

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 22nd day of January, 2018

O. S. No.364/2016

PLAINTIFF : Smt.M.S.Vimala and another
: **Vs.:**

DEFENDANTS : Smt.Basammanni and others
: **I.A. No.I**

APPLICANT : Smt.M.S.Vimala and another
(By Sri.C.S.S, Advocate)
: **Vs. :**

OPPONENTS : Smt.Basammanni and others
(By Sri. K.V.V., Advocate)

ORDERS ON IA.NO.I FILED U/O XXXIX RULE 1 AND 2
OF C.P.C.

This application is filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C., seeking for the relief of ad-interim temporary injunction against defendants, restraining them from in any way interfering with plaintiffs' peaceful possession and enjoyment over suit schedule property, till pending disposal of the suit. The suit is filed in respect of vacant site measuring 105' X 60' (alienated land measuring

0 acre 04 guntas of lands in old Sy.No.185/1 of K.M.Vadi Village), situated at K.M.Vadi 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 No.2 on behalf of the plaintiff No.1 that, they have filed the suit for the relief of bare permanent injunction against the defendants. It is further contended that the suit schedule property is the ancestral property of the plaintiffs and they are the absolute owners in possession and enjoyment over the suit property. Such being the case, the defendants having no manner of right, title, interest much less possession whatsoever over the suit property at any point of time. It is further contended that earlier the husband of the defendant No.1 and father of the other defendants had interfered with the plaintiffs' peaceful possession and enjoyment over the suit property, which had prompted the plaintiffs to file suit in O.S.No.151/2009 on the file of this court. It is further contended that about a month back the defendants had come in a body and interfered with the plaintiffs' peaceful possession and enjoyment over the suit property and also have threatened of dispossession. Hence, without any alternative have filed this suit. Hence, the plaintiffs filed this I.A, contending that they have made out a prima facie-case, balance of convenience liens in their favor and irreparable loss will cause to them if this application is not allowed. Hence, prayed to allow the same.

3. Defendants have appeared through their counsel and defendant No.4 has filed detailed written statement, which has been adopted by the rest of the defendants. The defendants have filed the memo stating to consider written statement filed by them as objections to I.A.No.1.

3(a). In brief the contents of the written statement filed by the defendants are as follows;

The defendants have admitted the averments made in para No.2 of the plaint and have denied entire averments made in para No.3 to 11 of the plaint. They have further contended that there is no cause of action to file the suit. It is further contended that on 29.07.1991 the defendant No.1 executed an agreement for sale in favour of Sri.Ramesh under sale consideration amount of Rs.10,000/-, in turn the said Ramesh sold the land bearing Sy.No.185/1 measuring 20 guntas as per registered sale deed to the husband of defendant No.1 and father of other defendants and khata was changed in his favour, thereafter, the late Somanna was enjoying the land as an absolute owner and got alienated 20 guntas of land and formed sites by an order of the Assistant Commissioner by ALN No.116/1997-98 dated 18.08.2000 and after the death of said Somanna the defendants are enjoying the above properties as absolute owner. It is further contended that the plaintiff has already filed the suit against the deceased father of defendant Nos.2 to 4 in

O.S.No.151/2009 for relief of bare injunction, as such the suit is hit by law of resjudicata. Therefore, the defendants have prayed for dismissal of the I.A. with exemplary costs.

4. Heard the advocates appearing for the plaintiffs and defendants and perused the documentary evidence produced before this Court.

5. On going through the pleadings, documents, I.A.No.I and objections to I.A.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?

6. 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

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 the suit property is their ancestral property and the defendants having no manner of right, title or interest over the suit property are interfering with the plaintiffs' peaceful possession and enjoyment over the suit property and have also threatened that they will dispossess the plaintiff. Therefore, the plaintiffs' have prayed for ad-interim order of temporary injunction. To substantiate the prima-facie case, the plaintiffs have produced certified copies of Ex.P1 to P29 in O.S.No.151/2009.

9. The plaintiffs have filed the suit for the 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 plaintiffs to prove their possession and interference by the defendants by producing cogent evidence. The plaintiff contends that the defendants along with their men have interfered with the plaintiffs peaceful possession and enjoyment and also threatened that they will dispossess the plaintiffs from the suit property. Per contra, the defendants have contended that on 29.07.1991 the defendant No.1 executed an agreement for sale in favour of Sri.Ramesh under sale consideration amount of Rs.10,000/-, in turn the said Ramesh sold the land bearing Sy.No.185/1 measuring 20 guntas as per registered sale deed to the husband of defendant No.1 and father of other defendants and khata was changed in his favour, thereafter, the late Somanna was enjoying the land as an absolute owner and got alienated 20 guntas of land and formed sites by an order of the Assistant Commissioner by ALN No.116/1997-98 dated 18.08.2000 and after the death of said Somanna the defendants are enjoying the above properties as absolute owner. It is further contended that the plaintiff has already filed the suit against the deceased father of defendant Nos.2 to 4 in O.S.No.151/2009 for relief of bare injunction, as such the suit is hit by law of resjudicata. 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 defendant, 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 and who is in possession and enjoyment of the suit property 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 plaintiffs have failed to prove their 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**.

10. **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.

11. The plaintiffs have 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**.

12. **Point No.4** : In view of the foregoing reasons, stated in at Point No.1 to 3, in my considered view the plaintiffs have 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.I filed by the plaintiffs 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 22nd day of January, 2018)

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

Order pronounced in the open court
(vide separate order)

ORDER

I.A. No.I filed by the plaintiffs 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.

For issues by 02.02.2018.

Civil Judge & JMFC.,
Hunsur.