

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

PRESENT : **SRI. SURESHA.S.N** B.A., L.L.B.,
Addl. Civil Judge & JMFC
Heggadadevanakote

Dated:- 29th day of August 2024

O. S. No.382/2023

BETWEEN: Smt. V. Venkatalakshamma

//VERSUS//

AND : Sri. Nanjundegowda and others

I. A. No.I

APPLICANT/S: Smt. V. Venkatalakshamma
.....(Plaintiff)
V/s

OPPONENT/S: Sri. Nanjundegowda and others
..... (Defendants)

i.	Provision under which the application is filed	Under order XXXIX Rule I & II of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	06.10.2023
iv.	Number of the application	I.A. No.I
v.	The date on which the objections are filed by different opponents	Memo filed on 19.06.2024 to treat the w/s as objections
vi.	The date on which the orders were passed on the said application	29.08.2024

**ORDERS ON I.A. No.I UNDER ORDER 39 RULE
1 AND 2 OF C.P.C.**

The Applicant/plaintiff has filed Application under Order 39 Rule 1 & 2 of CPC seeking for an order of temporary injunction against the defendants restraining them from trespassing and interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property till disposal of the suit.

2. This is a suit filed by the plaintiff against the defendants seeking relief of permanent injunction over the suit schedule property. It is averred in the affidavit accompanying with IA No.I that the defendant No.1 is the son of late Govindgowda, who is the brother of plaintiff. The defendant No.2 is the wife of defendant No.1 and defendant No.3 to 5 are the wife and children of late Ramachandregowda @ Chandregowda, who is also the brother of plaintiff. The plaintiff and defendants constitute a Hindu joint family relating to the suit schedule property and other properties. The plaintiff is the absolute owner of the suit property bearing Sy. No.10 measuring to an extent of 4.07 acres situated at Banavadi Village, Hampapura Hobli, H.D. Kote Taluk by virtue of registered sale deed dated 14.08.2008 executed by late Govindgowda S/o late Chowdamma Kalegowda and Smt. Puttamma W/o late Govindgowda. It is claimed by the defendants that the suit

property is the ancestral property of late Govindegowda, who is the father of defendant No.1 and on 12.04.1993 there was a partition in the family and an unregistered panchayath palupatti was executed between the family members. Further claimed by the defendants that suit property fell to the share of defendants and since from the date of panchayath palupatti the defendants are in possession and enjoyment of the suit property. It is pertinent to note that the suit property though it was part of the ancestral property as claimed by the defendants, once the partition was effected and a share was allotted to late Govindegowda, such property loses the nature of ancestral property and becomes the self-acquired property of the hands of late Govindegowda, and he had all the right, title and interest over the suit property and in such capacity he had every right to alienate the property according to his will and wish. Accordingly in order to meet the family expenditure and to clear the debts incurred for the sake of family, the said late Govindegowda executed a registered sale deed dated 14.08.2008 in favor of the plaintiff. From the date of said sale deed, the plaintiff is in peaceful possession and enjoyment of the suit property as absolute owner and as her self-acquired property.

3. After acquiring the suit property, the plaintiff got transferred the khatha of the said property in her name. The suit

property is a vacant land, and the plaintiff has been regularly remitting the revenue tax of the suit property. However in the year 2010 with an intention to knock off the plaintiff's suit property, the defendant No.1 in collusion with defendant No.4 & 5 has filed OS No.32/2010 for declaration and permanent injunction in respect of the suit property before Civil Judge & JMFC, H.D. Kote. During the said proceedings in OS No.32/2010 the plaintiff had filed an application U/order 39 Rule 1 & 2 of CPC (IA No.2) seeking to restrain the plaintiffs (defendant No.1, 4 & 5 herein) from interfering with the peaceful possession over the suit property, and filed revenue records and copy of deposition of defendant No.3 herein in Crl. Mis. 16/2009 wherein the defendant No.3 clearly stated that the late Govindgowda is owning the suit property and it is in his possession and enjoyment. Based on the said submission, the Hon'ble Court concluded that the sale deed dated 14.08.2008 executed by Late Govindgowda in favor of this plaintiff is binding and allowed IA No.2. The Hon'ble Court vide its order dated 10.02.2020 rejected the relief of declaration and granted the relief of permanent injunction as prayed for. Thereafter aggrieved by the said judgment and decree in OS No.32/2010, the plaintiff preferred an appeal in RA No.8/2021 before the Hon'ble Senior Civil Judge & JMFC, H.D. Kote to set aside the said order. The said appeal was

