

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
NANJANGUD**

Present : Smt. Shyla S.M., B.B.M., L.L.B.,
Prl. Civil Judge & JMFC.,
Nanjangud.

Dated **16th day of August 2019.**

:: O.S.No. 268/2018 ::

Plaintiff/s

1. H.N. Chamundanaika, S/o Late Nanjanaika, Aged about 60 years, R/at Hullahalli village, Hullahalli Hobli, Nanjungud Taluk
2. H.C. Nataraju, S/o H.N. Chamundanaika, Aged about 32 years, R/at Hullahalli village, Hullahalli Hobli, Nanjungud Taluk
3. Smt. C. Ranjitha, W/o H.C. Nataraju, R/at Hullahalli village, Hullahalli Hobli, Nanjungud Taluk

(By Advocate **Sri K.T.R.**)

V/s

Defendant/s

1. Mahadevanaika, S/o Late, Alagudu naika, Aged about 52 Years, R/at Behind J.S.S. College, 2nd cross, Hullahalli village, Hullahalli Hobli, Nanjungud Taluk
2. Basavanaika, S/o Late. Alagudu naika,

Aged about 50 years
R/at Behind J.S.S. College,
2nd cross, Hullahalli village,
Hullahalli Hobli,
Nanjangud Taluk

3. Puttanaika,
S/o Late. Alagudu Naika,
Aged about 42 Years,
R/at Behind J.S.S. College,
2nd cross, Hullahalli village,
Hullahalli Hobli, Nanjungud Taluk

4. Alagudu naika,
S/o Late. Alagudu Naika,
Aged about 42 Years,
R/at Behind J.S.S. College,
2nd cross, Hullahalli village,
Hullahalli Hobli, Nanjungud Taluk

(By Advocate **Sri B.L.S.**)

PARTIES TO I.A.NO.V

Applicant/
Plaintiff H.N. Chanmundanaika & others

Vs.,

Opponent/
Defendants Mahadevanaika & others

ORDERS IN I.A.NO.I

The plaintiff has filed an application U/O 39 rule 1 and 2 of CPC seeking ad interim temporary injunction for restraining the defendants to interfere with the plaintiffs'

peaceful possession and enjoyment of the suit schedule properties till disposal of the suit.

2. The suit is for the relief of declaration and permanent injunction.

3. Through the annexed affidavit, the plaintiffs have stated that, they are in peaceful possession and enjoyment of the suit schedule properties . The defendants have no manner of right, title or interest over the suit schedule properties . Though they are trying to destroy the fencing the stone pillars and also removed the boundary stone fixed by the Survey Department. Hence, this application.

4. Through objection, the defendants have contended that, the plaintiffs have not approached the court with clean hands that there is no relevant document to establish the proof of the possession and enjoyment of the suit schedule properties . The documents furnished by the plaintiffs are sham and created for the purpose of filing of this suit. On these grounds they are praying to dismiss the application.

5. I have heard the arguments addressed by both parties. I have carefully perused the IA and its affidavit and

entire materials on record, the points are arise for my consideration;

1. Whether plaintiffs are made out sufficient grounds for *prima facie* case?
2. Whether plaintiffs have balance of convenience in their favour?
3. Whether plaintiffs would suffer irreparable injury, if prayer for T.I. is not granted?
4. What Order?
6. For the above points my answer as under;
 1. point no 1: In the affirmative,
 2. point no 2 : In the affirmative,
 3. point no 3 : In the affirmative,
 - 4.point no 4 :As per final order, for the following;

REASONS

7. **Point No.1:** Before adverting to the discussions to the I.A, it is just and necessary to took down the matrix of the case.

The case of the plaintiffs that, the plaintiffs have stated that, they are in peaceful possession and enjoyment of the suit schedule properties . The defendants have no manner of right, title or interest over the suit schedule properties . Though they are trying to destroy the fencing

the stone pillars and also removed the boundary stone fixed by the Survey Department. Hence the suit.

8. Through objection, the defendants have contended that, the plaintiffs have not approached the court with clean hands that there is no relevant document to establish the proof of the possession and enjoyment of the suit schedule property. The documents furnished by the plaintiffs are sham and created for the purpose of filing of this suit. On these grounds they are praying to dismiss the application.

