> day of November 2021

**:PRESENT:**

**Smt. YASHASHWINI AMEEN B, M.A., L.L.M.,  
II ADDL. Civil Judge & JMFC.,  
PANDAVAPURA**

**ORIGINAL SUIT NO.230/2021**

Plaintiffs :

1. K.S.Nagamma w/o late  
M.H.Puttaswamy, aged 75  
years,
2. M.D.Shivakumar s/o late  
M.R.Dasegowda, aged 62  
years,
3. Sannathayamma w/o late  
Rajegowda, aged 65 years,

All are r/at Ragimuddanahalli  
village, Chinakurali hobli,  
Pandavapura taluk,

(by Sri. CRM, Adv.)

v/s

Defendants : Ningamma w/o late  
Kalegowda, aged 75 years,  
r/at Ragimuddanahalli  
village, Chinakurali hobli,  
Pandavapura taluk,

(Sri. HSS, Adv.,)

I.A.No.I

Applicants : M.B.Shivakumar  
----- 2<sup>nd</sup> plaintiff  
v/s

Opponents : Ningamma----- defendant

**:ORDERS**

**1.** The plaintiff has filed I.A.No.1 under Order 39 Rule 1 & 2 r/w sec.151 CPC seeking interim injunction restraining defendant from putting up any further construction in the suit schedule property till the disposal of the suit.

**2. Brief facts of the plaintiff case is that :**

In the affidavit annexed to the application, it is

stated that suit schedule property is the ancestral property of the plaintiffs. The defendant without having any title, interest and right over the suit schedule property she has created forged documents for the extent of east-west 45 feet and north-south 60 feet. On the basis of the said concocted document, defendant has constructed house by encroaching the 10 feet of the suit schedule property. If the defendant is succeeds in her attempts, then plaintiffs will be put to irreparable loss. Further plaintiffs have stated that, they are having prima facie case against the defendant. Hence, they filed this suit along with the application.

**3.** Per contra, the defendant has filed the written statement and objection to I.A.No.1.

**4. The gist of the objection filed by the defendant is as follows:** It is specifically contended that, the suit schedule property is not

belongs to the plaintiffs. Further she has stated that, the father of the defendant by name Doddamogegowda had 3 children, they have filed partition suit before Srirangapatna Civil court in O.S.No.172/1983. Further it is stated that defendant has filed appeal before Senior Civil Judge court in RA No.20/1990, as per the advice of the elderly people, compromise was executed between the parties. Accordingly, compromise decree was drawn in RA No.20/1990. Accordingly, this defendant has got house in Ragimuddanahalli bearing Khatha No.321/208 for the extent of east-west 45 feet and north-south 60 feet as her share.

- 5.** Further she has stated that the said house was a very old house and is in decay condition. Therefore in order to construct new house by demolishing old house, she has obtained license dated 27.8.2021 from the

panchayath. Accordingly defendant constructed house for the extent of east-west 39 feet and north-south 48 feet. The construction of the house reached upto Lintel level. At this stage, plaintiffs have filed this false case against this defendant. The plaintiffs have not reached this court with a clean hand by suppressing all the material facts. Hence, defendant prays that the application filed by the plaintiff is not maintainable. Hence, she prays to dismiss the application.

**6.** Heard the argument canvassed by the learned counsels for the plaintiffs and defendant on the application. Perused entire materials on record.

**7.** On careful examination of contention of both sides and materials on record, the following points arise for consideration of this court:

**Point No 1:** Whether the plaintiffs have made out prima facie case in their favour?

**Point No 2:** Whether the balance of convenience lies in favour of plaintiffs?

**Point No 3:** Whether the plaintiffs will be put to irreparable loss and injury, if an order of temporary injunction is not granted?

**Point No 4:** What order?

**8.** The above points are answered as follows:

**Point No.1: In the negative;**

**Point No.2: In the negative;**

**Point No.3: In the negative;**

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

**REASONS**

- 9.**        **POINT NO.1 :-** Plaintiffs are claiming to be the owner and in possession of the suit property. Accordingly, they are in peaceful possession and enjoyment over the suit schedule property. Further it is stated that, defendant has constructed house by encroaching the 10 feet of the plaintiffs property. Per contra, defendant has stated that, she has not encroached the property of the plaintiff. On the other hand, she has constructed house in her own property which she has obtained from the compromise petition executed between their family members of the defendant's in RA No.20/1990.
- 10.**        The plaintiffs in support of their case have produced khatha extract of the defendant property and also they have produced RTC in respect to the Sy.No.30/2. On careful perusal of the said RTC, it is noticed that, name plaintiff

No.3 by name Sannathayamma and Kaveramma, M.K.Krishnegowda, Jayamma and Sharadamma appears in column no. 9 in the RTC. Further it shows that they are in joint possession for the extent of 0.32 guntas in Sy.No.304/2. But in the plaint, plaintiffs have stated that they are the owner in possession of 2.28 acres of land in Sy.No.304/2 but in support of this, plaintiffs have not produced any documents. Moreover plaintiff no.1 and 2 names not appeared in the RTC produced by plaintiffs.