decreed in favor of this plaintiff by setting aside the order passed in OS No.32/2010. Therefore, the title and ownership including the self acquired nature of the suit property of the plaintiff was confirmed. In the year 2014 one Smt. Prema who is the younger daughter of late Govindegowda filed a suit in OS No.134/2014 seeking for partition and separate possession of her share in the property belonging to her father before the Court of Senior Civil Judge, at Hunsur including the suit property purchased by the plaintiff. But due to some accident, he could not appear and file the written statement, hence the written statement was taken as not filed in the said suit and suit was decreed in favor of the said Smt. Prema dated 20.12.2018. The FDP No.19/2019 was also filed wherein this plaintiff filed written statement on 27.10.2022 contending that the suit property was acquired vide sale deed dated 14.08.2008 which has not been set aside in OS No.134/2014 by the said Court as Smt. Prema has not sought for the relief of setting aside the sale deed. In the absence of setting aside of the sale deed, the decree passed in OS No.134/2014 by the Hon'ble Senior Civil Judge, Hunsur becomes non-executable in so far as the suit property is concerned. The FDP No.19/2019 is still pending. In the mean time aggrieved by the judgment and decree passed in RA No.8/2021 the defendant No.1, 4 and 5 have preferred an appeal before the Hon'ble High Court of

Karnataka in RSA No.1678/2022 to set aside the order dated 04.07.2021 in RA No.8/2021. The same is also pending for compliance of office objections. In spite of suffering a decree in RA 8/2021 the defendants herein are intentionally and illegally trying to knock off the suit property. On 19.10.2022 the defendants along with their henchmen visited the suit property and the defendants claimed that they are the absolute owners of the suit property by virtue of an unregistered panchayath palupatti dated 12.04.1993. The defendants have failed to take into consideration the several court orders that have transpired as above mentioned. The defendants have threatened to illegally dispossess the plaintiff by use of force. Aggrieved by the actions of defendants, the plaintiff lodged a police complaint on 19.10.2022 before the H.D. Kote police which was treated as a criminal miscellaneous and acknowledgment was issued. Owing to the complaint the defendants backed out and there was a period of peace and the defendants did not interfere with the suit property. Despite preferring an appeal and no interim order passed, the defendants yet again tried to knock off the suit property of the plaintiff and tried to dispossess the plaintiff from the peaceful possession and enjoyment. On 02.12.2022 the defendants visited the suit property and threatened to dispossess the plaintiff claiming them as absolute owners by virtue of unregistered

panchayath palupatti dated 12.04.1993 and through the family partition took place in the family. Again the plaintiff filed police complaint and case is registered in CC No.131/2023 and same is pending for consideration.

4. Again on 30.03.2023 the defendants interrupted the plaintiff and her family and abused them, the plaintiff again lodged police complaint. Despite filing of police complaints, the defendants still continue to harass the plaintiff by interfering with the peaceful possession of plaintiff in the suit property. The order dated 04.07.2021 passed in RA No.8/2021 by the Hon'ble Senior Civil Judge, H.D. Kote is not set aside by any Court of law and the same is binding on the plaintiff and defendants. Until the same is not set aside the plaintiff has to continue to be in the peaceful possession and enjoyment of the suit property, now the defendants are interrupting the peaceful possession of plaintiff in the suit property, hence without any alternative the plaintiff filed this suit along with the present application seeking the relief of injunction. The plaintiff has made out a prima facie case and the balance of convenience lies in her favor. If the application is not allowed, the plaintiff will be put to irreparable loss, inconvenience and greater hardship. On the other hand no hardship or loss caused to the other side. Hence, prays to allow the application.

