

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 22nd day of February, 2019

O. S. No.21/2019

PLAINTIFFS : Marikanthamma and another

: Vs.:

DEFENDANTS : M.D.Mahadeva and others

I.A. No.1

APPLICANT : Marikanthamma ...Plaintiff No.1
(By Sri.S.K.S., Advocate)

: Vs. :

OPPONENTS : M.D.Mahadeva and others
(By Sri.B.S.Y., Advocate)

ORDERS ON IA.NO.I FILED U/O XXXIX RULE 1 AND 2 R/W
SEC.151 OF C.P.C.

This application is filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w Sec.151 of C.P.C., seeking for the relief of ad-interim temporary injunction against the defendants, restraining them, their relatives, agents, workers from alienating the suit schedule property and from transferring the khata whatsoever until pending disposal of the suit. The suit has been filed in respect of land bearing Sy.No.72/11 measuring 1 acre 27 guntas,

situated at Madahalli Village, Kasaba Hobli. Hunsur Taluk. (herein after referred to as suit properties)

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff No.1 that, she along with plaintiff No.2 are the absolute owners in possession over the suit property, originally the suit property has been purchased by the husband of plaintiff No.1 on 05.11.1969 from Doddathammanayaka, Kanthanayaka, Chikkathammanayaka, Marikanthanayaka. Thereafter the khata of the suit property was mutated into the name of husband of the plaintiff No.1 and he was paying the tax to the Govt. After the life time of said Karinayaka, the plaintiffs are in peaceful possession and enjoyment over the suit property. Plaintiffs when approached the commercial banks for obtaining loan by mortgaging the suit property, on getting the RTC, they came to know that the name of the defendants was appearing in the same. Thereafter, panchayaths were held in the village but the defendants did not heed any words of the elders. As such, the plaintiff approached Bilikere Police station and lodged a complaint. Therefore, the plaintiffs without any alternative have filed the present suit and has contended that she has made out a prima facie case, balance of convenience lies in her favor and irreparable loss will cause to her, if T.I is not granted as sought by her. Hence, prayed to allow the I.A.

3. In response to the suit summons, the defendant Nos.1 and 3 have appeared through their counsel and have filed their objections to I.A.No.1. Defendant No.2 has not chosen to contest the claim of the plaintiffs, as such was placed exparte.

3(a). Defendant Nos.1 and 3 have contended that the application filed by the plaintiffs is not maintainable either in law or on fact and the plaintiffs have completely suppressed the real facts and has created false documents against the defendants. The suit of the plaintiffs is barred by limitation and there is no sufficient reason to file the application. The plaintiffs are not in a possession over the suit property and is an utter stranger to this defendant and also to the schedule of the plaint. The plaintiff in fact has to file the suit for declaration and injunction as the defendants are in peaceful possession and enjoyment over the suit property and khata is also standing in the name of defendants. Plaintiffs have not produced any single document to show the same. The plaintiff is not at all in possession of the same. Hence, the suit and the application filed by the plaintiff is liable to be dismissed in limine. The plaintiffs has not made out any prima-facie case and the balance of convenience lies in favour of these defendants. Hence, prayed to reject the application.

4. Heard the advocates appearing for the plaintiff and defendants and perused the materials on record.

5. On going through the pleadings, I.A.No.1 and written statement the points which arose for my consideration are as under:

1. ***Whether the plaintiff No.1 has made out a prima-facie case?***
2. ***Whether the balance of convenience lies in favor of the plaintiff No.1?***

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

4. What order?

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

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

7. **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."

8. 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 No.1 that she along with plaintiff No.2 are the absolute owners in possession over the suit property, while obtaining RTC they came to know that the name of the defendant is appearing in the said RTC, to which the plaintiffs are in peaceful possession and enjoyment over the suit property. In support of her contentions the plaintiff s have produced sale deed, index of land, record of rights, RTC, Mutation register, acknowledgment.

9. The plaintiffs have filed the present suit for the relief of declaration and for the consequential relief of injunction. On perusal of the objections to I.A. filed by the defendant Nos.1 and 3, they have contended that the plaintiffs utter strangers to these defendants and to the schedule and the plaintiffs are not in

possession over the same. As such, they are not having any right over the suit property. At this stage, the plaintiff No.1 has made out a case for trial and there are triable issues to be decided between the parties and if the application is not allowed, there will be multiplicity of proceedings. In view of the discussions made above, the plaintiff No.1 has made out prima-facie case to grant ad-interim temporary injunction in his favor. Accordingly, I answer this point in the **Affirmative**.

10. **Point Nos.2 and 3:** These points are taken up together for discussion for the sake of convenience.

The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favor and shall also satisfy that irreparable loss and hardship would be caused to her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favor.

11. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. If temporary injunction is granted and if ultimately the suit is dismissed, the defendants would not be put to loss and hardship. As discussed supra plaintiff No.1 has very well established prima-facie case. If an order of temporary injunction is not granted, the defendants will be successful in alienating the suit property. In such an event the plaintiff would be left nowhere. Therefore, balance of convenience and comparative hardship is more on the plaintiff No.1 than the

defendants. Accordingly, I answer points 2 and 3 in plaintiff's favor, in the **Affirmative**.

12. **POINT No. 4**: In view of my findings to points 1 to 3, I am of the considered opinion that, plaintiff No.1 has made out prima facie case and also made out a fit case for trial. Besides this the plaintiff No.1 has also established that balance of convenience lies in her favor and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the plaintiff No.1 is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.1 filed by the plaintiff No.1 under Order XXXIX Rule 1 & 2 r/w Sec.151 of C.P.C., is hereby allowed.

Consequently, defendants are hereby restrained from alienating the suit schedule property in any manner by way of ad-interim temporary injunction until disposal of the suit.

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

No order as to the costs.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 22nd day of February 2019)

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

Order pronounced in the open
court (vide separate order)

ORDER

I.A. No.1 filed by the plaintiff
No.1 under Order XXXIX Rule 1 &
2 r/w Sec.151 of C.P.C., is hereby
allowed.

Consequently, defendants are
hereby restrained from alienating
the suit schedule property in any
manner by way of ad-interim
temporary injunction until
disposal of the suit.

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

No order as to the costs..

**Civil Judge & JMFC.,
Hunsur.**

For filing written statement
by 20.03.2019.

**Civil Judge & JMFC.,
Hunsur.**