**11.** Further the defendant has stated that, she has constructed house for the extent of east-west 39 feet and north-south 43 feet in khatha No.321/208. She has stated that, as per the compromise decree in RA No.20/1990, she became the owner in possession of the said property. As old house is in decay condition, she demolished said old house and started

constructing new house in the place of old house by obtaining panchayath license on 27.8.2021. In support of her plea, she has produced compromise decree in RA No.20/1990. Further she has produced house construction license issued by the Gummanahalli panchayath and also she has produced certified copy of the MR No.15/1996-97. Further she has produced photos. On perusal of the said photos, it is noticed that, the defendant has constructed the house upto lintel level and house construction license issued by the Gummanahalli panchayath stands in the name of defendant.

**12.** It is admitted fact that, the suit is for bare injunction and the instant application is for temporary injunction. Thus, question of title not of any importance, though it has been exhaustively pleaded in the plaint as well as in

the written statement, possession must be proved.

**13.** Next coming to the documents produced by the plaintiff it is noticed that, even though plaintiffs have stated they are the owner in possession of the suit schedule property, but in support of their plea, they have not produced any documents. On the other hand, the defendant has produced the documents which shows that the defendant has obtained panchayath license for the construction of house. Further she has produced compromise decree. As per the said decree, defendant has become the owner and in possession of the property where she is constructing her house. Even though plaintiffs have stated defendant trying to construct the house by encroaching the suit property. However, it is well settled principle of law that **“the court shall not conduct a mini trial at the time of**

**disposal of application for temporary injunction in order to determine the genuineness of the documents produced by the parties”** Further at this stage plaintiffs have not produced any documents in their support.

**14.** Further defendant has stated that, she has constructed house upto the lintel level which clearly reflects from the photos produced by the defendant. At this juncture, **the Hon'ble Apex court held in 2008 (11) SCC page 1 in case of Mandali Ramanna and others v/s P.Ramachandra and others.** It is held that, *“application filed by the applicants seeking an injunction restraining the respondents from raising the construction in the schedule property and transferring or alienating the right in respect of property during the pendency of suit is not correct.”* In this case also, plaintiffs claiming temporary injunction to restraining the

defendants from raising the construction in the suit schedule property but plaintiffs have fail to prove their possession over the suit schedule property at this stage. Therefore, The question of considering the case of the plaintiffs as a prima facie case in their favour does not arise at all. On the contrary, the defendant has produced cogent and specific document to consider the case of the defendant in their favour for the purpose of disposal of IA I. In **ILR 1992 KAR 2905, the Hon'ble High Court of Karnataka**, it is held that

*“The principle regarding granting or refusal of an injunction are well settled now. It cannot be disputed that in order to entitle to a temporary injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this extraordinary*

*relief of temporary injunction cannot be granted to him”.*

Hence, keeping in mind, above principles laid down by Hon'ble High Court of Karnataka, and In view of the above discussion, this Court is of the view that, the plaintiff has not made out prima facie case for grant of injunction. **Hence, I proceed to answer point No.1 in the negative.**

**15. POINT NO. 2 & 3 :-** These Points are taken together for discussion in order avoid repetition of facts. Now it has to be seen whether the balance of convenience is lies in favour of the plaintiff and irreparable loss and injury would be caused to them if an order of temporary injunction is not granted.

**16.** In view of findings on point no.1 the plaintiff has failed to prove a prima faice case. Where a party has failed to prove a prima facie case, injunction cannot be granted even if such

party makes out case of balance of convenience and irreparable injury. It is so held by their Lordships in a decision reported in ***AIR 2010 SC 296, between Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy.***

**17.** It is a well established principles of law that even if the plaintiff establishes the prima facie case in their favour. If granting of an order of injunction the defendant will be put to greater hardship than the court has got power to refuse to grant an order of injunction. Whereas in this case viewed from any angle the balance of convenience does not lean in favour of plaintiffs. On the other hand if injunction is granted in favour of plaintiffs, then defendant will put to irreparable loss and injury as she has invested huge money for contraction of the house. When there is no prima facie case, question of considering the balance of convenience and

irreparable loss and injury that would be caused to the plaintiffs if temporary injunction is refused does not arise. Therefore, considering all these aspects, this court is of the considered view that, if the injunction is refused no irreparable loss and injury would be caused to the plaintiffs.

**18.** The plaintiffs have not made out prima facie case for grant of temporary injunction and balance of convenience does not lies in their favour and no injury will be caused to the plaintiffs if the application is rejected. Hence, **I answer the point No. 2 & 3 in the Negative.**

**19.** **POINT NO.4:** In view of my findings and discussions to the above points, this court proceed to pass the following:

**:: O R D E R ::**

**The IA No.1 filed by the  
plaintiffs under Order 39 Rule**

**1 & 2 r/w/s.151 CPC hereby  
rejected.**

**No order as to cost.**

*(Dictated to the Stenographer, transcribed by him, corrected, then pronounced by me in the Open Court on this the 2<sup>nd</sup> day of November 2021)*

**(YASHASHWINI AMEEN B)  
II Addl. Civil Judge & JMFC.,  
Pandavapura**

Order pronounced in the open  
court vide separate order

**:: O R D E R ::**

**The IA No.1 filed by the  
plaintiffs under Order 39 Rule  
1 & 2 r/w/s.151 CPC hereby  
rejected.**

**No order as to cost.**

**II Addl. Civil Judge & JMFC.,  
Pandavapura.**