

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 29th day of June, 2017

O. S. No.154/2015

PLAINTIFFS/S : Kum. Lakshmi
(By Sri.H.K.A, Advocate)

: Vs.:

DEFENDANT/S : Smt. Parvatamma and others
(D1, 2 & 4 By Sri.C.D, Advocate,
D3, 6 & 7- Exparte,
D8 by Sri. M.R.L, Advocate)

I.A. No.IV

APPLICANT : Kum. Lakshmi

: Vs. :

OPPONENTS : Smt. Parvatamma and others

ORDERS ON IA.NO.IV 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 of C.P.C., seeking for the relief of ad-interim temporary injunction against defendants, restraining

them, their family members, servants, relatives, representatives or anybody acting on their behalf from interfering with plaintiff's peaceful possession and enjoyment over suit schedule property in any manner, till pending disposal of the suit. The suit is filed in respect of land comprising in Sy.No.105, measuring 1 acre 20 guntas, out of which only 10 guntas, situated at Gavadgere village, Hunsur Taluk, Mysuru Dist. (Herein after referred to as "suit property")

2. That it is averred in the affidavit annexed to the application by the plaintiff that, since plaintiff is insane, suit has been filed by her mother natural guardian. She has contended that plaintiff is her daughter. That, she has contended that her father-in-law had two wives, he got only son from first wife who is dead leaving behind defendant no.1 as his only legal heir and through second wife he got 4 children, elder being Susheela, second one being Rajshetty, third being daughter Savithri, fourth being Shivanna i.e, father of the plaintiff. The khata of the suit property is mutated in the name of defendant no.1 and 2, such being the case, defendant no.2 has already sold out 20 guntas of land in favor of defendant no.1. Defendant no.3 with an intention to not to give away any share to the plaintiff, has not mutated his name in the khata. It is further contended about 16 years ago, out of 1 acre 20 guntas of land only 10 guntas were given to the plaintiff to lead her life by the

elders, as such the mother of the plaintiff along with has been doing agriculture in the said 10 guntas of land. Such being the case, defendant no.2, his wife and son came near suit property and abused her in filthy language stating that after getting order from the court to enter to the suit property and have given life threat, as such without any alternative have filed this I.A, contending that she has made out a prima facie-case, balance of convenience liens in her favor and irreparable loss will cause to him if this application is not allowed. Hence, prayed to allow the same.

3. The defendants No.1, 2 and 4 have filed objections to I.A. They have contended that the application is not maintainable in law and liable to be dismissed in limine. They specifically contended that plaintiff is not having right, title, interest over suit property and has denied relationship of the plaintiff with defendant nos.1, 2 and 4 and have contended that the plaintiff through this I.A has contended that about 16 years back, through elders she got 10 guntas of land and have further contended that they have filed their detailed W/s, as such without having full-fledged trial, the questions involved in the lis cannot be decided. Hence, submitted to dismiss the I.A.

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

5. 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?

6. 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

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 that about 16 years ago, out of 1 acre 20 guntas of land only 10 guntas were given to the plaintiff to lead her life by the elders, as such the mother of the plaintiff along with has been doing agriculture in the said 10 guntas of land. Such being the case, defendant no.2, his wife and son came near suit property and abused her in filthy language stating that after getting order from the court to enter to the suit property and have given life threat

and the defendants are interfering with the plaintiff's peaceful possession and enjoyment over suit property. To substantiate the prima-facie case, the plaintiff has produced G-tree, R.T.C's, M.R.copies, Demand extracts, copy of sale deed, and copy of order in Cri.Misc. No.500/2013.

9. The plaintiff has filed the suit for the partition of her half share in the defendant no3's share in the schedule properties. On careful perusal of the documents and the averments made in the plaint, written statement, I.A and objections to IA, it becomes incumbent on the part of the plaintiff to prove her 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. On perusal of the averments made in the plaint the defendants are not heeding to her request to effect partition and in the present I.A, she contends that about 16 years ago, through the elders 10 guntas have been given to her share, but there is no such averment in the plaint. Defendants have contended that they have disputed the relationship of the plaintiff with defendant nos. 1, 2 and 4. 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. 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 her prima-facie case by producing prima-facie materials to grant the I.A as sought by her. Accordingly, I answer point No. 1 in the **Negative**.

10. **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.***

11. 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**.

12. **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.IV filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w Sec.151 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.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 29th day of June, 2017)

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

Order pronounced in the open court
(vide separate order)

ORDER

I.A. No.IV filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w Sec.151 of C.P.C., is hereby dismissed.

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Civil Judge & JMFC.,
Hunsur.

Call on for examination of
parties as provided U/O X of
C.P.C by 21.07.2017

Civil Judge & JMFC.,
Hunsur.