

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 7th day of February, 2018

O. S. No.185/2017

PLAINTIFF : Sri. Shivananjappachari

: Vs.:

DEFENDANTS : Smt. Puttannaiah and others

I.A. No.I

APPLICANT : Sri. Shivananjappachari

(By Sri.C.S.S, Advocate)

: Vs. :

OPPONENTS : Smt. Puttannaiah and others

(D1 by Sri.S.G., Advocate)

(D2 and 3 by Sri.K.C.B., Advocate)

ORDERS ON IA.NO.V 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 or servants from in any way 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.76/4

measuring 10 guntas and 76/5 measuring 2 guntas totally 12 guntas situated at Oddambal village, Hanagodu Hobli, Hunsur Taluk, Mysuru District. (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 the suit schedule properties were his mother's properties got by her under registered will dated 28.08.1961 and she was in possession and enjoyment over it till her life time and thereafter, the plaintiff is in peaceful possession and enjoyment over the same. Such being the case, the defendants having no manner of right, title, interest much less possession over the suit properties colluding with each other have concocted and created fictitious documents as to deprive the plaintiff from his valuable right over the suit property. It is further contended that the defendant No.3 with the support of the defendant No.1 is coming near the suit property and obstructing the plaintiff's peaceful possession and enjoyment and the defendants have also gone to the extent of denying the plaintiff's title over the suit property. 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 No.1 has appeared through his counsel and not filed written

statement and objections to I.A.no.1 and defendant Nos.2 and 3 have appeared through their counsel and have filed their written statement and objections to I.A.No.1.

4. In brief the contentions of the objections filed by the defendant Nos.2 and 3 are as follows;

The I.A is not maintainable either under the law or on the facts of the case. Further they have denied entire averments made in the plaint and have specifically contended that originally Sy.No.76/2 of Oddambalu village has total extent of 37 guntas and was the ancestral property of the Doddaveerabhadrachari and he had no male issues, had four daughters by name Rajamma, Nanjamma, Puttamma and Kamalamma. Among them Rajamma is not having any issues, Nanjamma had only one son i.e., defendant No.3, Puttamma had four sons and the plaintiff with a malafide intentions has not made any of them as a parties to the suit. As such, the suit is bad in law. They have specifically contended that the mother of the plaintiff has sold 20 guntas in favour of Veerabhadrachari and in remaining 17 guntas has sold out 10 guntas to the defendant No.3 under registered sale deed dated 16.11.2015 and remaining 7 guntas belonged to the mother of the defendant No.3, which has been phoded as Sy.No.76/5. As such, the plaintiff has concocted the said documents and the suit filed by the plaintiff is barred by law of limitation and prays for dismissal of the suit with exemplary 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.V 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 schedule properties were his mother's properties got by her under registered will dated 28.08.1961 and she was in possession and enjoyment over it till her life time and thereafter, the plaintiff is in peaceful possession and enjoyment over the same. Such being the case, the defendants having no manner of right, title, interest much less possession over the suit properties colluding with each other have concocted and created fictitious documents as to deprive the plaintiff from his valuable right over the suit property. It is further contended that the defendant No.3 with the support of the defendant No.1 is coming near the suit property and obstructing the

plaintiff's peaceful possession and enjoyment and the defendants have also gone to the extent of denying the plaintiff's title over the suit property. Hence, prayed to allow the I.A. To substantiate the prima-facie case, the plaintiff has produced, index of land, record of rights, registered Will, RTCs, M.R extract.

10. The plaintiff has filed the suit for the relief of declaration and consequential relief of injunction against the defendants. 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 that the defendants have illegally started to dig the foundation and carrying out construction work in the suit schedule property by producing cogent evidence.

11. Per contra, the defendant Nos.2 and 3 have contended that originally Sy.No.76/2 of Oddambalu village has total extent of 37 guntas and was the ancestral property of the Doddaveerabhadrachari and he had no male issues, had four daughters by name Rajamma, Nanjamma, Puttamma and Kamalamma. Among them Rajamma is not having any issues, Nanjamma had only one son i.e., defendant No.3, Puttamma had four sons and the plaintiff with a malafide intentions has not made any of them as a parties to the suit. As such, the suit is bad in law. They have specifically contended that the mother of the plaintiff has sold 20 guntas in favour of Veerabhadrachari and in

remaining 17 guntas has sold out 10 guntas to the defendant No.3 under registered sale deed dated 16.11.2015 and remaining 7 guntas belonged to the mother of the defendant No.3, which has been phoded as Sy.No.76/5. As such, the plaintiff has concocted the said documents and the suit filed by the plaintiff is barred by law of limitation. 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 plaintiff and defendants, 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 defendants to try the suit, but the plaintiff has failed to prove their 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.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 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 7th day of February, 2018)

**(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 speedy disposal of this case.

No order as to costs.

Civil Judge & JMFC.,
Hunsur.

Call on for issues by
08.03.2018.

Civil Judge & JMFC.,
Hunsur.