

ORDERS ON I.A.NO.1

This is a suit for permanent injunction in respect of suit schedule property. Along with this suit, the plaintiffs have filed I.A.No.1 U/O.XXXIX Rules 1 and 2 of C.P.C., seeking *ad-interim* Temporary Injunction against the defendants, their agents, legal heirs or anybody acting on their behalf from not to interfere in their peaceful possession and enjoyment over the suit schedule property, till disposal of the suit.

Heard the learned Counsel for plaintiffs and perused the materials on record. In the affidavit filed in support of I.A.No.1, the 3rd plaintiff has stated that, suit schedule property was originally belongs his grand father Sri.Basappa S/o Basappa @ Basavaiah. The said Basappa has got three children namely Basappa (1st plaintiff's father), Devappa (2nd plaintiff's father) and H.B. Puttaswamy (3rd plaintiff's father). After death of his grand father, the plaintiffs were in joint possession of the same being their ancestral property. During lifetime of said Basappa, he had constructed a house in the suit property and residing therein. After his death, the khatha of the said property changed into the name of his first son Basappa S/o Basappa i.e., the father of 1st plaintiff. After demise of the said Basappa, the plaintiffs have divided the suit property among themselves through oral partition and were residing separately in their respective share along with their family members. Within the suit property there is a vacant space towards the southern side wherein they have constructed a shed for cattles. For proceeding towards the said cattle shed there is a path measuring 7 1/2 x 72 feet used by the plaintiffs. The defendants are the neighbors towards the eastern side and they have no manner of right, title or interest over the suit property. But on 15.12.2022 at about 5.30 p.m., the defendants made galata with the plaintiffs. The plaintiffs have lodged complaint before the H.D. Kote Police, and the

defendant No.3, 4, 6 & 8 appeared before the police station and given joint statement that they will not interfere with the plaintiffs' possession over the suit property. But again on 01.09.2023 the defendants caused interference over the plaintiffs possession in the suit property and try to put fencing over the suit property illegally. The plaintiff No.3 further stated that if *exparte* TI is not granted, he will be put to irreparable loss. Hence, he has filed this application.

The plaintiff No.3 in his affidavit has further stated that, he has made out a *prima-facie* case and balance of convenience lies in his favour and if *ad-interim* temporary injunction is not granted as prayed in I.A.No.1, he will be put to irreparable loss. Hence, the plaintiff has prayed temporary injunction as sought in I.A.No.1.

As per Rule 3 of Order 39 of the C.P.C., the power to grant an *exparte-interim* injunction in exceptional circumstances based on sound judicial discretion to protect the plaintiff from appended injury may be granted.

It is well settled that, while granting injunction plaintiff must show:

- i. Existence of *prima-facie* case,
- ii. Balance of convenience and
- iii. The injury must be of an irreparable loss
that cannot be compensated in terms of
money.

In the present case in order to grant *ad-interim* temporary injunction, the plaintiffs have produced demand register extract, tax paid receipts, copy of police complaint, NCR and joint statement of defendants. Perused the above said documents, plaint averments, affidavit filed in support of I.A.No.1. On perusal of the said documents shows that, suit

property is standing in the name of Basappa. Since there is an apprehension with regard to interference in respect of suit property at any moment. Hence, at this juncture, the plaintiffs have made out grounds that, if temporary injunction order is not granted, the very purpose of filing this suit will be defeated and they will be put to irreparable loss and on the contrary no kind of loss will be caused to the defendants.

At this stage, this Court satisfied with the *prima-faice* case, in view of demand register extract, tax paid receipts, copy of police complaint, NCR and joint statement of defendants. The balance of convenience is also satisfactory. Accordingly, in the ends of justice to avoid multiplicity of proceedings, this Court proceed to pass the following:-

ORDER

Issue exparte Ad-interim Temporary Injunction order against the defendants, their representatives, legal heirs or anybody acting on their behalf from not to interfere in the plaintiffs' possession and enjoyment over the suit schedule property, till next date of hearing.

The plaintiffs shall comply Order 39 Rule 3(a) of C.P.C. However, the plaintiffs shall file compliance affidavit. After compliance office is directed to issue T.I. order.

Issue notice on I.A.No.1, exparte T.I. order and suit summons to defendants.

Returnable by 27.10.2023.

C/c Addl. Civil Judge & J.M.F.C.,
H.D.Kote