

IN THE COURT OF THE CIVIL JUDGE & JMFC
HEGGADADEVANAKOTE

PRESENT

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)
Civil Judge & JMFC.,
Heggadadevanakote

Dated: 1st day of March 2021

O.S.No.139/2020

Plaintiff/s : H.Jagadeesh S/o.Late Hethegowda,
Aged about 53 years, R/o.Alanahalli
Village, Hampapura Hobli, H.D.Kote Taluk.

(By Sri.P.Nagendra, Advocate)

V/s

Defendant/s : 1. Satheesha S/o.Kempegowda,
Aged about 40 years,
2. Asha W/o.Satheesha,
Aged about 30 years,
3. Kempegowda S/o.Late Eregowda,
Aged about 75 years,

All are R/o.Alanahalli Village,
Hampapura Hobli, H.D.Kote Taluk.

(By Sri.M.N.R., Advocate)

Applicant : H.Jagadeesh (Plaintiff)

V/s

Opponents : Satheesha & Others (Defendants)

ORDER ON I.A.No.I FILED UNDER ORDER 39

RULE 1 AND 2 OF C.P.C.

This instant application is filed by the plaintiff U/O.39
Rule 1 and 2 of C.P.C., to restrain the defendants or anybody
acting on their behalf from interfering in his possession over

the suit schedule properties till the disposal of the suit.

2. The plaintiff has filed affidavit in support of the application deposing that, on the basis of the partition, dated 31/05/2016, the plaintiff got mutated his name in the revenue records with respect to land Sy.No.68/8 measuring 1.00 acre of Alanahalli Village, Hampapura Hobli, H.D.Kote Taluk, *vide* Mutation Order No.T15/2015-16. The plaintiff is in possession and enjoyment of the suit property and he is paying property tax. The plaintiff has cultivated various crops over the suit property. According to plaintiff, the defendants have no manner of right or interest over the suit property. They are trying to trespass and destroy the crops situated over the suit property. On 06/07/2020 the plaintiff was cultivating the suit property, the defendants have interfered in his activities. The Panchayath was summoned and defendants were asked not to interfere in the possession of the plaintiff over the suit property. The plaintiff is physically challenged and couldn't mitigate the interference by the defendants without the assistance of this Court. There are chances that the defendants may dispossess the plaintiff from the suit property. It is stated that, the plaintiff has got *prima-facie* case in his favour, the balance of convenience also lies in his favour. If the injunction is not granted, irreparable loss would be caused to

him. Hence, this application.

3. After service of notice, the defendants appeared through their learned Counsel. The defendants filed written statement. They filed memo to treat the written statement as also objections to the instant application.

4. The defendants admit that, the plaintiff is the owner and in possession of the suit property bearing land Sy.No.68/8 to the extent of 1.00 acre. However, the defendants denied the interference as alleged in the plaint. It is stated that, the defendants herein have already instituted suit against the plaintiff in O.S.No.123/2020 on 25/06/2020 seeking permanent injunction over the property bearing land Sy.No.68/1 and 68/4. The plaintiff by misleading the Court and to drag on the issue and to cause fear and threat to the defendants, had instituted this counter case against them. As the defendants moved their claim in O.S.No.123/2020 seeking injunction over the walk path bearing interrupted by the plaintiff, he filed this present suit to score vengeance and with intention to cause fear and threat to the defendants. It is the specific case of the defendants that, they have not caused any disturbance in the possession of the plaintiff over the suit property at any point of time. The plaintiff who has intentionally caused

interruption to the defendants and prevented them to use path way of 12 feet towards Northern side of land Sy.No.68/1. The existence of path way towards Northern side of land Sy.No.68/1 is referred in Registered Sale Deed No.1274/04-05, dated 22/11/2004. Only to score against defendants, the plaintiff has filed this frivolous suit. Amongst other grounds, they prayed to dismiss the application.

