

**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 28<sup>th</sup> day of November, 2017**

**O. S. No.198/2017**

**PLAINTIFF** : Sri.R.Ramesh

**: Vs.:**

**DEFENDANT** : Sri.M.P.Nagaraj

**I.A. No.III**

**APPLICANT** : Sri.R.Ramesh  
(By Sri.C.R.R, Advocate)

**: Vs. :**

**OPPONENT** : Sri.M.P.Nagaraj  
(By Sri.P.R.R., Advocate)

**ORDERS ON IA.NO.III 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 defendant, restraining him, his attorney holder or agents or any person or persons acting on behalf of him and through him from interfering with plaintiff's peaceful possession and enjoyment over suit schedule properties, till pending disposal of the suit.

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff that, the defendant is his son-in-law having married to his daughter on 04-05-2003 at Bangalore and out of the said wedlock 2 children were begotten and they started to reside at Madikeri. When the things stood so, the plaintiff with an intention to give good fortune for the defendant being the son-in-law have entered into agreement of sale with one Syed Ahamed to purchase the lands bearing Sy.No.1/112 measuring 3 acres 25 guntas, Sy.No.1/110 measuring 5 acres 38 guntas and Sy.No.83 measuring to an extent of 6 acre 32 guntas situated at Aspathrekaval village for a sale consideration of Rs.48 Lakh and the same came to be reduced into writing by executing agreement for sale on dated 18.03.2013 and the plaintiff has paid a sum of Rs.10 Lakhs by way of cash and agreed to pay balance amount of Rs.38 Lakh at the time of registration of sale deed. It is further contended that he could not secure revenue documents standing in his name to purchase the agricultural land and with good intention decided to get the sale deed registered in the name of defendant and registered the sale deed in the name of defendant at this cost and defendant was only a name lender and has not contributed even a single penny towards the purchase of the suit schedule properties in his name. It is further contended that as per the demand of the defendant he got executed the sale deeds in favour of defendant paying the entire sale consideration as agreed in the agreement of sale dated 18.03.2013 and also registration expenses to the concerned authority and the defendant acquired the suit properties. It is further contended that the defendant started threatening the plaintiff that he would alienate the suit schedule properties as the same is standing in his name, though the

original sale deeds, physical possession with respect to the suit properties are with the plaintiff, other family members requested him not to venture in alienating the suit properties. It is further contended that defendant came near the suit properties on 26.05.2017 and threatened that he would alienate the suit schedule properties and asked the watchmen to vacate the suit schedule properties. It is further contended that the court was pleased to order to maintain status-quo as far as the alienation of the suit schedule properties are concerned, such being the case, the defendant and his family members taking advantage of the situation started throwing threats through messages and calls and the plaintiff having no other option lodged the complaint with the superintended of police, Mysuru Dist. It is further contended that the defendant with an oblique motive has filed a suit for bare injunction against plaintiff and his family members, which is pending before this court. It is further contended that, the defendant being a practicing advocate at Madikeri Bar Association and with his influence, is making hectic attempts to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule properties, having no right, interest or possession over the same. Hence, without any alternative has filed this suit and has submitted that he has made out a prima facie case, balance of convenience lies in his favor and irreparable loss will cause to him, if T.I is not granted as sought by him. Hence, prayed to allow the I.A.

3. In response to the suit summons, the defendant appeared through his counsel and have filed written statement and objections to the I.A.No.III.

4. In brief contents of the statement of objections filed by the defendant is as under;

Defendant has contended that the plaintiff has sworn a false affidavit making false allegations against the defendant. The defendant is the absolute owner with possession and enjoyment of the suit schedule properties since the date of its purchase, the plaintiff who has no manner of right, title or interest over the suit schedule properties. It is further contended that the plaintiff was never in possession of the suit schedule properties and the I.A. filed by him lacks bonafideness and is liable to be dismissed in limine. I.A. has been filed to harass the defendant and to make unholy game for plaintiff. It is further contended that no prima-facie case made out by the plaintiff. The balance of convenience lies in favour of the defendant therefore, the defendant prays to dismiss the I.A. with compensatory costs.

