

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

PRESENT

SRI. SRINATHA.J.N. B.A.L, L.LB,
Addl. Civil Judge & JMFC
Heggadadevanakote

Dated:-25th day of September 2020

O. S. No.284 of 2018

PLAINTIFF/s : Sri.Prakash
S/o late Gavigowda
Aged about 53 years
R/o Ankanathapura village
Kasaba hobli
H.D.Kote taluk
Mysuru district

(By Sri.G.N.N., Advocate)

V/s

DEFENDANT/s: 1. Shivannanaika
S/o late Puttanaika
Aged about 70 years

2. Chikkanna
S/o Shivannanaika
Aged about 45 years

3. Prasanna A.C.
S/o Chikkanna
Aged about 22 years

4. Puttaraju
S/o late Bhyranaika
Aged about 40 years

5. Chikkanna
S/o late Bhyranaika
Aged about 35 years

All are R/o Ankanathapura village
Kasaba hobli
H.D.Kote taluk

(By Sri.B.L.T, Advocate)

I. A.

APPLICANT/S: *Prakash(Plaintiff)*

V/s

OPPONENT/S: *Shivanna and others -----(Defendants)*

**ORDERS ON APPLICATION UNDER ORDER 39 RULE 1
AND 2 OF CPC**

- 1.** The present I.A dated 25.08.2018 is filed by the plaintiff
U/o 39 Rule 1 & 2 of CPC seeking for an order of
temporary injunction by restraining the defendants from
interfering with the suit schedule property till pending
disposal of the suit.
- 2.** It is the case of the plaintiff that on plaintiff is the
absolute owner and in possession and enjoyment of the
suit schedule property. Suit schedule property stands in

the name of plaintiff father by name Gavinaika S/o late Sannanaika, property situated at Ankanathapura village, Hirehalli grama panchayath, Janger No.17, property No.17, measuring 36x62, in the suit schedule property constructed house. In that house plaintiff and his family members have residing. After the death of his father, demand register stands in the name of plaintiff. Plaintiff further submitted that plaintiff regularly paying tax to the concerned office. Presently, the suit schedule house is not in a good condition and it has fallen off, the house will be it requires to repair. Defendants have no manner, right, title or interest whatsoever over the suit schedule property to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property on 07.07.2018 defendants came to suit schedule property and they are trying to obstruct the construction of house work. The plaintiff strongly resisted their illegal interference and requested them not to interfere with his peaceful possession and enjoyment of the suit schedule property. But the defendants have

not cared request made by the plaintiff and continued their illegal interference. In this regard plaintiff lodged the complaint before the Superintendent of Police, Mysuru against the defendants, but police advised him to approach the Civil Court and therefore the plaintiff has filed this suit.

3. After service of summons defendants have filed vakalath through their counsel and 1st defendant filed written statement and the 2nd to 5th defendants filed a memo stating that adopt the written statement filed by the 1st defendant and defendants filed a memo stating that adopt the written statement as objection to the IA and denied the entire plaint avernments and contended that Defendant No.1 and his brother by name Byranaika, S/o Puttanaika filed a suit in O.S.97/1996 before Hon'ble Court against one Puttarajanaika S/o Puttaswamynaika, Bhadranaika S/o Eranaika and Sannanaika S/o Gavinaika of Ankanathapura village, H.D.Kote taluk, in respect of land bearing Sy.No.109, out of 8 acres 31

guntas, 1.00 acre on the Northern side, situated at Hirehalli village, Kasaba hobli, H.D.Kote taluk, said suit was decreed in favour of the 1st defendant on 17.06.2003, subsequently other defendants preferred an Appeal before the Principal Civil Judge (Sr. Dn.) at Hunsuru in RA.48/2008 the said Appeal is dismissed for non-prosecution on 14.08.2012. Then Execution Petition is also filed by the defendants, since the defendants in that suit are disobeyed the Judgement and Decree passed by Court, the defendants executed the decree in Ex.38/2018, being enraged by the said Execution Petition filed by the defendants, the plaintiff who is the brother of Sannanaika S/o Gavinaika (3rd defendant in O.S.97/1996) filed this suit to harass the defendants by giving false boundaries, which includes the defendants land bearing Sy.No.109, measuring 1.00 acres. Defendants further contended that the alleged suit schedule of the plaint comes within the boundaries of the defendant's property of Sy.No.109. The sale deed dated 16.11.1997. Defendants further contended that plaintiff

not submitted any documents bearing Janjer No.17 and property No.17 and further submitted that boundaries of the suit schedule clearly establish sketch and sale deed dated 16.11.1997, it is landed property of the defendants. Defendants further contended that plaintiff also suppressed the suit bearing No.97/1996 and RA.48/2008 and Execution Petition 38/2018 in the plaint, even though plaintiff got full knowledge of the said cases. Defendants further contended that the plaintiff not comes to the Court with clean hands. On this ground also the suit of the plaintiff is liable to be dismissed. On these grounds the defendants have sought for dismissal of this I.A.

4. The following points arise for consideration:

- i. Whether the Plaintiff has made out a *prima facie* case?
- ii. Whether the balance of convenience lies in favour of the Plaintiff?
- iii. Whether irreparable loss and injury would be caused to the plaintiff if Temporary Injunction is not granted?

iv. What Order?