9. The first among the three pillars on which the foundation of every order of injunction next in *prima faice* case, *prima facie* case means, the court must be satisfied that there is bona fide dispute by the applicant that there is an arguable case for trial which had investigation and a decisions on merits on the facts before the court there is probability of the applicant being had entitled to the relief claimed by them. Keeping of the facts in mind, let me examined the plaintiffs have made out *prima facie* case in this case for grant of T.I. The documents placed on record by the plaintiffs, it probabilsie the plaintiffs are in possession of the suit schedule properties.

10. The learned counsel for the plaintiffs vehemently argued that, he is in possession and enjoyment of the suit schedule properties. The defendants are trying to interfere with the peaceful possession and enjoyment of the suit schedule properties. The plaintiffs have a prima facie case and balance of convenience in his favour. Hence, he is praying to allow the application filed by th plaintiffs.

11. The learned counsel for the defendants vehemently argued that, the defendants specifically denied the title of the plaintiffs and boundaries of the suit schedule properties, hence the plaintiffs have to file a suit for declaration and permanent injunction and relied upon the decision reported in Civil Appeal No.8242/2009 between **Jharkhand State Housing V/s Anirudh Kumar Sahu & Ors.,** . In this case, Apex Court held that,

“Where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then

necessarily in those circumstances, plaintiff cannot maintain a suit for bard injunction.”

12. keeping in view of above decision I have once again perused the documents and material available on record, the documents placed by the plaintiffs, it probabalises that the plaintiffs are the absolute owners and in possession and enjoyment of the suit schedule properties, whereas the defendants have not produced any documents to show that the plaintiffs are not absolute owners of the suit schedule properties and the boundaries stated in the plaint are not correct. They have no interest and title over the suit schedule properties and further on perusal of the written statement the defendants have not specifically denied averments of plaint. After going through pleadings and documents it makes clear that the defendants are trying to interfere with the peaceful possession and enjoyment of the suit schedule property. Further on careful perusal of the written statement the defendant denying the possession and boundaries of the plaintiffs. This is sufficient to hold that the defendants are trying to interfere with the peaceful possession and enjoyment of the plaintiffs over suit schedule properties

and further causing interference to others need not to be only by the orally means. But the conduct of the defendants are enough to hold that the defendants are interfered the peaceful possession of the plaintiffs. Therefore I am of the opinion that the plaintiffs makes out prima facie case in their favour. Hence, I answer Point No .1 in the affirmative.

13. **Point No.2:** On plain reading of recital of the sale deeds and RTC extracts probabalises that the plaintiffs is in possession and enjoyment of the suit schedule properties. Moreover the suit schedule properties are vacant land, in case of vacant land the possession follows title. Further it probabalises that the defendants are trying to interfere the possession of the plaintiffs, if injunction is not granted. The very purpose of filing this suit may go in vain. If at all injunction is not granted there is no remedy left to the plaintiffs to protect themselves from the consequences of apprehended injury. The refusal may result in multiplicity of the proceeding. Hence, I answer Point No.2 in the affirmative.

14. **Point No.3:** The documents produced by the plaintiffs it appears that the plaintiffs are in possession and enjoyment of the suit schedule properties . If the injunction

is denied to the plaintiffs comparative mischief, hardship or inconvenience which is likely to be caused is greater, if injunction is refused inconvenience will be caused to the plaintiffs. Hence, I answer Point No.3 in the affirmative.

15. **Point No.4:** In view of the above discussions, I proceeding pass the following:

ORDER

The I.A. filed by the plaintiffs U/O 39 Rule 1 and 2 of the Code of Civil Procedure is hereby allowed.

The defendant is hereby restrained to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties till disposal of suit.

(Dictated to the Stenographer, transcribed and typed by her, revised and then pronounced by me in the Open Court on this 16th day of August 2019.)

sd/-

**(Shyla S.M.)
Pri. Civil Judge & JMFC
Nanjangud**

Orders pronounced in the Open Court
(Vide Separate)

ORDER

The I.A. filed by the plaintiffs U/O 39 Rule 1 and 2 of the Code of Civil Procedure is hereby allowed.

The defendant is hereby restrained to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property till disposal of suit.

Prl. C.J. & JMFC,
Nanjangud