

**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 1st day of February, 2020

O. S. No.134/2019

PLAINTIFFS : Ningamma and others,
: **Vs.:**

DEFENDANTS : Jeeraswamy and others,

I.A. No.II

**APPLICANT/
PLAINTIFF No.1** : Ningamma,
(By Sri. K.C.B., Advocate)

: Vs. :

**OPPONENTS/
DEFENDANTS** : Jeeraswamy and others,
(By Sri. I.R.S., Advocate)

ORDERS ON IA.NO.II

FILED U/O XXXIX RULE 1 AND 2 OF C.P.C.

This application is filed by the plaintiff No.1 under Order XXXIX Rules 1 and 2 of C.P.C., seeking for the relief of Ad-interim temporary injunction against defendants, restraining them or anybody from interfering with the plaintiffs' peaceful possession and enjoyment over the suit schedule property till pending

disposal of the suit. This suit has been filed in respect of land Sy.No.79/2 measuring 2 acre 37 guntas situated at Dharmapura Village, Bilikere Hobli, Hunsur Taluk. (hereinafter referred to as "suit property" for brevity)

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff No.1 that, she is the wife of late. C.Thimmanayaka, the husband of the plaintiff No.2 is her son, plaintiff No.2 is her daughter-in-law, plaintiff No.3 is her grandson, plaintiff Nos.4 to 6 are her daughters. It is further contended that, the husband of the plaintiff No.1 during his lifetime has purchased the suit property from Venkataiah S/o Chikkanaiah vide registered sale deed on 11.02.1972. Since the date of purchase till his lifetime, he was in possession and enjoyment over the same. Thereafter, his lifetime, it is the plaintiffs who are in peaceful possession and enjoyment over the suit property. It is further contended that, the husband of the plaintiff No.1 till his lifetime has paid tax to the Government and thereafter, the plaintiffs are paying tax to the Government. It is further contended that, apart from the plaintiffs' nobody is having right, interest, muchless possession over the same. Such being the case, defendant No.1 colluding with the revenue authorities got mutated his name with respect to the suit property. Aggrieved by the same, the plaintiffs have preferred RRT No.52/2015-16 before the Assistant Commissioner, Hunsur and the same came to dismissed on 19.12.2018. The defendants are not having any right over the suit property and are continuously interfering with the plaintiffs' peaceful possession and enjoyment over the suit property and are canvassing that, they will

dispossess the plaintiffs from the suit property. Therefore, without any alternative the plaintiff No.1 has filed the present I.A and she has contended that, she has made out a prima-facie case, balance of convenience lies in her favor and irreparable loss will cause to her, if T.I is not granted as sought by her. Hence, prayed to allow the I.A.

3. In response to the suit summons, the defendants have appeared through their counsel and have filed their detailed written statement and have also submitted to consider written statement as objection to IA No.II. Defendants have denied entire averments made in the plaint. They have admitted that RRT No.52/2015-16 has been dismissed by the Assistant Commissioner, Hunsur directing the parties to approach the competent Civil Court. Defendants have further contended that, the plaintiffs are not entitled for any of the reliefs as sought by them. They have further contended that, the boundaries furnished to the schedule of the plaint are false and created for the purpose of filing of the suit. Defendants have contended that, land bearing Sy. No. 79/2 measuring 4 acre 36 guntas has been gifted to the defendant No.2 on 23.11.2015 and the defendant No.2 is in possession over the same. Such being the case, the plaintiffs have no right over the said property. It is further contended that, suit property was originally belonged to the father of defendant No.1 and thereafter, the defendant No.1 being the legal heir got mutated his name with respect to the suit property. It is further contended that, the Chikkannaiah is not at all related to the suit property and no revenue documents are standing in the name of the plaintiffs. The plaintiffs have not filed

any application before the competent Authorities with respect to the suit property. Defendant No.2 as per the gift deed got mutated his name with respect to the suit property and he is the absolute owner in possession over the suit property. The plaintiffs have preferred R.A.No.66/2017 and 18 before the Assistant Commissioner, Hunsur wherein the said appeal came to be dismissed on 18.11.2018. Therefore, the defendants have prayed to dismiss the I.A., as well the suit with exemplary costs.

