

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 6th day of April, 2018

O. S. No.239/2017

PLAINTIFF : Sri. Devaiah

: Vs.:

DEFENDANTS : Sri. Rajaiah and others

I.A. No.1

APPLICANT : Sri. Devaiah
(By Sri.B.C.S, Advocate)

: Vs. :

OPPONENTS : Sri. Rajaiah and others
(D1 by Sri.K.A, Advocate)

ORDERS ON IA.NO.1 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 representatives or anybody acting on their behalf from in any way interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property, till pending disposal of the suit. The suit is filed in respect of-

land bearing Sy.No.84 measuring 2-28.08 acres, situated at Madapur Village, Gavadagere Hobli, Hunsur Taluk. (Herein after referred to as "suit property")

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff that originally the suit property was belonged to his father and during the life time of the father of the plaintiff vide M.R.No.6/93-94 the schedule property was mutated in the name of the plaintiff and till today without any interruption the plaintiff is in peaceful possession and enjoyment over the suit property. It is further contended that towards the northern side of the suit property, there are trees and the defendant has illegally encroached two guntas of land towards South direction and have illegally trespassed and cut down the trees, which were in the suit property. It is further contended that the plaintiff made an survey by filing application before the Tahasildar and has laid stones and made hadbath with respect to the suit property. Such being the case, the defendants have illegally trespassed encroached into the suit property and have cut down the trees to which the plaintiff has lodged complaint with the Tahasildar and Forest department. But they have not taken any action in that regard. It is further contended that the defendants are continuously interfering with the plaintiff's peaceful possession and enjoying 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 defendants have appeared through their counsel and have filed their written statement and objections to the I.A.No.1.

4. In brief the contentions of the written statement filed by the defendants are as follows;

The application filed by the plaintiff is not maintainable either in the law or on the facts of the case and the same is liable to be dismissed in limine. It is further contended that the plaintiff has filed the suit without prior measurement with regard to his extent of the property by concerned revenue authorities. The plaintiff with an eye to knock of the defendants from their property in Sy.No.65/1, which is adjacent to plaintiff's land filed this false suit. It is further contended that after filing of this suit, the defendants have approached the concerned revenue authorities for making survey with respect to the suit property, to which the Government surveyor has visited the disputed suit land, measured the land of the defendants and prepared the sketch. As per the sketch, the plaintiff himself has illegally encroached the defendants land to an extent as shown in the sketch and the illegally encroached portion by the plaintiff as contained several valuable trees, as contended by the plaintiff which are all belongs to these defendants. It is further contended that the property in Sy.No.61/5 and 61/6

are all the ancestral properties of the defendants and all the revenue documents are standing in his name and is in physical possession over the suit property. Therefore, prayed for dismissal of the I.A, with costs.

5. Heard the advocates appearing for the plaintiffs and defendants and perused the documentary evidence produced before this Court. The learned counsel for the defendants has filed the written notes of arguments on I.A.No.1, reiterating the averments made in the objections and written statement.

6. On going through the pleadings, documents, I.A.No.1 and objections to I.A.1, 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 originally the suit property was belonged to his father and during the life time of the father of the plaintiff vide M.R.No.6/93-94 the schedule property was mutated in the name of the plaintiff and till today without

any interruption the plaintiff is in peaceful possession and enjoyment over the suit property. It is further contended that towards the northern side of the suit property, there are trees and the defendant has illegally encroached two guntas of land towards South direction and have illegally trespassed and cut down the trees, which were in the suit property. It is further contended that the plaintiff made an survey by filing application before the Tahasildar and has laid stones and made hadbasth with respect to the suit property. Such being the case, the defendants have illegally trespassed encroached into the suit property and have cut down the trees to which the plaintiff has lodged complaint with the Tahasildar and Forest department. But they have not taken any action in that regard. It is further contended that the defendants are continuously interfering with the plaintiff's peaceful possession and enjoying over the suit property. To substantiate the prima-facie case, the plaintiff has produced, certified copy of the Tippani, hadbasth , index of lands, RTC extracts, copies of M.R., NCRs, Survey sketch, application to the forest office, application to Tahasildar, photos and CD.

10. The plaintiff has filed the present suit for the relief of declaration, declaring that he is the absolute owner of the suit property and consequential relief of bare 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

interfered with the plaintiff's peaceful possession and enjoyment of the suit schedule property by producing cogent evidence.

11. Per contra, the defendants have specifically contended that the plaintiff has filed the suit without prior measurement with regard to his extent of the property by concerned revenue authorities. The plaintiff with an eye to knock of the defendants from their property in Sy.No.65/1, which is adjacent to plaintiff's land filed this false suit. It is further contended that after filing of this suit, the defendants have approached the concerned revenue authorities for making survey with respect to the suit property, to which the Government surveyor has visited the disputed suit land, measured the land of the defendants and prepared the sketch. As per the sketch, the plaintiff himself has illegally encroached the defendants land to an extent as shown in the sketch and the illegally encroached portion by the plaintiff as contained several valuable trees, as contended by the plaintiff which are all belongs to these defendants. It is further contended that the property in Sy.No.61/5 and 61/6 are all the ancestral properties of the defendants and all the revenue documents are standing in his name and is in physical possession over the suit property. In order to substantiate the contentions of the defendants, they have produced copy of hadbath, sketch, RTC extracts. 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 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.1 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 6th day of April, 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.

Issues framed.

For plaintiff evidence and list
of witness by 14.06.2018.

Civil Judge & JMFC.,
Hunsur.