

KAMS410037622022



IN THE COURT OF ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B
Addl. Civil Judge & JMFC, Krishnarajanagara.

Dated 26th day of September 2023

O.S. No. 568/2022

Plaintiffs : Shanthamma and others

-V/s-

Defendants : Rachaiah and others

I.A. No.6

Applicant : Avinash

---2nd Plaintiff

-V/s-

Opponents : Rachaiah and others

Defendants

ORDER ON I.A. NO.6 FILED U/S 151 OF C.P.C.

Advocate for the 2nd plaintiff filed this application seeking directions to the police to implement the order of interim temporary injunction.

2. The applicant/2nd plaintiff filed his affidavit in support of his application and submitted that, he has filed a suit for perpetual injunction. Further, in an application filed by him U/o 39 R-1 and 2 of CPC. This court considering the prima-

facie title passed an order of 01.07.2023 by allowing the application and also restrained the defendant No.1 from causing any interference in respect of the suit schedule site property in any manner till the disposal of the suit. Further according to the plaintiff, in spite of the interim order of injunction, the defendant No.1 without caring the said order, he is causing interference with his peaceful possession and enjoyment over the suit site property. Hence, he prays to allow the application seeking directions to the police for implementation of the order passed by this court.

3. However on the other side, the 1st defendant has filed his objections by stating that, the assertions of the plaintiff in his sworn affidavit as false. Further according to the defendant No.1, he is law abiding citizen and he has been in possession of his property. Further, he is not causing any interference in respect of the plaintiff's possession over the schedule property. Further the defendant stated in his objections that, he has preferred an appeal before the Hon'ble Senior Civil Judge, K.R.Nagar, in MA 11/2023 challenging the order passed by this court and till the final adjudication of the appeal, this court not suppose to pass any orders on any applications. Accordingly, the defendant No.1 prays for dismissal of the application with cost.

Heard the counsel for the plaintiffs and defendant No.1 and also gone through the materials relied by the parties in respect of their pleadings.

5. The following points arise for this court's consideration.

1) Whether applicant/2nd plaintiff has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following:

REASONS

7. POINT NO.1:

The plaintiff initially filed this suit against the defendant No.1 and others for perpetual injunction. While instilling the suit, the plaintiff has also moved an application U/o 39 R-1 and 2 of CPC, to restrain the 1st defendant from causing any interference in respect of the application schedule property. This court upon issuing notice to the defendant No.1 and also considering the objections filed by the defendant No.1 and also after giving the parties an opportunity of being heard on the application, passed considered order on 01.07.2023 by allowing the application filed by the plaintiff and also restrained the 1st defendant from causing any interference in respect of the application schedule property. The same is admitted and true facts which are taken place before this court. Now, the applicant/plaintiff has filed this instant application seeking to enforce and to implement the

order of this court passed on 01.07.2023 on the ground that, according to him the 1st defendant in spite of the order passed by this court, he has continued his act of interference by violating the order passed by this court, and the same is refuted by the defendant No.1 in his objections.

Whenever, any application is moved for the implementation of the injunction order passed by this court, as per the provision enunciated U/s 151 of CPC is set out inherent power of the court for implementation of injunction order to restrain the defendants from causing interference with respect to the possession of the disputed land and the police protection or assistance for the effective implementation of the order can be ordered acting U/s 151 of CPC. There are catena of decision that, the court while considering the application U/s 151 of CPC can direct the police concerned to assist and to give necessary help, if it is found that, it is just or in order prevent the abuse of the process of court or when it is found absolutely necessary. Hence, what is required to be considered is, whether any such directions to police authorities to render aid or assistance to the aggrieved parties with regard to the implementation of the order of this court is necessary or not?

When the court is passed orders, considering the prima-facie factors and granted the temporary injunction in favour of the plaintiff after hearing the defendants, the court has to enforce the same and contention of the defendant that, he

has preferred an appeal before the Hon'ble appellant authority cannot be considered and accepted, unless and until the order passed by this court has been stayed, set aside or varied by the Hon'ble appellant court. Further it is to be considered that, if the court which passed the orders had no power to implement its own order, then there is no purpose in the court passing order in the matters coming before it.

Though, as per the provision of R-2A U/o 39 of CPC is provided to proceed against the condemner for violation or committing the breach of the order passed by this court, the remedy provided U/o 39 R-2A of CPC is not exhaustive and the court can pass appropriate orders to see that, its orders are enforced in true sense. Further, in the event whenever it is absolutely necessary in order to prevent the abuse of process of law, the court can direct the police to give necessary aid in effective implementation of the order passed by this court. If the case on hand is necessitated, the police can be directed to assist for enforcing the orders of this court. The provision of order 39 R-2(A) of CPC is for proceeding against the defendant for violation of the order and the same is not sufficient to protect the order passed by this court, after passing such order by considering the objections of the parties to the lis and also by letting an opportunity to address their grievance before this court. Further it is also to be observed that, the provision envisaged U/o 39 R-2(A) of CPC is to punish the person who has

violated the orders of this court. However, the order 39 R-2(A) is not exhaustive to protect the order of the court in the future. As such, whenever any application is moved for enforcing the order of this court, it is the duty of the court to ensure the order passed by this court is not a paper order and to see the benefits of the order passed by this court reaches the parties in whose favour the order has been passed. This court has to consider one thing, while considering the application that, it should ensure whether the order passed by this court is not stayed, varied or set aside by the appellant court having jurisdiction. Otherwise in order to safeguard the injunction order granted by this court, it is necessary to direct the police officials concerned to aid and to assist the plaintiff for effective implementation order of the court and to see the benefits and the fruits of the order to reach the person in whose favour the order has been passed. Hence, the objection of the defendant sans merit and the application filed U/s 151 of CPC seeking direction to the police is liable to be allowed. Hence, this court without further discussion proceeds to answer point No.1 in the **affirmative.**

8. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The I.A.No.6 filed by applicant/plaintiff U/s 151 of CPC is hereby allowed.

Further, the inspector of Saligrama Police Station is directed to assist and help the plaintiff for the effective implementation of the order passed by this court on 01.07.2023 in restraining the defendant No.1 from causing any interference in respect of the application schedule property till the order passed by this court is set aside, varied or stayed.

For issues call on: 04.12.2023.

(Chandan S)
Addl. Civil Judge & JMFC.,
K.R.Nagar.