

**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 14<sup>th</sup> day of August, 2017**

**O. S. No.13/2017**

**PLAINTIFF** : Sri. Ramegowda

**: Vs.:**

**DEFENDANT/S** : Sri. Shivamma and others

**I.A. No.I**

**APPLICANT** : Sri. Ramegowda  
(By Sri.P.L.K, Advocate)

**: Vs. :**

**OPPONENTS** : Sri. Shivamma and others  
(By Sri. K.R Advocate)

**ORDERS ON IA.NO.I FILED U/O XXXIX RULE 1 AND 2**  
**OF C.P.C.**

This application is filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking for the relief of ad-interim temporary injunction against defendants, restraining them, their agents, servants or anybody acting on their behalf from interfering with plaintiff's peaceful possession and enjoyment over suit schedule property, till pending disposal of the suit. The suit is filed in respect of land comprising in Sy.No.41/2, measuring 4 acre, situated at

Devagalli village, Mysuru Taluk. (Herein after referred to as "suit property")

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff that, the suit property was originally owned by one Hanumaiah and ultimately he purchased the land from the Government through auction and grant certificate was issued to him on dated 22/06/1974 and R.T.C got changed in his favor. It is further contended that the said Hanumiah due to his financial necessities has obtained the loan from RD Bank Ltd, Hunsuru and he did not paid loan, as such through Bank auction, the plaintiff purchased the said property and registered sale deed was executed in his favor and khata was mutated in his name. It is further contended that the defendant land is situated towards southern side of the suit property and the defendants with an intention on 15/12/2016 tried to interfere with plaintiff's peaceful possession over suit property and are trying to encroach the suit property. Thereafter, the plaintiff complained with jurisdictional police but went in vain and has directed the plaintiff to approach civil court for remedy. Hence, without any alternative has filed this suit. Hence, the plaintiff filed this I.A, contending that he has made out a prima facie-case, balance of convenience liens in his favor and irreparable loss will cause to him if this application is not allowed. Hence, prayed to allow the same.

3. In response to the suit summons, the defendants have appeared through their counsel and defendant no.1 has filed his W/s and defendant nos. 2 and 3 have adopted the W/s filed by the defendant no.1 and have filed memo stating to treat W/s as objections to I.A.No.1.

4. Defendants have denied entire averments made in the plaint in toto. They have specifically contended that one B. Gopal husband of defendant no.1 and father of defendant nos. 2 and 3 has purchased 5 acres of land existing in between Sy.No. 41/1. It is further contended has purchased 5 acres of land existing in between Sy.No. 41/3. It is further contended that he has purchased 4 acres of land existing in between Sy.No. 41/1. That, after his death said properties has been mutated in the name of defendant no.1. It is further contended that the defendant no.1 has gifted 5 acres of land in Sy.no.41/4 to defendant no.2. That, as per the said gift deed the khata has been mutated in the name of defendant no.2. It is further contended that the defendant no.1 has gifted 5 acres of land in Sy.no.41/3 in favor of defendant no.3. As such, the defendants are in peaceful enjoyment and possession over their property. Such being the case, the plaintiff with an intention to grab the property of the defendants has furnished wrong boundaries to the schedule and has filed this false suit against the defendants. Hence, prayed for dismissal of the I.A with costs.

5. Heard the advocates appearing for the plaintiff and defendants and perused the documentary evidence produced before this Court.

6. On going through the pleadings, documents, I.A.No.I and written statement and objections to I.A.I, the points which arose for my consideration are as under:

**1. Whether the plaintiff has made out a prima-facie case?**

**2. Whether the balance of convenience lies in favor of the plaintiff?**

**3. Whether the plaintiff will be put to great hardship and injury in case if TI is not granted?**

**4. What order?**

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

Point No.1	:	In the Negative
Point No.2	:	In the Negative
Point No.3	:	In the Negative
Point No.4	:	As per the final order For the following;

### **REASONS**

8. **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."***

9. 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. It is the contention of the plaintiff that the suit property is granted land to one Hanumiah and due to his financial necessities has borrowed loan by mortgaging suit property and it is the plaintiff who purchased through Bank auction. Cush being the case, the defendants have interfered with his peaceful possession and enjoyment over suit property by trying to encroach in the suit property. To substantiate the prima-facie case, the plaintiff has produced grant certificate, sale deed, R.T.C's, copies of M.R, E.C, copy of N.T.C.

