

KAMS300005272023



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C., HUNSUR.**

Present: **Zaibunnisa, B.Com., L.L.B.,**
Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 29th day of November 2024

O.S.NO.80/2023

Plaintiff : H.L. Raghukumar

V/s

Defendants: H. Rajegowda and another

I.A. No. I

Applicant : H.L. Raghukumar

V/s

Opponent : H. Rajegowda and another

Provision of IA filed	:	IA I U/O 39 Rule 1 and 2 of CPC
Relief sought	:	Temporary injunction
Date of filing IA	:	12.04.2023
Number of IA	:	IA No.I
Date of objection filed by the defendant	:	17.01.2024
Date on which the orders passed on the applications	:	29.11.2024

ORDERS ON IA No.I

The plaintiff has filed this application U/o 39 Rule 1 and 2 of CPC to restrain the defendants from alienating the suit schedule properties in favour of anybody in any manner, pending disposal of the suit.

2. On service of the summons and notice, the defendants appeared through their counsel and filed written statement and memo adopting the written statement as objection to the present application. For the purpose of brevity, the facts stated in the affidavit annexed to the application and objection will be stated at appropriate stage of the orders.

3. Heard both sides arguments and perused the materials placed and available on record.

4. On the basis of the rival contentions the following points would arise for my consideration

1. Whether the plaintiff has made out a prima-facie case in his favour to allow the application?
2. Whether balance of convenience lies in favour of the plaintiff ?
3. Whether irreparable loss and injury will be caused to the plaintiff in case of non-granting temporary injunction as sought for?

4. What order?

REASONS

5. **Point No.1 to 3:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition of facts and material circumstances.

6. According to plaintiff, the 1st defendant is his senior uncle and defendant No.2 is son of defendant No.1. The suit schedule property originally ancestral property bearing Sy.No.162 totally measuring 5.28 acres situated at Habbanakuppe Village, Hanagodu Hobli, Hunsur Taluk. Out of 5-28 acres, khata of 38 guntas to the defendants, 38 guntas to one Thandesh, 38 guntas to Dhanavantha and 2-34 acres to the plaintiff under the MR No.5/2001-02 and MR No.8/1995-96. In order to fix the boundaries on 16.3.2015 an application was submitted for Thatakhal phod, accordingly Taluka surveyor issued notice to the defendants and others who are in possession in said survey number and at that time out of 38 guntas of defendants identified and phoded 24 guntas in Sy.No.62/1 and 14 guntas in Sy.No.62/4 in favour of the plaintiff. Further while preparing mahazar by the surveyor said 24 guntas identified from western side of the defendants property and towards Eastern side down shown 14 guntas and was got measured accordingly. There was an understanding between plaintiff and defendants and other surrounding land owners with respect to the difference in the possession of the respective properties of the plaintiff and defendants. To the said mahazar plaintiff and defendants and others have agreed and put their signatures. In accordance with the consent of the defendants phodi

work of survey number 162 is taken place. As such the plaintiff is in possession of the 14 guntas of the property and he is growing ginger in the said land. Though the defendants admitted before the surveyor to fix the boundaries and to transfer the khata of the said property to the plaintiff as per Tatkal phodi now they are reluctant to do so and now trying to alienate the said 14 guntas of the property in favour of some third parties. Therefore, he came up before this court to declare this title over 24 guntas of land in suit Sy.No. 162/1 and 14 guntas in Sy.No.162/4. The said 14 guntas of the land is yet to be identified and boundaries to be fixed after regular phodi and durasth of the land. If the said work is carried out in accordance with the possession of the plaintiff, he is ready to execute the necessary deeds in favour of the defendants pertaining to their Sy.No.143 measuring 14 guntas land. Such being the case, the defendants in order to defraud the plaintiff and to grab his property they are trying to sell the same to third parties. If the defendants succeeded in their illegal acts the plaintiff will be put to irreparable loss and injuries. Hence, the application to restrain the defendants from alienating the suit schedule properties pending disposal of the suit.

7. Per contra it is the case of the defendants that the suit schedule Sy.No.162/4 measuring 0.14 guntas and Sy.No.162/1 measuring 0.24 guntas situated at Habbanakuppe Village, Hanagodu Hobli, Hunsur Taluk are the ancestral properties of the defendants and as per the partition took place under panchayath palu parikath between the 1st defendant and his brother during their life time, the said properties fallen to the share of the defendants accordingly, the defendants are the lawful owners in possession and enjoyment of the suit schedule properties by growing crops apart from that the lands cultivating by them and

also subjected to pakka phodi work taken place by Government surveyor under mahazar as per the order of ADLR. RTC also bifurcated with respect to the suit schedule properties. In suit schedule item No.1 the defendants have grown the Ginger crop during the period 2023-24 and also grown aeroconut and coconut in the suit schedule item No.2 property. Due to the ill health of the defendant No.1, he intended to sell the suit schedule item No.1 property and at the time plaintiff offered meager consideration to purchase the same. In spite of advise given by the elders of the village to purchase the said property by lawful consideration as per present market value. Hence the plaintiff in order to grab the suit schedule item No.1 property filed the suit with a malafide intention to harass the defendants.