5. Heard the advocates appearing for the plaintiff and defendant and perused the materials on record. During the course of the arguments the advocate for the plaintiff relief upon the following decisions in support of his contentions.

1.I.L.R. 1983 Page 81

2.K.C.C.R (4) Page 3761

3.A.I.R.2014 KAR.Page 140

4.A.I.R. 2010 SC Page 296

6. On going through the pleadings, I.A.No.III and written statement 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 is his son-in-law and for the fortune of his daughter has entered into agreement of sale with respect to the suit schedule properties with one Sri.Syed Ahmed for an amount of Rs.48 Lakh on dated 18.03.2013 and on the same day has paid a sum of Rs.10 Lakhs by way of cash and agreed to pay the balance consideration amount of Rs.38 Lakhs at the time of registration of sale deed. It is further contended that the plaintiff did not secure the revenue documents, as such as per the demand of the defendant got executed the sale deeds as agreed as per agreement of sale dated 18.03.2013 in the name of defendant, by investing balance consideration amount of Rs.38 Lakh and registration expenses. It is further contended that on 26.05.2017, the defendant came near the suit schedule properties threatened that he would alienate the suit schedule properties and asked the watchmen and his wife to vacate the suit schedule properties. It is further contended that the court was pleased to order to maintain status-quo as far as the alienation of the suit schedule properties are concerned, such being the case, the defendant and his family members taking advantage of the situation started throwing threats through messages and calls and the plaintiff having no other option lodged the complaint with the superintended of police, Mysuru Dist. It is further contended that the defendant with an oblique motive has filed a suit for bare injunction against plaintiff and his family members, which is pending before this court. It is further contended that, the defendant being a practicing advocate at Madikeri Bar Association and with his influence, is making hectic attempts to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule properties, having no right,

interest or possession over the same. In support of his contentions the plaintiff has produced xerox copy of the agreement of sale, sale deeds, RTCs, petition in M.C.No.451/2013, Electricity certificate, agricultural bank membership, soil testing certificate, test report, sprinkler, drip irrigation, bio compost manure delivery challan, drip irrigation plan and photographs, copy of complaint to S.P, Mysuru and copy of written statement filed by the plaintiff in O.S.No.253/2017.

10. The plaintiff has filed the suit for the relief of bare injunction against the defendant and also for the direction to the defendant from alienating the suit schedule properties. On perusal of the written statement and objections filed by the defendant, he has specifically contended that he is the absolute owner in possession of the suit schedule properties and all the revenue documents are standing in his name and the plaintiff was never in possession and enjoyment over the suit schedule properties. Defendant has contended that the plaintiff was never in possession and enjoyment over suit property. In order to prove his contentions the defendant produced xerox copies of sale deeds, M.R., RTC., tax paid receipts, acknowledgment. Hence, the plaintiff has prayed that the he has made out a prima facie case and balance of convenience lies in his favour and irreparable loss will cause to him, if this application is not allowed and there will be a multiplicity of proceedings. 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 and defendants, 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 cannot be decided at this stage. Hence, it requires full-fledged trial to decide over the same. During the course of the arguments the advocate for the plaintiff relief upon the following decisions in support of his contentions.

1.I.L.R. 1983 Page 81

2.K.C.C.R (4) Page 3761

3.A.I.R.2014 KAR.Page 140

4.A.I.R. 2010 SC page 296

I have gone through the above said decisions. Though there is triable issues raised by the plaintiff and defendant 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 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. III 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.**

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 28<sup>th</sup> day of November, 2017)

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

Order pronounced in the open  
court (vide separate order)

**ORDER**

**I.A. No. III 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 under order X of C.P.C by  
03.01.2018.

Civil Judge & JMFC.,  
Hunsur.