

KAMS500000452022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Smt. B. Anupama Lakshmi B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 21st day of April 2023

O.S./20/2022

Plaintiffs : Shivaraju and others

-V/s-

Defendants : Shivalingu and others

I.A.I

Applicants : Sri. Shivaraju and others
.... plaintiffs

-V/s-

Opponents : Special Land Acquisition Officer,
K.I.A.D.B., Mysuru,
Mysuru Division,
K.R.S.Road,
Mysuru. .. 3rd defendant

ORDERS ON I.A. I UNDER ORDER 39
RULES 1 & 2 R/W SECTION 151 OF CPC

The plaintiffs have filed this I.A. along with the suit, seeking to restrain the defendant No.3 from disbursing the award amount in respect of suit schedule property till disposal of the suit.

2. Defendant Nos.1 and 3 filed statements of objections.

3. Heard. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the plaintiffs have made out a prima facie case ?
2. Whether the balance of convenience lies in favour of plaintiffs ?
3. Whether the plaintiffs will be put to irreparable injury if the temporary injunction is not granted ?
4. What order ?

5. The above points are answered as follows :-

Points No.1 to 3 : In the negative

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

REASONS

6. **Points No.1 to 3**:-These points are taken up together for consideration as they are interconnected with one another and to avoid repetition of facts.

7. It is alleged in the affidavit filed in support of the above application that, the suit is for the relief of partition and separate possession of suit schedule property. That the 3rd defendant is initiating acquisition proceedings to acquire the suit schedule property. The defendant No.1 has made illegal efforts to get the award amount from the defendant No.3 without the knowledge of the plaintiffs. In case award amount is paid to the defendant No.1 he will not give share of the plaintiffs to them.

8. Defendant No.1 submitted that the suit schedule property was granted in the name of defendant No.1. There is already partition of property under a registered partition deed dated 03.11.2006. Therefore, defendant No.1 has opposed for granting temporary injunction.

9. According to the defendant No.3 the K.I.A.D.B. has issued only the preliminary notification for acquiring the land for the purpose of establishment of industrial area in schedule land under gazetted preliminary notification under Section 28 (1) of Land Acquisition Act. That final notification under Section 28(4) is not yet passed. That at present, defendant No.3 has neither passed final notification nor the award amount in respect of schedule land. Therefore, defendant No.3 contended that the application is premature.

10. Case of the plaintiffs is that, plaintiff No.1 and defendant No.1 are jointly cultivating and enjoying the suit

schedule property though the order of grant is made only in the name of defendant No.1. However, the suit land is notified for acquisition by the 3rd defendant. Apprehension of the plaintiffs is that, in case the defendant No.1 receives the award amount the plaintiffs will be deprived of their share in the award amount. But defendant No.3 contended that the application is premature as final notification is not passed and award is also not passed. In case final notification is not passed then it cannot be said that the property is acquired and the award amount is passed. Therefore, at this juncture, plaintiffs have not made out a prima facie case and balance of convenience does not lie in their favour. In case temporary injunction is not granted, plaintiffs will not suffer hardship. Hence, I answer points No. 1 to 3 in the negative.

11. **Point No.4:-** In view of the findings on the above points, this Court proceeds to pass the following:

ORDER

I.A.I filed by the plaintiffs under Order 39 Rules 1 and 2 r/w Section 151 of CPC is dismissed.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 21st day of April 2023).

(B. Anupama Lakshmi)
Senior Civil Judge & J.M.F.C.,
Nanjangud.

**Order pronounced in the open court
(vide separate order)**

ORDER

I.A.I filed by the plaintiffs under Order 39 Rules 1 and 2 r/w Section 151 of CPC is dismissed.

Senior Civil Judge, Nanjangud.