It is further stated that plaintiff is a practicing advocate at Hunsur and he very well known the order of the pakka phodi issued by ADLR in the year 2014-15 pertaining to the suit schedule properties. He also known that as per said pakka phodi works the RTC of the suit schedule properties is bifurcated to 2023-24. Such being the case the plaintiff came with the false claim only with an intention to harass the defendants. Therefore the application filed by the plaintiff is liable to be dismissed.

8. In the light of the above said facts, circumstances and I view of the settled position of law, when I gone through the pleadings and records it prima facie appeared that defendants have not disputed the changing of khata of the suit properties bearing Sy.No.162 was standing in the name of plaintiff as per the RTC for the year 2001-2002. Further he has produced the mahazar and sketch in form No.5 as well as the re-survey of the record. As per the RTC for the year 2022-23 the suit schedule item No.1 property is standing in the name of defendant No.1 and 2. It is also

pertinent to note that one more suit in OS No.128/2021 is pending before the learned Civil Judge and JMFC Hunsur that filed by one Kavitha W/o Ravikumar against the defendants and others. In the said suit this plaintiff filed IA No.III U/O 1 Rule 10(2) of CPC. However, the defendants remained absent to address their arguments on the instant application. There is no doubt that the suit schedule properties are the agricultural lands subjected to pakka phodi by ADLR during the period of 2014-15. Both the plaintiff and defendants are claiming independent right over the suit schedule properties. The defendants also expressed their intention to sell the suit schedule item No.1 property immediately before institution of this suit. When there is a serious dispute with respect right, title and possession over the land in question, the dispute is to be decided on merits only after full fledged trail. Under the above said circumstances whether there is any force in the case of defendants is to be ascertained during trial but this court cannot hold a mini trial at this preliminary stage. The above said aspect of the matter require a full fledged trial as stated above.

9. In the present application the plaintiff has sought for temporary injunction restraining the defendants from alienating the suit schedule properties pending disposal of the suit. It is a settled law that very intention of granting temporary injunction is to maintain the state of things as it is. This well settled legal proposition can be borne out from the ratio laid down by the Hon'ble High Court of Karnataka in a decision reported in 1991(1) KLJ page 577 (**Smt. Rathamma V/S B.A. Srinivasa Guptha and others**). Wherein it is held that

“ © CPC 1908 order 39 rule 1 – temporary injunction – grant of – primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of the parties are settled – it is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party – were party seeking temporary injunction has satisfied the court that there is question of law or facts to be tried in suit, that court's interference is necessary to save him from irreparable injury and that comparative mischief which is likely to occur from withholding injunction will be grater than that which is likely to arise from granting it, party is entitled to relief”

And also in ILR 2004 Karnataka page 4076 Fakir Sab V/S Syedu Sab and others wherein it is held that

**“ (B) CPC 1908 order 39 Rule 1 and 2
Object of – while considering an application for grant of temporary injunction, the right and need of respective parties 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.”

10. In the background of principle laid down in the above authorities and in the facts and circumstances of the case on hand. I deem it necessary to invite the parties to the trial to decide the issue on merits and if an order of injunction restraining the defendants from parting with the suit schedule properties during the pendency of trial definitely it would not cause much hardship to the defendants. Therefore I came to conclusion that plaintiff has proved the prima facie case for trial and balance of convenience lies in restraining the defendants from alienating the subject matter of the suit pretending disposal of the case. If an order of injunction as sought is not granted , it may lead to multiplicity of proceeding the plaintiff may be put to loss and injuries if he succeeds in the suit. Accordingly I answer point No.1 to 3 in the affirmative.

11. **Point No.4:** In view of the reasons above I proceed to pass the following;

Order

I.A No. I filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Defendants are temporarily restrained from alienating the suit schedule

properties in favour of anybody in any manner till further orders.

In the given circumstances I passed no order as to costs.

(Dictated to the stenographer, directly on the computer, typed by her, corrected and then pronounced by me in the open Court on this day, the 29th November 2024).

(Zaibunnisa)
Prl. Senior Civil Judge & JMFC
Hunsur