

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HUNSUR.**

PRESENT: Sri.Girish Chatni, B.A., LL.B (Spl).
Civil Judge & J.M.F.C,
Hunsur.

Dated this the 25th day of October, 2016

O. S. No.370/2015

PLAINTIFF/S : Smt.Abhida and another

:Vs:

DEFENDANT/S : Sri.Purushotham and others

I.A. No.I

APPLICANT/S : 1. Smt.Abhida,
W/o Nazeer Pasha,
D/o Late Abdul Majid
Aged about 40 years.

2.Smt.Shahin Taj,
W/o Abdul Roof,
D/o Late Abdul Majid,
Aged about 38 years,

Both are r/at Kalenahalli Village,
Hanagudu Hobli Hunsur Taluk,
Now R/at Sulu galale (Bidasu)
Village, Shanivara Santhe Post,
Somavarapete Taluk, Coorg Dist.

(By Sri.B.S.Yoganandkumar, Advocate)

: Vs. :

OPPONENT/S : 1. Sri.Purushotham,
S/o Late Gurudev
Aged about 45 years,

2. Mudhu,
S/o Late Gurudev
Aged about 42 years,

3. Yadugiri,
S/o Late Gurudev,
Aged about 40 years,

All are R/at Kalenahalli Village,
Hanagudu Hobli Hunsur Taluk.

(Sri.B.A.Suresh Kumar, Advocate)

**ORDERS ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF
CPC**

This is the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C., seeking the relief of ad-interim temporary injunction against defendants, restraining them, their representatives or anybody acting on their behalf from interfering with the plaintiffs' peaceful possession over the suit property till disposal of the suit. The suit is filed in respect of the landed property bearing Sy.No.748/P15, measuring 1 acre 20 guntas situated at Aspatre Kaval village, Kasaba Hobli, Hunsur Taluk (hereinafter referred to as 'the suit property' for short).

2. That it is averred in the affidavit annexed to the application that, the plaintiffs are the absolute owner in possession and enjoyment over the suit property and the suit property is the ancestral property, which has been granted by the Government in LND(K)229/93-94, S.C.432/95-96 dated 22.12.1995 in favour of the father of the plaintiffs by name Abdul Majid. The said Abdul Majid died on 24.06.2004 and after his death the khata was changed in the name of plaintiff No.2 in MRH No.197/2014-15 dated 24.07.2015 and since then she is in the possession and enjoyment of the suit property and all revenue records of the suit property are standing in his name and he is paying tax to the Government.

3. It is further contended that the defendants having no right and interest whatsoever over the suit property are interfering with the peaceful possession and enjoyment of the suit property. Further the plaintiffs have lodged a complaint against the defendants before the Hunsur Rural Police station and the said police have not taken any action against the defendants as they are most powerful and influential persons and in such circumstances, the defendants to grab the suit property are interfering with the plaintiffs' peaceful possession over the suit property. Further after the institution of the suit, the defendants are

illegally interfering over the suit property. As Such the plaintiffs submitted that they have made out prima-facie case by producing prima-facie materials, balance of convenience lies in their favor and if T.I. is not granted, they will be put to irreparable loss. Hence, prayed to allow the I.A.

4. That, in response to the summons, the defendants have marked their appearance and defendant No.1 has filed written statement and objection to I.A. No.I.

5. The defendant No.1 submitted that the plaintiffs have filed the above case against him and other defendants for the relief of permanent injunction. Originally the suit property belonged to Sri.Abdul Majid. Further submitted that the plaintiffs are residing at Somwarpet Taluk, Coorg District, they never come near the suit property nor seen the suit property at any point of time. Infact, Sri.Abdul Majid was residing in Kalenahalli Village and he was having the suit property in his name and the same was granted to him by the Government. Further the said Abdul Majid had a wife by name Fathima bi and two daughters i.e., the plaintiffs. Due to his old age and personal problems he was not in a position to do agricultural work and no one was taken care of the said Abdul Majid. At that time, the father of the defendant No.1 taking care of the said Abdul Majid and also