4. Heard the advocate appearing for the plaintiffs and defendants and perused the materials on record.

5. On going through the pleadings, I.A.No.II, the points which arose for my consideration are as under:

1. Whether the plaintiff No.1 has made out a prima-facie case?

2. Whether the balance of convenience lies in favor of the plaintiff No.1?

3. Whether the plaintiff No.1 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 No.1 to 3 : In the Negative

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

REASONS

7. **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.”

8. 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 plaintiffs that on strength of the sale deed that was executed by Chikkannaiah in favour of the husband of the plaintiff No.1, the plaintiffs claim to be joint owners in possession over the suit property after the lifetime of the husband of the plaintiff No.1. Plaintiffs have further contended that, the defendants are not having any rights, interest muchless possession over the suit property are canvassing that, they will dispossess the plaintiffs from the suit property and also interfering with their peaceful possession and enjoyment over the same. The plaintiffs have preferred RRT No.52/2015-16, which came to be dismissed by the Assistant Commissioner, Hunsur on 19.12.2018. Accordingly, the plaintiff No.1 has maintained the present I.A.,

9. In order to substantiate their contentions, the plaintiffs have produced sale deed, gift deed, order copy in RRT, Appeal memo, R.T.C., M.R.

10. The plaintiffs have filed the present suit for the relief of declaration and injunction against the defendants. On perusal of averments made in the pleadings of the parties to the suit, it is incumbent on the part of the plaintiffs to prove their possession

over the suit property and also inference by the defendants. Defendants in their written statement have contended that, the boundaries furnished to the schedule of the plaint are false and created for the purpose of filing of the suit. Defendants have contended that, land bearing Sy. No. 79/2 measuring 4 acre 36 guntas has been gifted to the defendant No.2 on 23.11.2015 and the defendant No.2 is in possession over the same. Such being the case, the plaintiffs have no right over the said property. It is further contended that, suit property was originally belonged to the father of the defendant No.1 and thereafter, the defendant No.1 being the legal heir got mutated his name with respect to the suit property. It is further contended that, the Chikkannaiah is not at all related to the suit property and no revenue documents are standing in the name of the plaintiffs. The plaintiffs have not filed any application before the competent Authorities with respect to the suit property. Defendant No.2 as per the gift deed got mutated his name with respect to the suit property and he is the absolute owner in possession over the suit property. The plaintiffs have preferred R.A.No.66/2017 and 18 before the Assistant Commissioner, Hunsur wherein the said appeal came to be dismissed on 18.11.2018.

11. Defendants in their written statement have furnished boundaries to the land bearing Sy. No. 79/2 totally measuring 4 acre 36 guntas bounded on west by land of Cheluvaiah and Dindigaiah, west by land of Chikka chennanayaka, north by Thimmanayaka, South by remaining land of defendant No.2. On perusal of the RTCs produced by the plaintiffs, the name of defendant No.1 has been entered in the year 1987-88 itself and

same has been continued up to 1999-2000 where in the name of defendant No.1 has been appearing as owner and possessor of the property bearing No.79/2, measuring 4 acre 36 guntas. Thereafter, as per the gift deed the khatha of the said property has been mutated into the name of defendant No.2. Therefore, the contentions of the parties to the suit have to be tested only with full-fledged trial. As per the decision of the Hon'ble High Court of Karnataka, in order to grant the relief of declaration and injunction, identification of the property is must, wherein the case on hand the defendants have seriously disputed about the boundaries furnished to the schedule of the plaint. 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. That, merely on perusal of the documents produced by the plaintiffs, 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 plaintiffs and defendants to try the suit, but the plaintiff No.1 has failed to prove prima-facie case by producing prima-facie materials to grant the I.A as sought by her. 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”.

13. 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.***

14. The plaintiff No.1 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 plaintiffs. Under the circumstances balance of convenience does not lie in favor of plaintiffs. 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**.

15. **Point No.4 :** In view of the foregoing reasons, stated in at Point No.1 to 3, in my considered view the plaintiff No.1 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.II filed by the plaintiff No.1 under Order XXXIX Rules 1 and 2 of C.P.C., is hereby dismissed.

Parties are hereby directed to cooperate 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 1st day of February 2020)

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