

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

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

Dated this the 06th day of February 2021

O. S. No.254/2020

PLAINTIFF/S : Sri.H.Shivanna

: Vs :

DEFENDANT/S : Smt. Kamamma and others

I.A. No.I

APPLICANT/S : Sri.H.Shivanna.

(By Sri. **K.B.R.**, Advocate)

: Vs. :

OPPONENT/S : Smt. Kamamma and others

(By Sri. **L.K.J**, Advocate)

**ORDERS ON I.A NO.I FILED UNDER ORDER 39 RULE 1 AND 2
R/W SEC.151 OF C.P.C.,**

The plaintiff has maintained I.A.No.I under order 39 Rules 1 and 2 R/W sec. 151 of C.P.C., seeking for the relief of ad-interim temporary injunction against defendants, restraining them, their family members and their agents from trespassing illegally into the suit property and illegally constructing house till disposal of the suit. The application has

been filed in respect of land bearing Sy. No.51/2, measuring 2 acre 17 guntas, situated at Hirikyathanahalli village, Gavadagere Hobli, Hunsur Taluk, Mysuru District.(Hereinafter referred to as **“Schedule Property”** for the purpose of brevity)

2. In the affidavit annexed to I.A.No.1 sworn into by the plaintiff, he has contended that, he is in absolute possession and enjoyment over the property and the same has been allotted to him vide partition in the family. His name has been mutated with respect to the suit property vide M.R.T.No.14/2019-20 dated 28.09.2019 and he is also paying tax to the concerned. Defendants are the neighbors of the plaintiff. Accordingly, the plaintiff has made survey with respect to his property and has laid down boundary stones. Such being the case, the defendants having no manner of right, possession and interest over the suit property have removed the boundary stones and have come forward to encroach the suit property. As such the plaintiff on 01.07.2020 has lodged complaint to the Rural Police to which they have called the defendants and advised not to trespass to the suit property. Thereafter, the defendants have not left in picking up quarrel with the plaintiff and on 01.10.2020, the plaintiff had applied for laying boundary stones. At that juncture, defendant No.2 has abused the plaintiff in filthy language and picked up quarrel. That on 04.11.2020, the plaintiff has lodged complaint to the Rural complaint, but all his efforts went in vain. Plaintiff has further contended that, the defendants with an ulterior motive to grab the suit property have not only trespassed into the suit property, but also constructing illegal house in the suit property. Defendants being politically influenced persons are not heeding the request made by the plaintiff. Therefore, plaintiff has filed I.A.No.1, contending that, he has made out prima-facie case, balance of convenience lies in his favour and irreparable loss will

cause to him if temporary injunction is not granted in his favour as sought in the I.A. Accordingly, prayed to allow I.A.No.1.

3. In pursuance to the suit summons, the defendants have appeared through Sri.L.K.J advocate and have filed their detailed written statement. Counsel for the defendants while canvassing his arguments on I.A.No.1 has submitted to treat the written statement filed by the defendants as objections to I.A.No.1.

3.1. Defendants have contended that, the suit of the plaintiff as well as I.A.No.1 are not at all maintainable in the eyes of law and the same are liable to be dismissed in limine. The defendants have admitted that the suit property was allotted to the plaintiff under family partition and khatha is in the name of the plaintiff and he is in possession and enjoyment over the suit property. Defendants have denied the remaining averments made in para Nos.2 to 7 of the plaint. Defendants have specifically contended that, the husband of the defendant No.1 and the plaintiff are brothers in relation. Suit property was the ancestral and joint family property of the plaintiff and defendants. During the lifetime of the husband of the defendant No.1, there was family partition and they were enjoying their respective share by effecting khatha in their names.

3.2. Defendants have further contended that, their property is situated towards south of the suit property. Defendants have also contended that, in order to construct house in their share of the property have identified their property. Such being the case, in order to take the precautions by the plaintiff that, the construction materials may be dumped in his property and also with an intention to stop the construction work carried out by the defendants, the plaintiff has lodged complaint with the Rural police. Thereafter, the police authorities have visited the spot and advised the plaintiff to have

cordial relationship with the defendants. Having got failed the plaintiff has maintained the instant suit. Defendants have contended that, they have not caused any interference with the plaintiff's peaceful possession and enjoyment over the suit property. Defendants at para No.13 of their written statement have contended that, they are ready to get measured the suit property as well as their property by appointing a court commissioner in that regard. Accordingly, prayed to dismiss the I.A.No.1 with exemplary costs.

4. Heard both sides. Perused the materials available on record.

5. The points that arise for consideration are:

1. Whether the plaintiff has made out 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?

6. My findings on the above points are as follows:

Point Nos.1 to 3 : In the Negative

Point No.4 : As per the final order for the following;

REASONS

7. **Point Nos.1 to 3:** These points are taken together for common discussions, in order to avoid repetition of facts and circumstances.

