

KAMS300018062023



**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 27th day of February 2025

O.S.NO.298/2023

Plaintiffs : Smt. Prabhamani and others

V/s

Defendants: Smt. Vishala Rangaraju and another

I.A. No. I

Applicant : Sathish Babu H Kplaintiff No.2

V/s

Opponents : Smt. Vishala Rangaraju and another
...defendants

Provision of IA filed	:	IA I U/O 39 Rule 1 and 2 of CPC
Relief sought		Temporary injunction
Date of filing IA	:	18.12.2023
Number of IA		IA No.I
Date of objection filed by the defendant	:	01.02.2025
Date on which the order passed on the application	:	27.02.2025

ORDERS ON IA No.I

The plaintiff No.2 has filed this application U/o 39 Rule 1 and 2 of CPC to restrain the defendants from creating any charge or sub-lease or assign their interest in the schedule property to anybody in any manner, pending disposal of the suit.

2. After appearance of the defendants, defendant No.1 and 2 have filed their written statement and also memo to consider written statement as objection to the 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 side 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 plaintiffs have made out a prima-facie case in their favour to allow the application?

2. Whether balance of convenience lies in favour of the plaintiffs?

3. Whether irreparable loss and injury will be caused to the plaintiffs 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. It is the suit filed by the plaintiffs for possession/ejectment of the defendants from the suit schedule property. The plaintiffs also brought the application on hand seeking interim relief of temporary injunction against the defendants from creating any charge or sub lease or assigned their interest in the schedule property to anybody in any manner till the disposal of the suit.

7. Plaintiffs are the owners of the property bearing No.2063/C measuring East-West 200 feet and North-South 120 feet situated at Kalkunike, Hunsur Town, more fully described in the plaint as well as in the application schedule. That one late H.S.Krishnaraj, who is the husband of Plaintiff No.1 and father of Plaintiff Nos. 2 to 5 and his brothers late H.S.Nagendra Guptha, late H.S. Nataraja Guptha and Plaintiff No.13 for their legal necessity have mortgaged the schedule property in favour of one Smt. Dhanalakshamma wife of H.H.Krishna Setty for Rs.4,000/- and executed a simple mortgage deed in her favour and the mortgage deed was duly registered before the Sub Registrar,

Hunsur on 08-06-1970. As on the date of simple mortgage the schedule property was tenanted to one H.H.Krishna Shetty who is none other than the husband of H.K.Dhanalakshamma-mortgagee. The mortgage was for a period of four years and the said Smt. Dhanalakshamma-mortgagee was permitted to collect the rent from the tenant H.H.Krishna Setty in respect of the schedule property.

8. It is submitted for various reasons the original mortgagors could not redeem the mortgage. Ultimately they were forced to file a suit for redemption of the mortgage in O.S.No.116/1997 on the file of Civil Judge (Jr.Div.) & JMFC, Hunsur, against the mortgagee Smt. Dhanalakshamma wife of H.H.Krishna Setty. The above case was contested and finally the suit came to be decreed on 13-06-2001 directing the defendant Smt. Dhanalakshamma to redeem the mortgage upon receiving the mortgage amount and to cause discharge shara upon the original mortgage deed and also to deliver the schedule property.

9. Aggrieved by the Judgment and decree passed in O.S.No.116/1997, Smt.Dhanalakshamma W/o H.H.Krishna Setty preferred Appeal in R.A. No. 12/2001 on the file of Senior Civil Judge & JMFC, Hunsur. The appeal was contested and ultimately the appeal came to be allowed in part on 12-06-2009 modifying the Judgment and decree of the Trial Court directing the defendant after due redemption of mortgage, to handover only symbolic and constructive possession of the suit schedule property to the plaintiffs by attorning the tenancy of H.H. Krishnashetty again as the tenant in favour of the plaintiffs and not the actual and physical possession; liberty is given to the plaintiff to initiate separate action against the tenants in occupation of the suit property to

evict them from the schedule property through due process of law, if they desire; and the cross appeal filed by the plaintiffs for mesne profits under order 41 rule 22 of CPC is allowed. The findings of the Trial Court on Issue No.4 and denying the mesne profit to the plaintiffs is set aside.

