

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 4th day of April, 2017

O. S. No.367/2016

PLAINTIFF/S : Shekaraiah

: Vs. :

DEFENDANT/S : Parvathamma and others

I.A. No.I

APPLICANT : Shekaraiah

(By Sri.P.C., Advocate)

: Vs.:

OPPONENTS : Parvathamma and others

(By Sri.M.K, Advocate)

ORDERS ON IA.NO.I FILED U/O 39 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 agents or anybody acting on their behalf from illegal interfering with plaintiff's peaceful possession and enjoyment over suit schedule property in any manner, till pending disposal of the suit. The suit is filed in respect of vacant site property bearing janger No214, Property No.306 measuring East to West 40 feet, North to South 35 feet situated at Mookanahally Village, Kasaba Hobli, Hunsur Taluk, Mysuru Dist. (Herein after referred to as "suit property")

2. That it is averred in the affidavit annexed to the application by the plaintiff that, originally the suit property was acquired by one Kapaniah in the year 1962 and after his death it was inherited by his son i.e., the plaintiff and the khata of the suit property and revenue records were transferred to his name, as such the plaintiff is the absolute owner in possession and enjoyment of suit property by paying taxes to the concerned authority. Such being the case, on 08.11.2016 the defendants came near the suit

property, had a quarrel with the plaintiff and interfered with his peaceful possession and enjoyment over suit property by trying to dispossess him. It is further contended that the defendants are strangers to the plaintiff, they having no right, interest over suit property are trying to interfere with his peaceful possession and enjoyment over suit property. In this regard the plaintiff has lodged a complaint with HRPS, but no purpose was served. Hence, submitted that he has made out prima-facie case, balance of convenience lies in his favor and irreparable loss would cause to him. Hence, prayed to allow the I.A.1.

3. The defendants No.1 to 9 have filed written statement and objections to I.A.No.1. They have denied entire averments made in the plaint in toto. They specifically contended that the suit property is vacant site i.e., Gramatana site, which was in possession of plaintiff since 30 years back. Thereafter, Bijaganahalli gramapachayath has acquired the property to construct water tank and in this regard plaintiff was given a site measuring 40 x 30 ft. on 31.12.1984, in turn it was sold to one Mangalamma by the plaintiff, after that khata got changed in her name and grama panchayath was divided and the suit property underwent to Mookanahalli gramapanchayath. The plaintiff has demolished water tanks, against which defendants informed to Mookanahalli

Grama Panchayath and in turn it issued notice to Executive Officer, Hunsur to verify, put fence and take possession of the property and put the board of panchayath. They further contended that to grab the Government property the plaintiff has suppressed all material facts and they have disputed that the boundaries furnished by the plaintiff is wrong one and submitted to dismiss the I.A.

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

5. On going through the pleadings, documents, I.A.No.I and written statement, 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 plaintiff that he has inherited the suit

property from his father and all revenue records are standing in his name and he is the absolute owner in possession and enjoyment over suit property. That it is the defendants who are strangers are interfering with his peaceful possession over suit property.

9. To substantiate the prima-facie case, the plaintiff has produced Demand register extract, Tax paid receipts, photos, acknowledgment and letter issued by the P.D.O of Mookanahally Gramapanchayath.

10. Per contra, the defendants have denied all the allegations made in the plaint and submitted that the suit property is the vacant site belonging to Gramatana and to grab the suit property has filed this case.

11. To substantiate their contentions the defendants have produced Hakku Patra, photos.

12. The plaintiff has filed the suit for the relief of permanent injunction against the defendants. The explicit contention of the plaintiff is that he has inherited the suit property from his father and he is in the possession and enjoyment over the suit property by paying the taxes to the concerned revenue authorities and the revenue records are standing in his name. That on 08.11.2016, it is the defendants who are having no manner of right, title and

interest came near the suit property and tried to obstruct the plaintiff's peaceful possession and enjoyment of the suit property by dispossessing him, against which the plaintiff has lodged a complaint with Hunsur Rural Police Station, to which they have not taken any action in this regard. Per contra, the defendants submitted that the suit property is the vacant site belonging to gramatana and it was in possession of the plaintiff since 30 years back, thereafter the Panchayath has acquired the same and the plaintiff has demolished water tanks, against which notice was issued to Executive Officer to inspect over the matter. Hence, submitted to dismiss the I.A filed by the plaintiff.

13. 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 his possession and interference by the defendants by producing cogent evidence. The plaintiff contends that the defendants are interfering with his peaceful possession and enjoyment over suit property, whereas the defendants contends that it is the plaintiff who intends to grab the suit property has demolished the water tanks and the defendants have disputed with the boundaries furnished by the plaintiff and have produced Hakku patra issued by the government, against which the plaintiff has produced the letter issued by the PDO. 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 photographs produced by the plaintiff and the defendants, 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 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 his 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.**

14. **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.

15. 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**.

16. **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. 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 plaintiff 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 4th day of April, 2017)

**(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 the speedy disposal of this case.

No order as to costs.

Civil Judge & JMFC.,
Hunsur.

Call on for examination of parties as enumerated U/O X of CPC.

Parties are hereby directed to be present before the court.

Call on

Civil Judge & JMFC.,
Hunsur.