5. Heard the argument on both side.

6. My answers to the above points is 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 the final order
for the following,

REASONS

7. Point No.1 to 3: These points have been taken up together for common discussion to avoid repetition as they involve common questions of facts and are interconnected.

8. The Learned counsel for the plaintiffs arguing that suit schedule property demand register issued in favour of the plaintiff father, after death of the plaintiff father demand register stands in the name of plaintiff, plaintiff relied the demand register in the year 2018-19 issued by the Panchayath Development Officer, Hirehalli Grama panchayath and tax paid receipt in the year of 2018 and

plaintiff filed a complaint before Superintendent of Police, Mysuru against the defendants, plaintiff produced the photographs, Plaintiff further contended that plaintiff is in peaceful possession and enjoyment of the suit schedule property. Therefore, the plaintiffs prays for allow the application.

- 9.** The learned counsel for the defendants arguing that the defendant No.1 and his brother had filed a suit in O.S.No.97/2006 against one Puttarajanaika in respect of Sy.No.109, situated at Hirehalli vilalge, Kasaba hobli, H.D.Kote taluk, 1 acre out of 8 acres 31 guntas, said suit was decreed in favour of the 1st defendant on 17.06.2003, subsequently other defendants preferred an Appeal before Sr. Division, Hunsuru in RA.48/2008 the said Appeal is dismissed for non-prosecution and defendants counsel, further submitted plaintiff not submitted any documents bearing Janger No.17 and property No.17 and further submitted that boundaries of the suit schedule clearly establish sketch and sale deed dated 16.11.1997 it is landed property of the defendants and further

contended that plaintiff also suppressed the suit bearing No.97/1996 and RA./48/2008 and Execution Petition No. 38/2018 in the plaint, even though plaintiff got full knowledge of the said case, but plaintiff not comes to the court with clean hand and defendants further submits that plaintiff without seeking declaration of plaintiff alleged title over the suit schedule property is not at all maintainable, plaintiff relied the registered sale deed, sketch and RTC. Hence, he prayed for reject the application.

10. Perused the IA, supporting affidavit, objections, pleadings, documents produced by the plaintiff and defendants. In view of the averments made in the plaint and the contentions made in the written statement, it is clearly indicated that the subject matter of dispute between the parties is a title deed of the suit schedule property.

11. This court carefully observed that plaintiff did not produced any title documents in respect of the suit schedule property except demand register. The

contention of the defendants and defendants relied the xerox copy of the decree in O.S.97/2006, on perusal of the decree in respect of Sy.No.109, situated at Hirehalli village, Kasaba hobli, H.D.Kote taluk, 1 acre out of 8 acres 39 guntas, defendants obtained a decree against one Puttarajanaika and further contention of the defendants the suit schedule property comes within the boundaries of the Sy.No.109 i.e., defendants property, thus, in the circumstances, whether the plaintiff is in possession and enjoyment of the suit schedule property, the court cannot come to the decision, said question can be ascertain only after full-fledge trial of both parties.

12. When a temporary injunction applications, the court can observed whether the plaintiff has made out a prima facie case, and prima facie case must not be a confused with prima facie title of the suit schedule property, prima case means includes very maintainability of suits. In this case plaintiff has not made out prima facie case there is a confusion in the title of the suit schedule property, when the application for temporary injunction the court can

observed the prima facies case and who is in lawful possession of the suit schedule property, when the title of the suit schedule property are in dispute, the plaintiff is in lawful possession does not arise. Hence, court cannot grant a temporary injunction against the defendants. Hence, this court relied the Judgement, The Hon'ble High Court in **R. Dilip Kumar v. S. Ramu** reported in **ILR 1992 KAR 2905** has held that *"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."*

- 13.** However, At this stage, it is difficult to comprehend as to how the plaintiff can seek right over a particular suit schedule properties disputed in the title of the suit schedule property. Thus in the absence of plea in respect of specific dispute of the title arise, it cannot be said that the plaintiff has made out a prima facie case. Moreover,

the question with respect to the right over the alleged title of suit schedule property has to be prove by the plaintiff by producing cogent evidence and the said question can be ascertained only after a full-fledged trial. With respect to the questions of balance of convenience and irreparable injury, since both parties are claiming right over the same subject matter, if an injunction is granted then a possibility cannot be ruled out that it may cause hardship if it is being dispute title of the suit schedule property. Hence, for these reasons and in view of the law laid down by the Hon'ble High Court in ***R. Dilip Kumar v. S. Ramu (referred supra)***, I am of the considered opinion that at this stage it is not proper to grant the extra ordinary relief of temporary injunction. Accordingly, points No.1 to 3 are answered in the Negative.

14. Point No.4: In view of my answers to the above points and the reasons assigned therein, the following:

ORDER

The IA dated 25.08.2018 filed by the Plaintiff
under Order XXXIX Rule 1 and 2 of CPC is hereby

dismissed.

(It is necessary to add that the observations made herein above 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 her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **25th day of September 2020**).*

(SRINATHA.J.N)
Addl.Civil Judge & JMFC
Heggadadevanakote