5. On service of suit summons, the defendant No.1 appeared before the Court through his counsel and filed written statement along with a memo to treat the contents of w/s as objections to IA No.1. In the W/s the plaint averments made in para 2, 3, 6, 8 & 9 of the plaint are denied and the plaintiff has to prove the same. The defendants are in possession of suit property since from 45 years without any obstruction. The plaint averments at para 5, 7, 12 & 14 are admitted as true. The cause of action is created for the purpose of this suit and the plaintiff is not entitled for any reliefs.

6. The defendant No.1 further contended that the suit schedule property is the joint family property, it fallen to the share of defendant No.1 through partition, since from partition the family members of defendants are in possession in the suit property. Before 29 years back the defendant No.1 and late Govindegowda and their children Kalegowda Srinivasa, Venkatesha, Ramachandregowda and Prema have partitioned dated 12.04.1995 through palupatti. The said palupatti is not registered. The late Govindegowda was the kartha of the family, hence the palupatti was given to his custody. In the suit property the defendants have rights other hand the defendants have no right over the suit property. The khatha of the suit property was standing in the name of Govindegowda till his death. The father of defendant No.4 & 5 was

died one year before prior to file OS 32/2010. The defendant No.1, 4 & 5 have equal share in the suit property. The defendants are the illiterates. Both Govindgowda and Puttamma had no rights over the suit property, but without the knowledge of these defendants in order to grab the suit property, executed the sale deed in favor of plaintiff. The said defendant no.1 has filed OS No.32/2010 against plaintiff, late Govindgowda and Puttamma seeking relief of declaration and permanent injunction in the suit property. After recording evidence from both sides, the suit was decreed. Then the appeal was filed before Senior Civil Court, H.D. kote in RA 8/2012, the said appeal was allowed. Then the defendant No.1 filed RSA before Hon'ble High Court of Karnataka in RSA No.1678/2022, the said appeal is pending before the Hon'ble Court. The one Prema has filed suit on the suit property in OS No.134/2014 before the Senior Civil Judge, Hunsur seeking partition and separate possession in the suit property and also filed FDP 19/2019, the said FDP is pending in the Court. The suit and appeal in respect of suit property is pending in different courts. In order to grab the suit property the plaintiff filed the present suit against the defendants. On the said grounds, prays to dismiss the suit.

7. Heard the plaintiff counsel on IA No.I.

8. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration.

- 1) Whether the plaintiff has established prima facie case?
- 2) Whether the balance of convenience lies in favour of plaintiff ?
- 3) Whether irreparable loss and hardship will be caused to the plaintiff if injunction is not granted?
- 4) What order?

9. My findings to the above points are as under:

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

REASONS

10. POINT NO.1 TO 3: Since these points are interlinked with each other they are taken up together for common discussion to avoid repetition.

11. I have heard Learned counsel and have gone through the record of the case carefully. For consideration of grant of relief of temporary injunction under Order 39 rule 1 & 2 CPC, the Civil

Courts basically considers the three well known principles. Firstly, the plaintiff has to show a prima-facie case in his favour, secondly balance of convenience is also in his favour and lastly he/she would suffer irreparable loss if interim injunction as prayed is not granted.

12. In the present application, the plaintiff has claimed temporary injunction in his favour and against the defendants thereby restraining them from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property till the disposal of the suit.

13. The plaintiff has filed the present suit seeking relief of permanent injunction against the defendants in respect of the suit schedule property contending that suit property is granted to the plaintiff vide LND 4-83/76-77 dated 13.09.1976, DR-92/76-77 dated 13.09.1976, and khatha has been changed into the name of plaintiff. The plaintiff is the absolute owner and in possession of the suit property without any obstruction from anybody. Dated 01.08.2021 the plaintiff was doing cultivation in the suit land along with his children, but the defendants without having any right, title or interest over the suit property have criminally trespassed into the suit land and try to remove the fencing on the eastern side of the suit property. The plaintiff resisted the illegal interference of

defendants and sent them out of the suit property, but the defendants threatened the plaintiff that they would dispossess the plaintiff from the suit property.

