

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,  
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,  
Senior Civil Judge & J.M.F.C.,  
H.D.Kote

Dated, this the 18<sup>th</sup> day of December, 2021

**O.S.NO.44/2020**

Plaintiff/s : Kendagannappa  
S/o Late Mariswamappa,  
Aged about 44 years,  
R/at Hanchipura Village,  
Saraguru Hobli & Taluk,  
Mysuru District.  
  
(By Sh. B.S.Umesha., Advocate)

-V/s-

Defendant/s : 1. Nataraj  
S/o Late Chamappa,  
Aged about 52 years,  
  
2. Chikkarathana  
W/o Nataraj,  
Aged about 42 years,  
  
3. Naveen  
S/o Nataraj,  
Aged about 20 years,  
  
4. H.S.Malleshha  
S/o Late Siddamallappa,  
Aged about 42 years

All are R/at Hanchipura Village,  
Saraguru Hobli & Taluk,  
Mysuru District.

(By Sh. G.N.Narayanagowda., Advocate)

**PARTIES TO I.A.III**

Applicant/ Plaintiff : Kedagannappa

-V/S-

Opponents/Defendants : Nataraja and others

**ORDER ON I.A.III**

The plaintiff have filed the present application under Section 151 of C.P.C., seeking for the police protection for the implementation of the order passed by this Court on I.A.No.II filed under Order 39 Rule 1 and 2 of C.P.C where under this Court after perusing the material on record came to a prima- facie conclusion that the plaintiff was in possession of the suit schedule property had granted an order of injunction restraining the defendants from interfering with the possession of the suit schedule property by the plaintiff.

2. It is the grievance of the plaintiff that though this court had come to a prima-facie conclusion that the plaintiff was in possession of the suit schedule property and granted injunction, the defendants started trying to interfere with the possession of the suit schedule property in violation of the order passed by this court. It is the grievance of the plaintiff that without the aid of the police he cannot protect his possession.

3. The learned counsel appearing for the plaintiff relying on the decision of this Court in the case of Papanna Vs. Nagachari reported in ILR 1996 KAR 1271 more particularly at para No.8 thereof would contend that once a trial Court has passed an order of injunction, it is a bounden duty on part of the trial Court to implement the said order which in this case can only be done by a direction being issued to the police authorities.

4. On the other hand the learned counsel appearing for the defendants would contend that the order dated 23.12.2020 is in the nature of an interim order and as such, the direction to the police issued being in nature of the final order could not have been so granted. He further submits that the defendants has produced enough and more documents to establish that the defendants are in possession of suit schedule property and as such, under the guise of present application under Section 151 of C.P.C. seeking for police protection, the plaintiff is seeking to take possession of the property. The plaintiff has already taken recourse under Order 39 Rule 2(a) for disobedience of an injunction order and as such the present application is not maintainable.

5. On enquiry, learned counsel for the defendants submits that the order of this Court passed on I.A.No.II has been assailed by the defendants in M.A.No.12/2021 which is pending on the file of the Hon'ble VIII Addl.District Judge, Hunsur. However, the case is posted for arguments. Be that as it may, the fact remains that the order passed on I.A.No.II by this Court continues to be valid and subsisting and unless set aside the parties are bound by it.

6. As held by the Hon'ble High Court of Karnataka in the case of Papanna Vs. Nagachari reported in ILR 1996 KAR 1271, the mere fact

that there is a provision under Order 39 Rule 2(a) for taking action for disobedience of an order of temporary injunction, does not come in the way of the plaintiff from taking steps to see that the order is implemented. If the Court had no power to implement its own orders then there is no purpose in the Court passing any interim order and then stating that the plaintiff has a remedy under Order 39 Rule 2(a) of C.P.C.

7. I am of the considered opinion that the remedy provided under Order 39 Rule 2(a) of C.P.C. is not an efficacious remedy. However, the same would always exist as a parallel remedy for the violation already committed by the defendant of any order passed by the trial Court. The punishment for any violation provided under Order 39 Rule 2(a) of C.P.C. would not come in the way of the Court implementing the order passed by the trial Court, since, otherwise, no order of any Court would be given effect to or be capable of being implemented. The remedy provided under Order 39 Rule 2(a) of C.P.C is for violations already committed, that is for the past, whereas the power to direct implementation of the injunctive order already granted through police protection or otherwise is to prevent any future default.

8. In view of the above finding, though there is an appeal in MA.No.12/2021 which is pending, since the defendants have not been diligent enough to get the same posted and prosecute the same, the order passed by this Court on I.A.No.II under Order 39 Rule 1 and 2 of C.P.C. continuous to be valid, subsisting and binding on the parties, the said order requires to be implemented.

9. The present application would therefore, be required to be allowed and as such, the jurisdictional police are directed to implement the order

passed by this court on I.A.No.II under Order 39 Rule 1 and 2 of C.P.C and in terms thereof protect the possession of the plaintiff in respect of suit schedule property from any interference from the defendants.

10. In view of the above reasoning, I proceed to pass the following:

**ORDER**

**IA.No.III filed by the applicant/plaintiff under section 151 of Civil Procedure Code is hereby allowed.**

**Consequently, the SHO of Sarguru PS is directed to provide police protection, by considering the representation to plaintiff in the implementation of order dated 23.12.2020 so long as that order is in operation.**

**No order as to costs.**

**For F/Chief Examination**

**Call on 12.01.2022**

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 18<sup>th</sup> day of December 2021.)

(NATARAJ YADAV .S)  
Senior Civil Judge & J.M.F.C  
H.D.Kote