10. It is further ordered and decreed that the plaintiffs are entitled for mesne profits from the defendant, from the date of deposit of mortgage amount in the Trial Court till the date of redemption of mortgage. However, to ascertain the quantum of mesne profits a separate enquiry is ordered under order 20 rule 12 of CPC and confirmed the Judgment and decree of Trial Court in respect of rest of the matters.

11. Thereby, it is confirmed that, after due redemption of mortgage the defendant was directed to handover only symbolic and constructive possession of the schedule property to the plaintiff by attorning the tenancy of H.H.Krishna Shetty as against the tenancy in favour of the plaintiffs and not the actual and physical possession. Option was given to the plaintiffs to Initiate separate action against the tenants in occupation of the suit schedule property to evict them from the suit schedule property through due process of law if they desire. Thus the appellate court finally concluded the matter and settled the dispute through its modified Judgment as stated above.

12. It is submitted that one of the plaintiffs again challenged the Judgment and Decree before Hon'ble High Court of Karnataka, Bangalore in RSA No. 1344 of 2009. The Regular Second Appeal was contested. In the meantime, Smt. Dhanalakshamma wife of H.H.Krishna Setty died on 16-05-2014

leaving behind her husband H.H.Krishna Setty as sole heir SINCE THEY HAVE NO ISSUES. Subsequently her husband H.H.Krishna Setty also died on 13-01-2021 at Mysore. Thus the original tenant and the mortgagee Smt. Dhanalakshamma wife of H.H.Krishna Setty both died during the pendency of the RSA. However, it came to the knowledge of the plaintiffs subsequently that the original mortgagee Smt. Dhanalakshamma wife of H.H.Krishna Setty had adopted a daughter by name Smt. Vishala Rangaraju, who is the first defendant in the present case, since, she is stepped into the shoes of the deceased original mortgagee Smt. Dhanalakshamma wife of H.H.Krishna Setty and original tenant H.H.Krishna Setty as their legal representative, after the death of above said parties.

13. It is further submitted that after the death of above said parties, the first defendant alone was carrying on business in the schedule property and running the saw mill in the name of Srinivasa Saw Mill. Thus the original business which was running by the original tenant H.H.Krishna Setty, the adopted father of 1st defendant alone. Thus except the first defendant there are no other tenants who continued in the schedule property as tenants.

14. Subsequently, the plaintiffs before filing the petition for drawing up of final decree proceedings as there was no appeal against the modified judgment and decree passed by Appellate Court in R.A.12/2001 and as no final decree was passed, the plaintiffs caused legal notice to the defendants on 19-06-2021 to cause discharge shara and also to deliver possession and they were also informed that they are also liable to pay mesne profits for continuous possession and running business in the schedule property. The legal notice was duly served and they replied the same on 01-07-2021 admitting the mortgage transaction and their

possession, however raised their objection that possession has to be obtained only through due process of law.

15. It is submitted that the Final Decree Proceedings in FDP No.10 of 2021 on the file of Principal Civil Judge(Jr.Div.) and JMFC Hunsur, by the plaintiffs was contested by defendants who were the respondents in the FDP proceedings. After contest the FDP came to be allowed on 20-10-2022 wherein the Hon'ble Court ordered and directed the defendants 1 and 2 to execute the registered cancellation of mortgage-deed in favour of petitioner by receiving the mortgage amount within three months from the date of order and in the event of defendants failing to execute the registered deed of mortgage, the plaintiffs-petitioners are at liberty to obtain the deed executed through process of court.

16. It is submitted that when the said FDP was at the stage of arguments the learned counsel appearing for defendants who were the respondents in the FDP proceedings brought to the notice of the court that the redemption of mortgage had already taken place and Smt. Dhanalakshamma wife of H.H.Krishna Setty had withdrawn the mortgage amount which was deposited in the court by original plaintiffs and also caused discharge shara upon it and the document has been given to the court on 18-08-2009. However, as there was no proper compliance through due process of law, the final decree petition was allowed.