The necessary or important ingredients or elements to grant Ad-interim temporary injunction are that, the prima-facie case, balance of convenience, irreparable loss and also the conduct of the parties in approaching the court for an equitable relief.

The prima-facie case means the court must be satisfied that, the applicant has raised a bonofide dispute, which needs investigation and a decision on merits and that there is possibility of the applicant being entitled to the relief claimed by him. When determining, whether a prima facie case been made out the relevant consideration is whether on the evidence led it is possible to arrive at the conclusion in question and not whether that is the only conclusion which could be arrived at on that evidence."

8. It is well-settled law that the prima facie case is condition precedent or harbinger to consider other two elements. It is the contention of the plaintiff that, under family partition he got the suit property as his share and khatha of the suit property was entered into his name. Plaintiff's main contention is that, the defendants being the neighbors in order to construct illegal house are coming forward to encroach the suit property and have also removed the boundary stones fixed by the revenue authorities. The plaintiff has also lodged complaint with the Rural Police for two times, but all his efforts went in vain. Accordingly, he has sought for ad-interim mandatory injunction

restraining the defendants from constructing the house illegally in the suit property.

9. In order to substantiate the contention of the plaintiff, he has produced RTC, wherein the name of the plaintiff is appearing as owner and possessor with respect to the Sy.No.51/2 of Hirekyathanahalli village, which has been mutated vide M.R.T No.14/2019-20 as per partition. It is also evident from the mutation register. Plaintiff has also filed copy of the complaint to the Rural Police station alleging the encroachment made by the defendants with respect to the suit property. Plaintiff has also furnished haddubastu sketch with respect to the suit property. Plaintiff has also filed mahazar, haddubast and copy of the acknowledgement, issued by the Rural police station.

10. On perusal of the averments made in the plaint as well as in the written statement, the defendants are not disputing about the possession and enjoyment of the plaintiff with respect to the suit property. However, it is the plaintiff through I.A.No.1 seeking ad-interim mandatory injunction by restraining the defendants from illegally constructing the house by encroaching the suit property by removing boundary stones.

11. Copy of the complaint given by the plaintiff to the PSI, H.R.P.S., it reveals that, the defendants have not only removed the boundary stones with respect to the suit property, but also alleged about the defendants have encroached the suit property and plaintiff has prayed as per the haddubast sketch and mahazar possession of the encroached portion of the land being handed over to him from the defendants. The copy of the complaint has also been forwarded to the Tahsildar of Hunsur for necessary action. The most important document produced by the plaintiff is the haddubast sketch wherein

the surveyor has reported that, there is no encroachment in Sy.No.51/2, measuring 2 acre 17 guntas and the same has been surveyed on 30.06.2020. Therefore, the contention of the plaintiff that, the defendants by removing the boundary stones and has illegally constructed house by encroaching the suit property are not at all maintainable. In such an event it needs to be tested only after having full-fledged trial. Moreover the averments made in the plaint as well as in the I.A.No.I are silent about exact measurement in which the defendants have encroached and thereby have constructed their house. Ad-interim mandatory injunction is a special remedy it can be only granted, if there is a genuine case. On perusal of the materials on records and also on going through the plaint, written statement and also I.A.No.I, the plaintiff has failed to averred sufficient grounds in order to grant ad-interim mandatory injunction as sought in I.A.No.I. Moreover, the contentions of the plaintiff are not supported with sufficient documentary evidence. In order to know the exact encroachment with respect to the suit property a report of the revenue Department or the report of commissioner is essential in order to adjudicate the matter in question. Accordingly, it needs full-fledged trial to decide over the issues. Accordingly, the plaintiff has not made out any prima-facie case, balance of convenience does not lie in his favour and irreparable loss would be caused to the defendants if T.I is granted as prayed in I.A No.I. Accordingly, the plaintiff has not made out fit case to grant order of ad-interim Temporary Injunction as prayed in I.A.No.I. In view of the discussions made, I answer point Nos. 1 to 3 in the **“Negative”**.

16. **Point No.4** : In view of the foregoing reasons, stated in Point Nos.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 negative findings on point Nos.1 to 3, I proceed to pass following;

ORDER

I.A. No.1 filed by the plaintiff under order 39 Rule 1 and 2 R/w Sec.151 of C.P.C., is hereby dismissed.

No order as to costs.

Parties are hereby directed to cooperate for speedy disposal of this case.

(Dictated to the stenographer directly on computer, typed by her, then corrected and pronounced by me in open court on this the 06th day of February, 2021)

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