

**IN THE COURT OF THE ADDL.CIVIL JUDGE & J.M.F.C.
HUNSUR.**

PRESENT: Sri.Girish Chatni, B.A., LL.B (Spl).
C/c Addl.Civil Judge & J.M.F.C,
Hunsur.

Dated this the 19th day of December, 2019

O. S. No.219/2019

PLAINTIFFS : Chandrashekhara
: Vs.:

DEFENDANTS : Singregowda

I.A. No.I

APPLICANT/PLAINTIFF : Chandrashekhara
(By Sri. M.N.B., Advocate)
: Vs. :

OPPONENTS/DEFENDANT : Singregowda
(By Sri NSG., Advocate)

ORDERS ON IA.NO.I FILED U/O XXXIX
RULES 1 AND 2 R/W SECTION 151 OF C.P.C.

This application is filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C., seeking for the relief of ad-interim temporary injunction against the defendant, restraining him from alienating the suit properties pending disposal of the suit.

2. That, it is averred in the affidavit annexed to the application sworn in to by the plaintiff that, he is the son of Late

Sannamarigowda. Suit properties are the ancestral properties of the plaintiff belonging to his grand father. Thereafter the death of grand father of the plaintiff, the khatha of the suit properties were mutated into the name of his father. Defendant by creating false documents, has contending that the said properties have been purchased from the father of the plaintiff, has created sale deed and got mutated the name of the plaintiff with respect to the suit properties. It is further contended that when the plaintiff was minor, without bringing to his knowledge has created documents and purchased the suit properties from his father, as such, the suit properties being the ancestral properties of the plaintiff, the defendant has constructed house over the suit properties. The defendant is not having right, interest much less possession over the suit properties, with an intention to grab the suit properties, has purchased the same. It is further contended that the defendant is making hectic effort in alienating the suit properties. Therefore, without any alternative the plaintiff has filed the present I.A and 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 has appeared through his counsel and has filed detailed written statement and has submitted to treat written statement as objection to IA No.1.

4. Defendant has denied entire averments made in the plaint. Defendant has specifically contended that the land bearing Sy. No. 76, resurvey No.76/3 measuring to the extent of 0.10.08 guntas situated at Singamaranahalli has been purchased by the

defendant from his vendor Sannamarigowda vide Registered Sale Deed dated 07-11-1977 for valuable consideration of Rs.1,000/-. Singregowda was in possession and cultivated the suit properties till his lifetime. Thereafter, the said Singregowda @ Motegowda died leaving behind his children Singregowda and Kuntegowda as successor. As of now they are possessing and cultivating the suit properties. Defendant had filed OS. No.44/2006 against the father of the plaintiff before this court, seeking rectification of the sale deed dated 07-11-1977 to rectify the Sy. No. as 76/3 instead of Sy. No. 40. The said suit came to be decreed. As per the directions of the court, rectified deed was registered. Thereafter the name of the defendant was entered into the khatha and all the revenue documents are standing in his name. The defendant and the children of his brother are in physical possession and cultivation of the suit properties. The suit is bad for necessary parties and is barred by law of limitation.

5. Heard the advocate appearing for the plaintiff and defendant, perused the materials on record.

6. On going through the pleadings, I.A.No.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 properties are the ancestral properties, originally belonged to his grand father. At the time when the plaintiff was minor, the suit properties have been purchased by the defendant from his father. As such, the said sale transactions are not binding on him. Defendant is making hectic efforts in alienating the suit properties. In support of their contentions, the plaintiff has produced RTC, copy of the legal notice, postal receipt and acknowledgement.

10. The plaintiff has filed the present suit against the defendant for the relief of declaration, declaring that he is the absolute owner of the suit properties and consequential relief of bare injunction. On perusal of the written statement filed by the defendant he has contended that the land bearing Sy. No. 76, resurvey No.76/3 measuring to the extent of 0.10.08 guntas situated at Singamaranahalli has been purchased by the defendant from his vendor Sannamarigowda vide Registered Sale Deed dated 07-11-1977 for valuable consideration of Rs.1,000/-. Singregowda was in possession and cultivated the suit properties

till his lifetime. Thereafter, the said Singregowda @ Motegowda died leaving behind his children Singregowda and Kuntegowda as successor. As of now they are possessing and cultivating the suit properties. Defendant had filed OS. No.44/2006 against the father of the plaintiff before this court, seeking rectification of the sale deed dated 07-11-1977 to rectify the Sy. No. as 76/3 instead of Sy. No. 40. The said suit came to be decreed. As per the directions of the court, rectified deed was registered. Thereafter the name of the defendant was entered into the khatha and all the revenue documents are standing in his name. The defendant and the children of his brother are in physical possession and cultivation of the suit properties. The suit is bad for necessary parties and is barred by law of limitation. Defendant in order to substantiate his contention, has filed copy of the rectification sale deed dated 07-9-2006, copy of the M.R. and RTC with respect to land bearing Sy. No. 76/3. On going through the documents relied on by the defendant, as of now it establishes that the father of the defendant was purchased item No.2 of the suit property from the father of the plaintiff. With respect to the contentions raised by the plaintiff that at the time when he was minor, the suit properties have been purchased by the defendant and that is not valid in law has to be tested with the full-fledged trial and it requires evidence of both the parties. Item No.1 of the schedule of the plaint shows that the plaintiff has claimed relief with respect to Sy. No. 70 measuring 14 guntas of Singaramaranahalli village, whereas documents produced is incomplete showing that it is totally measuring 29 guntas. Accordingly, the relief with respect to the item No.1 of the suit property has also to be tested with full-fledged trial. Merely on the perusal of documents

produced by the plaintiff, it is not sufficient to grant the relief as sought in IA No.I.

11. Hence, to decide over the rival allegations of the parties to the suit, it requires evidence of the parties to the suit. 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 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 lies 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 r/w Section 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.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 19th day of December 2019)

**(Girish Chatni)
C/c Addl.Civil Judge & JMFC.,
Hunsur.**