17. The defendants 1 and 2 being not satisfied with the Judgment/order passed in FDP 10/2021 challenged the same by filing Regular Appeal in R.A.01/2023 on the file of Senior Civil Judge, Hunsur. After contest the appeal came to be allowed on 31-08-2023 by modifying the finding of the trial court in respect of

execution of cancellation of registered mortgage deed was set aside. However, direction was given to the office to deliver mortgage deed in favour of respondents-plaintiffs and further ordered for DRAWING UP OF FINAL DECREE. Thus the matter came to be finally disposed of in favour of the plaintiffs and in accordance with the Judgment passed in R.A. 1/2023. The plaintiffs have received the original mortgage deed on 19-01-2023. Thus the entire transaction of mortgage, drawing up of preliminary decree, final decree, receipt of mortgage money, delivery of mortgage deed were also finally completed through judicial process except the point of taking possession of schedule property from the defendants. As such, the defendants are bound to deliver possession of the schedule property, accordingly, this suit is filed for possession.

18. It is further submitted that as stated supra, the 1st defendant as legal representative in the capacity as adopted daughter of late Smt. Dhanalakshamma and H.H.Krishna Setty, is bound to deliver vacant possession of the schedule property legally. Whereas the 2nd defendant who is a third party and is in illegal possession of the schedule property running business along with first defendant. Hence, having come to know of this fact in the legal notice and in all other judicial proceedings, he is also made as a party. Throughout in all the legal proceedings and the judicial admissions it is established by the plaintiffs that the 2nd defendant is in possession of the schedule property illegally. Hence, he cannot be dispossessed otherwise by due process of law, for which liberty was obtained and in this suit also he is made as 2nd defendant seeking the relief against him also. Hence, both the defendants are liable to be evicted through due process of law.

19. On the other hand, the defendants No.1 and 2 have filed a memo to consider the written statement as objection to IA No.I. It is the case of the defendant No.1 and 2 that one Hanumantha Shetty S/O Venkatesha Shetty a resident of JLB Road, Hunsur Town was a timber merchant. He left behind him three sons by names H.H. Rama Shetty, H.H. Krishna Shetty and H.H. Govindaraja Guptha. That after the death of H.V. Hanumantha Shetty his three sons continued the joint family timber business and were in search of a proper place for extending their business. The sons of one P Subbakrishna Shetty who was also a business man had five sons by names H.S. Nagaraja Shetty, H.S. Krishnaraja Shetty, H.S. Nagendra Guptha, H.S. Ramachandra Guptha and H.S. Nataraja Guptha. The said Sons of P Subbakrishan Shetty were divided brothers and were in hard need of funds and offered to Lease the suit schedule property on a ground rent of Rs. 50/- Per month. The above said three sons of H.V. Hanumantha Shetty entered the suit schedule property as joint tenants. Since H H Krishna Shetty was more versatile in business and public relations, the Lease agreement was taken in his name for and on behalf of the joint family. The said deed is Registered as Document No.1254 of Book I Volume 1039 at pages 113-115 dt. 29.07.1967. The three sons of H.V. Hanumatha Shetty entered possession of the schedule property as joint tenants. As such the necessary persons are not made as parties to the suit and hence the suit is bad for non joinder of necessary parties.

20. That again on 08.06.1970, the above said four sons of P Subbakrishana Shetty mortgaged the suit schedule property without possession in favour of Smt. H.K. Dhanalakshamma W/o H.H.Krishna Shetty for a sum of Rs. 4,000/-. The said deed was

registered as Document No. 786 of Book I Volume 1114 at pages 31-33 of the year 1970-71 dt. 18.06.1970. The mortgage was for a period of four years from the date of Registration of the mortgage deed. As such the tenants H H Rama Shetty and his brothers went on making payment of rents to Smt. H.K, Dhanalakshamma. The mortgagors did not redeem the mortgage as agreed in the mortgage deed and hence Smt. H.K. Dhonalakshamma continued to be the mortgagee without possession collecting rents from the tenants. In fact an area equivalent to the suit schedule property was available in those days for the sum paid by Smt. Dhanalakshamma towards mortgage money. In spite of repeated request and demands by her, the mortgagors went on postponing the redemption of mortgage on one pretext or the other causing heavy monetary Loss to her.