14. The plaintiff has already been got marked Ex.P1 to 19. Out of them Ex.P1 is the court certified of registered sale deed executed dated 14.08.2008, on perusal of the said sale deed it found that the plaintiff has purchased the suit schedule property through registered sale deed on the above said date for sale consideration of Rs.92,000/- from one Govindgowda and his wife Smt. Puttamma. On perusal of the said sale deed it further found that the possession of the suit schedule property was handed over to the plaintiff on the said date of sale deed. The plaintiff has produced RTC it has got marked at Ex.P2, on perusal of the said RTC the name of the plaintiff entered into the revenue records vide MR 2/2008-09 as ಕ್ರಯ. Both column No.9 & 12 of the said RTC the name of the plaintiff has been entered. Ex.P3 is the certified copy of MR 2/2008-09, Ex.P4 is the court certified copy of tax receipts. On perusal of the above said documents at this stage it found that the suit property is appearing in the name of present plaintiff of the suit. The defendants taken a contention that the suit property is the ancestral property not at all partitioned among the children of

deceased Govindgowda, the said Govindgowda and his wife Puttanna had been illiterates, the plaintiff illegally executed the sale deed in her favor by taking advantage that they are the illiterates.

15. The defendants further taken a contention that there are number of cases filed against plaintiff and defendants vice versa, in order to grab the suit property the plaintiff has filed the false suit against these defendants. However at this stage the defendants have not produced any cogent documents to prove their contention at this stage. On perusal of the documents produced by the plaintiff are clearly appears that the suit property is appearing in the name of the plaintiff at this stage.

16. In support of his pleadings at this stage the plaintiff has furnished RTC extract, carbon copy of tax paid receipt, patta book, copy of grant certificate, acknowledgment issued by police. And also produced photo, CD, FIR in Cr. No.288/2021, complaint etc., On the other hand the defendants not produced any documents to prove their contention taken in the written statement.

17. The prima facie case only means that there is a legal right vested in the plaintiff and the defendants have infringed the same or intends to infringe the same so the matter requires

investigation/trial by way of evidence of parties to evaluate the pleadings of the parties to know which of the parties have legal right, title or interest in the suit property. The controversy is whether the defendants are interfering with the possession of plaintiff over the suit schedule property which is triable issue and matter requires investigation by way of evidence of the parties and the plaintiff can be said to have the prima-facie case in his favour.

18. It is common knowledge that plaintiffs/appellants and petitioners apply for temporary injunction/stay in Courts but the Courts are generally loathed in granting injunction although the law in this regard is well settled. The Apex Court has time and again propounded triple test doctrine for the grant of temporary injunction, existence of prima facie case, balance of convenience and doctrine of irreparable injury, but more importantly all these tenets must co-exist together to enable the courts to exercise their judicial discretion in favour of the applicant. These three cardinal principles are to be applied in a proper perspective looking to the particular facts and circumstances of a case before deciding the grant of temporary injunction.

19. At the stage of passing an interlocutory orders such as on an application for the grant of ad-interim injunction under Rule 1

or 2 of Order 39 of the CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and irreparable injury – the three pillars on which rests the foundation of any order of injunction.

20. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or damage would ensue before the legal right would be established at trial and that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

21. The Hon'ble Apex Court in the case of **Shivakumar Chanda etc V/s. Municipal Corporation of Delhi reported in 1993 (3) SCC 161** reiterated the dictum and held thus – it has been pointed out repeatedly that a party is not entitled to an order

of an injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

22. The purpose of temporary injunction is, thus to maintain the status quo. The Court grants such relief according to the legal principles, *ex debite justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case had been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

23. The Apex Court in the case of **Gujrath Bottling co. Ltd., V/s. Coco cola Co.,** reported in **AIR 1995 SC 2372** gave a landmark judgment as to the guidelines to be followed by the Court while considering applications for granting a temporary injunction. The Court held thus -

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion

of the court. While exercising the discretion the Court applies the following tests:

- i. Whether the plaintiff has prima facie case,
- ii. Whether the balance of convenience is in favour of the plaintiff, and
- iii. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

24. A finding on prima facie case would be a finding of fact. However, while arriving at such finding of fact the Court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.

25. However it is pertinent that it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction as held by Apex Court in S.M. Dyechem Ltd., V/s. M/s. Cadbury (India) Ltd., **AIR 2000 SC 2114**.