5. I have heard the learned counsels for the plaintiff and defendants. Perused the records.

6. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

7. My answer on the above points are as follows:-

- | | | |
|------------|---|--|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Negative |
| Point No.3 | : | In the Negative |
| Point No.4 | : | As per final order for the following:- |

REASONS

8. **POINTS NO.1 TO 3:-** The plaintiff in order to substantiate his *prima-facie* case, has produced R.T.C. of land Sy.No.68/8 measuring 1.00 acre for the year 2019-20, Mutation Order No.T15/15-16, Sketch, Aakar Bandh, Tax Paid Receipt and other allied documents.

9. On the other hand, the defendants in order to show that, the plaintiff has no *prima-facie* case and balance of convenience, has produced a copy of plaint, written statement and order on I.A.No.I, in O.S.No.123/2020.

10. The plaintiff claim to be in possession and enjoyment of the suit property. The R.T.C.s and the Mutation order produced by him would manifestly reveal his name as possessor of the suit property. Infact, the defendants themselves have admitted the possession of the plaintiff over the suit property within the boundaries mentioned in the plaint schedule. The only thing which the defendants deny that, they have never interfered in the possession of the plaintiff over the suit property.

11. The learned Counsel for defendants vehemently argued that, he admit the possession of the plaintiff over the suit property, but have never interfered his possession. He argued that, the defendant No.1 herein has instituted suit

against the plaintiff and his family members in O.S.No.123/2020 regarding the use of path in land Sy.No.68/1. He had maintained I.A. in O.S.No.123/2020 U/O.39 Rule 1 and 2 of C.P.C., which came to be allowed by this Court. The plaintiff herein was restrained from interfering in the right of defendant No.1 from using path in land Sy.No.68/1 of Alanahalli Village. After filing of suit in O.S.No.123/2020, the plaintiff herein in order to score vengeance and cause fear and threat in the mind of the defendants herein, has filed the instant suit.

12. In order to grant interim injunction, the Court need to see not only the *prima-facie* case, but the other two ingredients, i.e., in whose favour the balance of convenience tilts and if the injunction is granted who will suffer loss. On perusal of the records, it would necessarily indicate that, the plaintiff is in possession of the suit property. In this regard, the plaintiff is successful in proving his *prima-facie* case in regard to the possession. However, in respect of balance of convenience and injury, the plaintiff failed to prove these ingredients. The plaintiff has not lodged any complaint before the jurisdiction Police alleging the interference by the defendants. He did not putforth any document at this juncture to prove the interference by the defendants. The learned Counsel for defendants has argued that, if the

injunction is granted, the plaintiff would use the order as trump card and harass the defendants and thereby cause fear in their mind. Thus, he prayed to reject the application of the plaintiff. The defendant No.1 herein has already obtained injunction against the plaintiff in respect of use of path way in land Sy.No.68/1. The plaintiff except referring to the interference in his plaint, has not filed any documents to show that he attempted to raise the issue before the jurisdictional Police. Moreover, though the R.T.C. of land Sy.No.68/8 is for the whole extent of 1.00 acre, the plaintiff without assigning reasons, has bifurcated land Sy.No.68/8 into an extent of 0.39 guntas and 0.01 gunta. The boundaries mentioned in plaint schedule 'A' and 'B' properties are different and they doesn't appear to be adjacent, though the R.T.C. is issued to the whole extent of 1.00 acre. The plaintiff having failed to produce documents to show that they have lodged complaint alleging the interference by the defendants would *prima-facie* indicate that, the defendants would suffer if injunction is granted. So because, the defendants fairly submits the possession of the plaintiff over the suit property within the boundaries mentioned therein. Thus, though the plaintiff has *prima-facie* case, the balance of convenience tilts in favour of the defendants. If the injunction is granted, loss would be

caused to the defendants, since they apprehend that the order allowing the application will be used as a trump card by the plaintiff to harass the defendants. The material at this juncture would *prima-facie* indicate that, the defendants have not interfered in the possession of the plaintiff. Therefore, I answer Point No.1 in the **Affirmative** and Point No.2 and 3 in the **Negative**.

13. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

The application filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., is hereby rejected.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **1st day of March 2021**).*

(MD SHAIZ CHOUTHAI)
CIVIL JUDGE & JMFC.,
H D Kote