

KAMS410020762022



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

PRESENT

Smt. Gayatri. B.Com., LL.M. (IPR)
Addl. Civil Judge & JMFC, Krishnarajanagara.

DATED 2ND DAY OF JANUARY 2023

O.S. No.268/2022

PLAINTIFF : B.Mahesha

-V/s-

DEFENDANT : L.S.Mahadeva

IN I.A. No. I

APPLICANT / PLAINTIFF: B.Mahesha, S/o late Basappa,
aged about 70 years,
R/at Lalanahalli village,
Kasaba hobli,
K.R.Nagar taluk, Mysuru district.

-V/s-

RESPONDENT / L.S.Mahadeva
DEFENDANT:

IN I.A. No. VIII

APPLICANT / DEFENDANT: L.S.Mahadeva, S/o late
L.S.Somashekaraiah,

R/at Lalanahalli village,
Kasaba hobli, K.R.Nagar
taluk, Mysuru district.

-V/s-

RESPONDENT/
PLAINTIFF:

B.Mahesha

ORDER ON IA NO.1 ADN I.A.NO.8 FILED U/O 39 R-1 AND 2
OF C.P.C BY RESPECTIVE PARTIES

I.A. No.1 is filed U/O. 39 R-1 and 2 of C.P.C by the applicant/plaintiff for restraining defendants, their agents, servants, or anybody acting on their behalf from interfering with his peaceful possession and enjoyment over the suit schedule property in any manner whatsoever, pending disposal of present suit in the interest of justice and equity.

2. I.A. No.8 is filed U/O. 39 R-1 and 2 of C.P.C. R/W Sec. 151 of C.P.C by the respondent/defendant restraining plaintiff or the persons claiming under him from interfering with applicant/defendant's settled possession over the application schedule property, pending disposal of present suit in the interest of justice and equity.

3. Per contra, learned counsel for respondent/defendant has filed memo for considering the written statement averments as objections to I.A.No.1 and prayed for dismissal of I.A with exemplary cost. Learned counsel respondent/plaintiff has filed

objections to I.A.No.8 and prayed for dismissal of I.A with exemplary cost.

4. Heard and perused.

5. The following points arise for this court's consideration in respect of I.A. No. I.

1) Whether the applicant proves that he has got a prima-facie case on hand?

2) Whether the applicant proves that the balance of convenience lies in his favour?

3) Whether the applicant further proves that, it will cause untold hardship and irreparable damages to him, if the present application is not allowed?

4) What order?

6. This court's findings on the above points for consideration with regard to I.A.No.1 are as under:

Point No.1 : In the **Affirmative**

Point No.2 : In the **Affirmative**

Point No.3 : In the **Affirmative**

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

7. The following points arise for this court's consideration in respect of I.A. No. VIII;

1) Whether the applicant proves that he has got a prima-facie case on hand?

2) Whether the applicant proves that the balance of convenience lies in his favour?

3) Whether the applicant further proves that, it will cause untold hardship and irreparable damages to him, if the present application is not allowed?

4) What order?

8. This court's findings on the above points for consideration with regard to I.A.No.8 are as under:

Point No.1 : In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : In the **Negative**

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

REASONS

9. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern all the points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

10. Applicant/plaintiff has filed present suit against defendant for the relief of permanent injunction. The I.A.No.1 is filed by the applicant/plaintiff U/O.39 Rule 1 and 2 of C.P.C. against defendant for restraining defendant, and his agents from

interfering into plaintiff's peaceful possession and enjoyment over the suit schedule property in any manner whatsoever pending disposal of present suit. Likewise, the respondent/defendant who is applicant/defendant filed I.A.No.8 against respondent/plaintiff to restrain the plaintiff from interfering with the defendant's settled possession over the application schedule property pending disposal of the present suit.

11. It is the specific contention of the applicant/plaintiff that the suit schedule property originally belongs to one late Basappa the father of plaintiff. It was purchased by his father through a registered sale deed on dated 08.06.1972 for a valuable consideration. The said Basappa got 4 sons by name B.Mahesha ie., plaintiff, L.B.Palaksha, L.B.Puttanaiah, and L.B.Nagaraja. It is the allegation of applicant/plaintiff that suit schedule property was the joint family property of himself and his 3 other brothers who entered into a partition through a registered partition deed on 27.10.2021 and by virtue of said partition, the suit schedule property is allotted towards the share of plaintiff and the katha's and other documents pertaining to the suit schedule property are duly changed and standing in the name of plaintiff. The plaintiff is thereby paying tax to the government regularly. He is holding possession of the suit schedule property by carrying out cultivation activities on the said land. Such being the fact defendant having no manner of right, title or interest over the suit schedule property started

to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property which is highly illegal and contrary to all the norms of law. The applicant/plaintiff alleges that he made several requests to the defendant not to cause interference. But, the things went beyond the control of plaintiff, as such he lodged a complaint before the jurisdictional police on 19.03.2022. The said police instead of giving protection have advised him to take redressal from the Civil court as the matter is civil in nature.