Prima facie case:- The expression prima facie is a latin expression meaning "**at first sight or based on first impression or on the face of it**". Prima facie means that evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. The term prima facie is used in modern law to signify that

upon initial examination, sufficient, corroborating evidence appears to exist to support a case. In common law a reference to prima facie evidence denotes evidence that unless rebutted would be sufficient to prove a particular proposition or fact.

26. The Apex Court in **Gujarath Electricity Board Gandhinagar V/s Mahesh Kumar company, Ahamedabad** reported in **(1995) 5 SCC 545** elucidated the meaning of prima facie case thus prima facie case means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. Prima facie case is substantial question raised bonafide which needs investigation and a decision on merits. The Court at the initial stage cannot insist upon a full proof case warranting an eventual decree.

Principle of irreparable injury:- The second condition is that the applicant would suffer irreparable injury if the respondent/defendant is not injuncted. An irreparable injury is, in equity, the type of harm which no monetary compensation can cure or put conditions back the way they were. The term irreparable injury means injury which is substantial and could never be

adequately remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist any standard for ascertaining the actual damage likely to be caused. It is most opposite to mention here that irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, that cannot be adequately remedied or compensated by way of damages.

27. It is appropriate to refer the judgment in **Dalpath Kumar V/s. Prahlad Singh** wherein it is elucidated the doctrine of irreparable injury and its necessity besides the existence of prima facie case and observed thus :

“Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences.”

28. Thus the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused

to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of interim injunction pending the suit.

29. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is tilted in favour of the plaintiff. Plaintiff shall suffer an “Irreparable loss which cannot be compensated in terms of money as rights in immovable properties are involved” if relief so prayed by him is not granted to him which shall result into multiplicity of litigation. On the other hand, it will not affect the interest of the defendants.

30. In the light of these findings, I am of the opinion that as the plaintiff has established all the three essential ingredients in his favour at this stage, hence application U/o 39 Rule 1 & 2 CPC is liable to be allowed to protect the suit property till disposal of the suit.

31. It is settled law that the very intention of granting temporary injunction is to be maintain the state of things as it is.

This well settled legal proposition can be born out from the ratio laid down by the **Hon'ble High Court of Karnataka reported in 1999 (1) KLJ Page No.577 Smt.Rathnamma V/s B.A.Srinivasa Gupta and Others** where in it is held that:

“CPC 1908- Order 39 R.1 & 2 -Temporary injunction grant of finally purpose of the temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled. It is issue to keep things in status-quo pending litigation, so that suit is not rendered infructuous by unilateral acts of party. Where a party seeking temporary injunction has satisfied the court that there is question of law or fact to be tried in the suit, that courts interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from with holding injunction will be greater than that which is likely to arise from granting it, parties entitled to relief.

32. Further, it is settled ratio laid down in **ILR 2004 KAR 4076, Fakirasab vs. Syedusab and others**, wherein it is held that:

“CPC 1908, Order 39 R 1 & 2- object of, While considering an application for grant of temporary injunction, that right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object

is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.

33. Further, the ratio laid down in **ILR 2007 KAR 1214. Smt.T.K.Gowramma vs. C.K.Raviprasanna** wherein it is held that:

“CPC 1908 -Order 39 R 1 & 2 temporary injunction, the relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour for the trial.

34. It is however, clarified that the observations made above are only for the purpose of disposal of **the present application and shall not tantamount to be expression of opinion on the merits of suit. The issues that could be decided only by a full fledged trial.** Hence, I answered Points No.1 to 3 in the **Affirmative.**

35. POINT NO.4: In view of my answers to the above points No.1 to 3, and the reasons assigned therein, I proceed

to pass the following.

ORDER

I.A. No.I filed by applicant/plaintiff U/o 39 rule 1 & 2 is hereby allowed.

Consequently the defendants are hereby restrained from interfering with the peaceful possession and enjoyment of plaintiff in the suit schedule property till the disposal of the main suit.

No order as to cost.

*(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 **29th day of August 2024**).*

**(SURESHA.S.N.)
Addl. Civil Judge & JMFC
H.D.Kote.**