10. The plaintiff has filed the suit for the relief of bare injunction against the defendants. On careful perusal of the documents and the averments made in the plaint, written statement, I.A, it becomes incumbent on the part of the plaintiff to prove his possession and interference by the defendants by producing cogent evidence. The plaintiff contends that the defendants are interfering with his peaceful possession and enjoyment over suit property by trying to encroach in the suit the property. On perusal of the W/s filed by the defendants, they have contended that the defendants are in peaceful possession and enjoyment over their share and the plaintiff with an intention to grab the land of the defendants has furnished wrong boundaries to the schedule to the plaint. Hence, to decide over the rival allegations of the parties to the suit, it requires evidence of the parties coupled with evidence of the adjacent owners. At this juncture merely on perusal of the averments made by the parties and documents produced thereto, it is not sufficient to decide over the issues, as it will tantamount to decree before trial. That, merely on perusal of the documents produced by the plaintiff, the issues where the parties are at variance and as to whether the defendants are interfering with the plaintiff's peaceful possession and enjoyment over suit property and who is in possession and enjoyment of the suit property cannot be decided at this stage. Hence, it requires full-fledged trial to decide over the same. Though there is triable issues raised by the plaintiff

and defendants to try the suit, but the plaintiff has failed to prove his prima-facie case by producing prima-facie materials to grant the I.A as sought by him. Accordingly, I answer point No. 1 in the **Negative**.

11. **Point Nos.2 and 3:** These points are taken up for common discussion in order to avoid repetition of facts.

For granting equitable remedy of temporary injunction existence of prima facie case is a must. Existence of prima facie case is the harbinger to investigate in to other points. This proposition of law laid down in the decision reported in **ILR 1989 KAR 1701** in the case of **GOWRISHANKARA SWAMIGALU VS. SIDDHAGANGA MUTT**- wherein it was held that

***“existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear design to go ahead’ in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at***

***the very first stage itself. But if there was a prima facie case then other considerations governing the grant of injunction would come in to fully and will also have to be evaluated before granting or refusing the injunction. The relief of injunction is a remedy in equity. Hence such relief must be bestowed upon only those whose reputation and hand both spotlessly clean”.***

The Hon'ble Supreme Court in case a reported in 2009-AIR (SCW) 7581 **KASHI MATH SAMSTHAN VS. SRIMAD SUDHINDRA THIRTHA SWAMY** has held that - ***if a party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.***

12. The plaintiff has failed to make out prima facie case. Therefore, in view of the ratio laid down in the case cited supra, I need to examine this point in the point of view of plaintiff. Under the circumstances balance of convenience does not lie in favor of plaintiff. 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 a 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. Accordingly, I answer these points in **Negative**.

13. **Point No.4** : In view of the foregoing reasons, stated in at Point No.1 to 3, in my considered view the plaintiff has failed to establish ingredients which are necessary for obtaining equitable relief of ad-interim temporary injunction. Accordingly, the application is liable to be dismissed. In view of the negative findings on points No.1 to 3, I proceed to pass following;

### **ORDER**

**I.A. No. I filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., is hereby dismissed.**

**Parties are hereby directed to cooperate 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 14<sup>th</sup> day of August, 2017)

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

Order pronounced in the open court (vide separate order)

**ORDER**

**I.A. No. I filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., is hereby dismissed.**

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

**No order as to costs.**

Civil Judge & JMFC.,  
Hunsur.

Call on for examination of parties as provided U/O X of C.P.C by 13.09.2017

Civil Judge & JMFC.,  
Hunsur.