12. Per contra, the respondent/ defendant has filed his detailed written statement along with counter claim claiming for the relief of declaration of title along with consequential relief of permanent injunction restraining the respondent/ plaintiff from interfering into their peaceful possession and enjoyment over the counter claim schedule property with a further relief of declaring the registered partition deed on dated 27.10.2021 got executed between plaintiff and his 3 other brothers as null and void thereby not binding upon the defendant.

13. I.A.No.8 is filed by the applicant/ defendant against the plaintiff to restrain the respondent/ plaintiff from interfering into applicant/defendant settled possession over the counter claim schedule property. With this regard the defendant has filed an independent affidavit U/O.19 Rule 1 and 2 of C.P.C. swearing the fact that defendant and his family members are in settled possession of the counter claim schedule property from

past 40 years. They are also carrying out agricultural activities on the said land from past 40 years.

14. In respect of present suit learned counsel for applicant/plaintiff has argued the matter submitting that it is the applicant/plaintiff who is in peaceful possession and enjoyment of the suit schedule property. Applicant/plaintiff has also produced documents ie., the certified copy of registered sale deed along with certified copy of registered partition deed and revenue receipt along with a RTC pertaining to the suit schedule land. Per contra, it is the argument of the learned counsel for respondent/defendant that plaintiff has not approached this court with clean hands as the applicant/plaintiff has suppressed the true fact of where about the original sale deed. In turn original sale deed has been produced before this court by the respondent/defendant along with the notarized Genealogical Tree and online copy of the partition deed entered into between the applicant/plaintiff with his other 3 brothers. Defendant has also submitted the certified copies of hand written RTCs and M.R. extracts. Admittedly, the suit of the plaintiff is yet in the beginning stage. The trial is yet not commenced, there are two counter applications for temporary injunction filed by the respective parties. On careful perusal of the documents produced by the either parties, it is clear that applicant/plaintiff is in possession of the suit schedule property and it is settled law that a person cannot be disturbed of his possession without due course of law. It is the

applicant/plaintiff who first approached to court with the present suit for the relief of permanent injunction, subsequently at the time when this court after hearing the learned counsel for applicant/plaintiff on I.A.No.1, in-spice of sufficient time and opportunity given to defendant they did not come forward to file their objection to said I.A. along with written statement and at the time when matter was posted for passing orders on I.A.No.1, the learned counsel for applicant/ defendant advanced the matter and thereby filed his written statement along with counter claim with a subsequent application U/O.39 Rule 1 and 2 of C.P.C. R/W 151 of C.P.C.

15. It is settled law that applicant/plaintiff in order to seek the relief of temporary injunction against the respondent/ defendant has to prove the fact of he having prima-facie case on hand, balance of convenience lying in his favour and he suffering untold hardship and irreparable injuries if temporary injunction has not been granted. As this court has already held that matter is yet in its initial stage, trial is yet to commence, as such at this stage this court cannot go through the merits of the case with a detailed explanation and discussion. But, this court finds it just and proper to protect the interest of applicant/plaintiff by allowing the I.A.No.1. It is clear that there is a very dispute as to the fact of possession of schedule property by either parties, with this regard it requires this court to record detailed evidence by giving both the parties opportunities to lead their evidence, but at this premature stage

of proceedings this court finds it just and proper to consider the documents those produced before this court and it is just and proper to dismiss the application filed by the respondent/defendant. Hence, this court being of the said opinion proceeds to answer these points accordingly.

16. POINT NO.4:

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

ORDER

I.A. No.1 filed by applicant/plaintiff U/O. 39 R-1 and 2 of C.P.C. is hereby allowed with cost.

Further, defendants, their agents, servants, or anybody acting on their behalf are hereby an order of temporary injunction are temporarily restrained from interfering into the applicant/plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the present suit.

I.A. No.8 filed by applicant/defendant U/O. 39 R-1 and 2 r/w Sec.151 of C.P.C. is hereby dismissed with cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 2nd day of January 2023]

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

For issues, call on 16.02.2023.

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