cultivating the suit property on lease. That with an intention to gift the suit property to the father of defendant No.1, the said Abdul Majid has executed a registered Will on dated 10.12.1996 in favour of the father of the defendant No.1 in respect of suit property and has handed over the said Will, after some time the Abdul Majid was left the village and settled at Somwarpet village and passed away on 15.06.2004. After the demise of the said Abdul Majid the father of the defendant No.1 tried to get the khata of the suit property into his name on the basis of registered Will but as the will as mis-placed and the same was not traced and was not possible for him to change the khata into the name of father of defendant No.1. Unfortunately the father of the defendant No.1 was also passed away on 14.04.2015 leaving behind the defendant No.1 and his mother as only successors and submitted that they are in possession and enjoyment of the suit property even till today as absolute owners. Further submitted that at the time of cleaning the house the defendant No.1 traced out the registered Will and decided to get the khata to their name. Such being the case, the daughters of the Abdul Majid were trying to get the khata of the suit property to their name as such, the mother of the defendant No.1 has filed objection on 20.04.2015 not to change the khata to the name of the plaintiffs before the concerned revenue authority and the revenue authority has also issued endorsement to that effect. Inspite of the said

fact, the revenue authorities has issued khata in favor of plaintiffs. On the strength of the said khata the plaintiffs are interfering with the defendants' peaceful possession and enjoyment over the suit property. Such being the case, when the plaintiffs' have tried to dispossess and interfere with the defendants' peaceful possession and enjoyment of the suit property the defendants' have filed another suit before this court for the relief of declaration and permanent injunction against the plaintiffs, which is numbered as O.S.No.385/2015. Further submitted that the plaintiffs have failed to prove the prima-facie case and the defendants have proved their prima-facie case and are in possession of the suit property. Hence, balance of convenience lies in favor of the defendants and if the T.I. is granted the plaintiffs' will dispossess the defendants' on the strength of the order. Hence, prayed to dismiss I.A.No.I.

6. Heard the advocate appearing for the plaintiff and defendants and perused the documentary evidence produced before this Court.

7. On going through the pleadings, I.A.No.I and objections to I.A.No.1 the points which arose for my consideration are as under:

1. Whether the plaintiff has made out a prima-facie case and balance of convenience liens in his favor?

2. If T.I. is granted who will be put to greater hardship and injury?

3. What order?

8. My findings on the above points are as follows:

Point No.1 : In the Partly affirmative

Point No.2 : Both the parties

Point No.3 : As per the final order
For the following;

REASONS

9. **Point No.1 :-** Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,)*** it is held as under:

"Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The

other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general

public which can or cannot be compensated otherwise.”

10. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above-cited decision, let me advert to consider the case of the parties. That, this is the suit filed by the plaintiffs for Permanent Injunction against the defendants. That, the plaintiffs are the absolute owners in possession and enjoyment over the suit property and the suit property is the ancestral property, which has been granted by the Government in favor their father and he died on 24.06.2004 and after his death the khata was changed in the name of plaintiff No.2 in MRH No.197/2014-15 dated 24.07.2015 and since then she is in the possession and enjoyment of the suit property and all revenue records of the suit property are standing in her name and she is paying tax to the Government. The defendants having no manner of right, interest, over the suit property are interfering with the plaintiffs' peaceful possession and enjoyment over suit property and with regard to that the plaintiffs have given complaint before the police. Hence, the plaintiffs submitted that they have made out a prima-facie case to grant ad-interim T.I. in their favor and also balance of convenience lies in their favor.

11. To substantiate the prima-facie case, the plaintiffs have produced acknowledgment issued by Police, RTC and Mutation register extract.