21. After a very Long gap of nearly 27 years, the mortgagors got issued a Legal notice dt. 08.01.1997 to Smt. Dhanalakshamma regarding redemption of mortgage etc. Smt. Dhanalakshamma enquired the mortgagors as to how they could get the notice issued in spite of her demanding redemption of mortgage. The mortgagors confessed and assured of settling the matter amicably and behind her back moved the court in OS No.116/1997 against Smt. Dhanalakshamma on the file of Civil Judge (JD) at Hunsur, seeking for redemption of mortgage and other reliefs. Smt. Dhanalakshamma appeared before court and filed her written statement and the suit was disposed on merits on 13.06.2001 granting reliefs which were not prayed and was not possible to be obliged. Hence Smt. Dhanalakshamma filed an appeal against the Judgment and Decree dt. 13.06.2001 passed in OS No. 116/1997, before the Senior Civil Judge at Hunsur in RA No. 12/2001, which was made over to the court of the Additional

Senior Civil Judge. The appellate court by its judgment and decree dt.12.06.2009 allowed the appeal, modified the judgment of the Trial Court to the extent of redemption of mortgage and symbolic and constructive possession of the property, attorning the tenancy of H.H. Krishna Shetty in favour of the plaintiffs/respondents therein.

22. That up on disposal of the appeal, in RA No. 12/2001 dt. 12.06.2009, Smt. Dhanalakshamma wife of Krishna Shetty had attorned the tenancy, directing the tenants to pay rents to the Land Lords and hence H H Krishna Shetty and his brothers got issued a Legal notice dt. 31.07.2009 informing them of the attornment of tenancy and instructions to pay rents to them. The tenants were paying rents to Sri. H.S. Krishnaraj as per the registered release deed dt. 29.07.1967 and since he was dead, instructions were sought from the Land Lords as to whom the rents are to be paid amongst them and up on hearing from them, necessary arrangement would be made to pay the rents regularly from the month of June 2009. The notice was served on the Land Lords. There was no reply by the Land Lords to whom the rents were to be paid and hence the tenants could not pay the rents. Conspicuously after Lapse of almost 10 years, one of the Land Lords by name H N Sheshakumar S/O H.S. Nagaraja Shetty got issued a Legal notice dt. 20.03.2019 making false allegations and for which H H Krishna Shetty S/O Late. Hanumantha Shetty had got issued a proper reply on 26.03.2019.

23. That after issuing of notice by the tenants, they received notice of institution of a second appeal before the Hon'ble High Court of Karnataka by the respondents in RA 12/2001 in RSA 1344/2009. The mortgagee Smt. H.K Dhanalakshamma appeared

before the Hon'ble High Court and contested the matter. The plaintiffs who had come on record in place of the deceased Land Lords after a long time got the appeal withdrawn on 03.06.2021 and thus the orders of the Additional Senior Civil Judge at Hunsur became final.

24. The plaintiffs, even while the RSA was pending before the Hon'ble High Court filed an execution petition to execute the decree passed in RA No. 12/2001 and a detailed objections was filed by the tenants and the plaintiffs coming to know that their petition was not maintainable got the execution petition dismissed on 17.02.2018. The plaintiffs went on causing notices one after the other which were all suitably replied. The tenants H H Rama Shetty, H H Krishna Shetty and H H Govindaraja Guptha were doing timber business in the suit property under the management of H H Krishna Shetty. That up on H H Ramashetty and H H Krishana Shetty became aged and unable to do business on their own, H R Ravindranath S/o H H Rama Shetty took up the management of the saw mill since more than 27-28 years in the suit schedule property. H H Rama Shetty passed away Leaving behind him two sons by names H R Ravindranath and H R Harisha. H H Krishna Shetty passed away Leaving behind his adopted daughter Smt. R Vishala the 1st defendant. The above said persons and H H Govindaraja Guptha are running wood business jointly and Legally in the notice schedule property, which facts are very well within the knowledge of the plaintiffs. Further H H Rama Shetty and his brothers have also constructed pakka office building, rest room etc., in the schedule property investing heavy amounts. They have also raised number of trees in the schedule properties for providing protection from sunlight to the valuable timber wood, which trees are more than 50 years old.

