

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 24th day of April, 2018

O. S. No.66/2016

PLAINTIFF : Sri Karigowda

: Vs.:

DEFENDANT : Sri.Puttegowda

I.A. No.II

APPLICANT : Sri Karigowda
(By Sri.B.A.S., Advocate)

: Vs. :

OPPONENT : Sri.Puttegowda
(By Sri.B.S.S., Advocate)

ORDERS ON IA.NO.II 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 defendant restraining him, his representatives or any body acting on his behalf from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule properties till pending disposal of the suit. The suit is filed in respect of

Lands bearing Sy.No.18/2 and 18/3, measuring 3 acres and 20 guntas respectively, both situated at Haradanahalli Village, Bilikere 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 that defendant is his own brother. He has filed the above suit against his brother to set aside the registered release deed dated 20.10.2015, which is obtained by the defendant from him by paying fraud in respect of the suit properties. It is further contended that he is in peaceful possession and enjoyment over the suit properties as an absolute owner till today, the defendant who is his own brother having an eye over the suit properties is trying to knock of the plaintiff from the suit schedule properties. It is further contended that on 20.10.2015, when the plaintiff was waiting for the bus in Hunsur Bus stand, the defendant came near by him and told that the khata of the properties which are purchased by him still not changed to his name and he will make arrangement to get the khata changed to his name. Believing his words, the plaintiff went along with the defendant and put his thumb impression on some paper and thereby he came to know that the khata of suit properties were changed to the name of the defendant on the basis of registered release deed and thereafter filed the suit for cancellation of release deed. It is further contended that 15 days back the defendant came near the suit properties and tried to dispossess the plaintiff from the

suit properties by obstructing the plaintiff from carrying out his agricultural operations. Hence, the plaintiff filed this I.A, contending that he has made out a prima-facie case, balance of convenience lies in his favor and irreparable loss will cause to him if this application is not allowed. Hence, prayed to allow the same.

3. In pursuance of the suit summons, the defendant has appeared through his counsel and filed his objection to I.A.No.II.

4. In brief the contents of the objection filed by the defendant are as follows;

The defendant has contended that the application is not maintainable either under law or under the facts of the case and the same is liable to be dismissed in limine. Further he has contended that the plaintiff has sworn into false affidavit in support of the I.A. The defendant has specifically contended that through oral partition joint family properties have been partitioned among the plaintiff and defendant and as per the said oral partition the plaintiff got 2 acres of land and his wife got two acres of land. Such being the case the ancestral properties of the plaintiff and defendant which is belonged to one Chikkegowda and thereafter from the income of the joint family properties, the plaintiff has purchased suit properties and Sy.No.18/1 measuring 2 acre 13 guntas in the year 1965. At that time, the defendant was

minor and was in joint possession with the plaintiff. Thereafter, on the basis of the oral partition, Sy.No.18/1 to the extent of 2 acre 13 guntas was fallen to the share of the plaintiff and Sy.No.18/2, 18/3 totally measuring 3 acres 20 guntas was fallen to the share of the defendant and the said partition has taken place about 35 year ago and since then, the defendant is in peaceful possession and enjoyment over the suit schedule properties. It is further contended that as per the oral partition the plaintiff has got 6 acre 13 guntas of land and now the children of the plaintiff are enjoying the said property as the same way the defendant has got 5 acres 20 guntas of land. Therefore, the defendant has prayed that the release deed has been executed by the plaintiff with his own consent, as such no fraud has been played by the defendant. Therefore, prayed for dismissal of the I.A. with exemplary costs.

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

6. On going through the pleadings, documents, I.A.No.II and objections to I.A.II, 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 defendant by playing fraud and by saying that he will get the transfer of the khata into the name of the plaintiff and got the thumb impression of the plaintiff on the release deed and on the basis of the registered release deed, the khata of the suit properties have been changed into the name of the defendant. The plaintiff has contended that he is in possession of the suit property and has purchased the same by virtue of registered sale deed and about 15 days back the defendant came near by the suit property and tried to disposes the plaintiff from the suit property. To substantiate the prima-facie case, the plaintiff has produced, certified copy of the registered release deed, affidavit, M.R., RTCs, notice, endorsement, R.O.R, legal notice and postal receipts.

10. The plaintiff has filed the present suit against the defendant for the releif of cancellation of registered release deed dated 20.10.2015 and for the consequential releif of bare injunction. On careful perusal of the documents and the averments made in the plaint, I.A and objections to IA, it becomes incumbent on the part of the plaintiff to prove that

the defendant has illegally interfered with the plaintiff's peaceful possession and enjoyment of the suit schedule property and is trying to dispossess him from the suit properties.

11. Per contra, the defendant has specifically contended that through oral partition joint family properties have been partitioned among the plaintiff and defendant and as per the said oral partition the plaintiff got 2 acres of land and his wife got two acres of land. Such being the case the ancestral properties of the plaintiff and defendant which is belonged to one Chikkegowda and thereafter from the income of the joint family properties, the plaintiff has purchased suit properties and Sy.No.18/1 measuring 2 acre 13 guntas in the year 1965. At that time, the defendant was minor and was in joint possession with the plaintiff. Thereafter, on the basis of the oral partition, Sy.No.18/1 to the extent of 2 acre 13 guntas was fallen to the share of the plaintiff and Sy.No.18/2, 18/3 totally measuring 3 acres 20 guntas was fallen to the share of the defendant and the said partition has taken place about 35 year ago and since then, the defendant is in peaceful possession and enjoyment over the suit schedule properties. It is further contended that as per the oral partition the plaintiff has got 6 acre 13 guntas of land and now the children of the plaintiff are enjoying the said property as the same way the defendant has got 5 acres 20 guntas of land. Therefore, the defendant has prayed that the release deed has been executed by the plaintiff with his

own consent, as such no fraud has been played by the defendant. In order to substantiate his contentions, the defendant has produced certified copies of the sale deeds, RTCs, Order of the A.C. Hence, to decide over the rival allegations of the parties to the suit, it requires evidence of the parties coupled with evidence. 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 plaintiffs and defendant, the issues where the parties are at variance 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 defendant to try the suit, but the plaintiff has failed to prove 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**.

12. **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.

13. 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**.

14. **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. In view of the discussions and directions made above and in view of the negative findings on points No.1 to 3, I proceed to pass following;

ORDER

I.A. No.II 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 cooperate for 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 24th day of April, 2018)

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

Order pronounced in the open court (vide
separate order)

ORDER

**I.A. No.II 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 speedy
disposal of this case.**

No order as to costs.

Civil Judge & JMFC.,
Hunsur.

Call on for issues by
13.06.2018.

Civil Judge & JMFC.,
Hunsur.