12. The defendants have contended that originally the suit property belonged to Sri.Abdul Majid, the plaintiffs are residing at Somwarpet Taluk, Coorg District, they never came near the suit property nor seen the suit property at any point of time. The suit property was in the name of Abdul Majid and the same was granted to him by the Government. The father of the defendant No.1 who was taking care of the said Abdul Majid and also cultivating the suit property on lease. That with an intention to gift the suit property to the father of defendant No.1, the said Abdul Majid has executed a registered Will on dated 10.12.1996 in favor of the father of the defendant No.1 in respect of suit property. Unfortunately the father of the defendant No.1 was also passed away on 14.04.2015 leaving behind the defendant No.1 and his mother as only successors and submitted that they are in possession and enjoyment of the suit property even till today as absolute owners. On the strength of the said khata the plaintiffs are interfering with the defendants' peaceful possession and enjoyment over the suit property. Such being the case, when the plaintiffs' have tried to dispossess and interfere with the defendants' peaceful possession and enjoyment of the suit property.

Further submitted that the plaintiffs have failed to prove the prima-facie case and the defendants have proved their prima-facie case and are in possession of the suit property.

13. That, the defendants No.1 & 2 have produced the copies of the registered will dated 10.12.1996, RTC extracts, mutation extracts, death certificates of Abdul Majid and C.G.Gurudeva.

14. This is a suit filed by the plaintiffs against the defendants for the relief of permanent injunction. It is the main contention of the plaintiffs that the suit property granted to their father and after his death, the plaintiffs are in peaceful enjoyment and possession of suit property by paying tax etc. Per contra, the defendants submitted that the plaintiffs are residing at Somwarpet, they were never in possession of the suit property. It is the father of the plaintiffs' has executed a registered will in favor of the father of defendant no.1 and after the death of the father of defendant no.1, the defendants are in possession and enjoyment of suit property till today also. Hence, submitted that plaintiffs have failed to prove the prima facie case.

15. On close perusal of the averments made in the plaint, written statement, I.A No.1, objections, documents produced by the plaintiffs and the defendants, no doubt that

R.T.C stands in the name of the plaintiff No.2, but they only bears presumptive value, which can be rebutted by adducing the evidence to contrary. That, the defendants have contended that on the strength of Will executed by the father of the plaintiffs in favor of the father of the defendant No.1 and after the death of their father they are in possession and enjoyment over suit property. That the defendants have filed suit with respect to the suit property against the plaintiffs for the relief of the Declaration and Permanent Injunction pending on the file of this Court which is numbered as O.S No.385/2015, so there is a triable issue to decide who is in possession of the suit property, but at this stage only on the contentions of the parties and documents produced by the parties will not be sufficient to determine the issue. Hence, it requires the evidence of the parties. At this stage in whose favor principles of equity lies so that will be entitled for permanent injunction irrespective of title has to be determined. Hence, it requires full-fledged trial to decide over the case. At this stage, without determining as to who is in possession over suit property, if T.I is granted then it would tantamount to decree before trial. The plaintiffs have made out a prima-facie case for trial. To grant the ad-interim temporary injunction, one has to prove prima-facie case, balance of convenience and irreparable loss. The prima-facie case and balance of convenience are inter-connected with each other. Balance of

convenience is based upon prima-facie made out by the parties to the suit. On the observations made above there is a triable issue to be decided between the parties, but it requires full-fledged trial. Hence, the point No.1 is answered in the **partly Affirmative**.

16. **Point No.2** : To grant the ad-interim temporary injunction, one has to prove prima-facie case, balance of convenience and irreparable loss. On the observations made in the point No.1, if T.I. is granted in favor of the plaintiffs they will dispossess the defendants from the suit property. On the other hand if the T.I. is not granted then the defendants will continue their activities in interfering with the plaintiff's peaceful possession and enjoyment over suit property. Hence, the point No.2 is answered in favor of both the parties.

17. **Point No.3** : In view of the foregoing reasons, stated in at Point No.1 & 2, the plaintiffs have made out that there is a triable issue to be decided between the parties in the interest of justice if the status-quo is ordered, it will meet the ends of justice. Hence, I proceed to pass following;

ORDER

The I.A.No.I filed by the Plaintiffs is hereby partly allowed.

Consequently, Parties are hereby directed to maintain the Status-quo until the disposal of the suit.

Parties are hereby directed to co-operate for the speedy disposal of this case.

No order as to costs.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 25th day of October, 2016)

**(Girish Chatni)
Civil Judge & JMFC.,
Hunsur.**

Order pronounced in the open court (vide separate order)

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