25. The suit schedule property is in the joint possession of the tenants as stated above. Since the power tariff went up exorbitantly and since Labour problems have reached the peak, it became difficult for the tenants to do sawing business in the suit schedule property. As such unable to bear the exorbitant expenses, the tenants have stopped the sawing business. But timber business is continued even today. The tenants are unable to do any other business as they have been in the field of timber business for more than 50-55 years and hence, are continuing the same profession and eking out their Livelihood. The tenants are in possession of the schedule property right from 29.07.1967, since about 57 years and if they are ordered to be evicted, they will be put to great hardship and difficulty and their families will be thrown to streets. On the other hand the plaintiffs are all well put up having Lucrative income from their avocations and, are not in need of the suit schedule properties. It is only in this regard that in the reply notice dt. 06.11.2023, the defendants had offered for settlement of the matter amicably with fresh proposal of increasing the rents. Even today the defendants are ready for a conciliation for settlement of the matter amicably with proposal for enhancement of rents.

26. In the backdrop of above stated facts and circumstances, and in view of arguments addressed by the learned counsel for the parties, I have gone through the documents made available by the plaintiffs in support of their application. It is appeared at this juncture that there is no dispute on the relationship between the parties and nature of the suit property as well as the transaction contended in the pleadings. The plaintiffs are seeking equitable relief of temporary injunction restraining the defendants who are admittedly in possession of the suit schedule property as a tenants. No doubt, the relief sought is not harmful to

the defendants since, they are to be restrained only from creating any charge or sub lease the property pending litigation.

27. It is settled notion of law that the grant or refusal of order of temporary injunction is based on the establishment of prima-facie arguable case by the plaintiffs to proceed in the matter. In discharging a prima-case, the settled law appears to be that merits of the case should not be examined closely, deeper examination of the controversies is impermissible, stand of the parties are not be proved in such a manner as to give a final decision. The plaintiff need not establish title, but it is enough if they can show that they have a fair question to raise as to the existence of the right which they alleged and ultimately it is the principle of equity by which the court should be guided.

28. Be that as it may, it is needless to state at this stage that the court cannot hold a mini trial to decide the application and the case made out by the plaintiff prima-facie discloses the relationship between the parties as land lords and tenants with respect to suit schedule property and the alleged transaction as well as the defence raised by the defendants needs full fledged trial. Till then defendants are to be restrained from creating charge or assigning their interest in the suit property in favour of any third parties. If the defendants are not restrained as sought for in the application, the defendants may create some third party interest over the suit schedule properties since the possession of the property is with them. So far as relationship between the parties and nature of the suit schedule properties is concerned no one is disputed the same as discussed above. The very admission of the relationship and dispute regarding the right of the plaintiffs in the suit property itself is a prima-facie case which goes to establish

that, the matter is to be decided, either by way of settlement or adjudication through full fledged trial. When plaintiffs prove the prima-facie case, the balance of convenience automatically tilts in their favour.

29. In other words, the principles governing temporary injunctions are that the party to the litigation who seeks an injunction must satisfy the Court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e., prima-facie case is in his favour. However, at this juncture it is made clear that prima-facie case may not be confused with prima-facie success, but simply there is serious question to be tried if the test of prima-facie is satisfied and further Court's reference is necessary without which a right approved in favor of the party concerned cannot be protected from species of injury which is known as irreparable injury and comparative hardship which is likely to cause in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour, broadly these principles apply where injunction is sought by the party.

30. It is most settled law that the provisions of Order 39 Rule 1 CPC primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad-interim injunction, is to preserve the subject matter of the suit for the time being since material question is to be tried in the suit and there is probability of being entitled to the relief asked for by the plaintiff and court's

interference is necessary to protect the party from the species of injury. That the 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.

31. Considering the above said aspects, this court opined that the subject matter of the suit should be kept intact till determination of the rights of the parties. Therefore, I came to conclusion that it is just and necessary to protect the suit properties by way of granting temporary injunction against the defendants so that the dispute with respect to claim of the plaintiffs in the suit property must see its logical end. Under the above stated facts and circumstances I answer the **Point Nos.1 to 3 in the Affirmative.**

32. **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 creating any charge or sub lease the suit schedule property 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 27th February 2025).

(Zaibunnisa)
Prl. Senior Civil Judge & JMFC
Hunsur