

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., AT
PERIYAPATNA**

Present: Sri.V.Hanumanthappa, M.A, L.L.B.,
Civil Judge & JMFC

Dated: this the 23rd day of February 2017

O.S.No.305/2015

Plaintiff : Kalaiah

V/s

Defendants : P.D.O and others

I.A.No.I

**Applicant/
Plaintiff** : Kalaiah

[By.Sri.S.M.Purushotham, Adv.,]

V/s

**Opponents/
Defendants** : P.D.O and others

[By.Sri.C.K.Manjunath, Adv.,]

Orders on I.A.No.I

This application filed by the applicant/plaintiff U/o XXXIX Rule 1 and 2 R/w Sec.151 of CPC with a prayer to pass an ad-interim order of ex-parte temporary injunction, restraining the defendants or anybody claiming under them, from interfering with the possession and enjoyment of the plaintiff's over the suit schedule property, till disposal of the suit.

2. The schedule given in the application is piece and parcel of the site including a residential house with property No.406, Janjer No.372 and Assessment No.598, situated at Hitnehebbagilu village,

(V.HANUMANTHAPPA)

Ravandur Hobli, Periyapatna Taluk, measuring to an extent East to West: 40 feet and North to South: 60 feet, bounded on East by: House of Kariyanna, West by: VSSN property, North by: Siddappa's house, South by : Property belongs to plaintiff's wife by Gowramma.

3. This application supported with affidavit sworn by the applicant/plaintiff contending that, he is the owner in possession and enjoyment of the suit schedule property. The suit schedule property was given to the plaintiff after acquisition of lands in Sy.No.183, 184 and 185 by the government i.e., the then BDO of Periyapatna Taluk. At the time of issuance of site No.1, the Grama panchayath documents was maintained by the Kampalapura Gramapanchayath authority, now it comes under Hitnehebbagilu Gramapanchayath. After getting this property, the plaintiff has constructed a house in the said site. He is paying tax to the concerned authority in respect of the suit schedule property and all the panchayath documents in respect of the suit schedule property standing in the name of the plaintiff. The plaintiff has constructed a Mangalore tiled house and erected Vasare by installing the Asbestos Sheets. The extent of the house is 50 to 40 feet, with vacant site of 10X40 feet. The defendants have no manner of right, title or interest over the suit schedule property, but on 13.10.2015 and 2.11.2015, the defendants are trying to interfere with the possession of the plaintiff over the suit schedule property and about 2 days back before filing the suit, the defendants came near the suit schedule property and threatened the plaintiff with dire consequences. They are attempting to dispossess the plaintiff from the suit schedule property and hence, the plaintiff has seriously worried about the act of the defendants. Therefore, the plaintiff has filed the suit so also this application to protect his possession over

the suit schedule property. Accordingly, he prays for allowing the same.

4. The defendants have filed their written statement and memo to consider the same as objection to I.A.No.I. In the written statement the defendants have categorically denied all the averments made in the plaint as false and untenable. They have taken specific defence that, the boundary description furnished to the suit schedule property is not correct, as per Hitnehebbagilu Gramapanchayath records and also spot situation the property No.406, E.Property No.152200601119200624 situated at Hitnehebbagilu village, Periyapatna Taluk is bounded by towards North: Road, East: House of Karigowda, West, Society property, South: Barns of Kalaiah. The measurement of the said site property is East-West: 12.192 mts (40 feet), North-South: 18.288 mts (60 feet), within the said measurement a building is located and the same is measuring 222.97 Sq.mts, but, the plaintiff has furnished wrong and fictitious extent and boundaries to the property. In fact at the northern side of the property there is panchayath road is located and thereafter, the house property of Siddappa is located. The plaintiff with an intention to grab the said road has given false boundaries. It is also their defence that, the Gramapanchayath authorities have made their best efforts to carryout the drainage work to the panchayath road, which is located at the northern side of the suit schedule property under the scheme of Mahatma Gandhi Rastriya Grameena Udyogh Khatri Yojane (MGNREGA). The Government has released funds, in this regard the panchayath authorities have taken up the said work for the benefit of the villagers. The panchayath authorities have cleared all the hurdles adjacent to the suit property by removing the Coconut trees and also boulders during the month of October 2015 and the said work was in progress. When such being the case, the plaintiff who is a

habitual litigant has obstructing for panchayath work by filing the suit and also by giving false boundaries to the suit schedule property. In view of pendency of the suit, the panchayath authorities is unable to carryout their drainage work. The plaintiff has not approached this court with clean hands. He has suppressed the material facts before this court and hence, they pray for dismissal of the suit and also this application.

5. I have heard the argument and perused the material available on record.

1. Whether the applicant/plaintiff has made out prima facie case?
2. Whether the balance of convenience is lies in favour of the plaintiff?
3. Whether the plaintiff would be put to irreparable loss that cannot be compensated in terms of money, in case of refusing the order of temporary injunction?
4. What order?

6. My answers to the above points are here under:

Point No.1 in "**Negative**"

Point No.2 in "**Negative**"

Point No.3 in "**Negative**"

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

REASONS

7. Point No.1 to 3: These points are interconnected with one another, Hence I have taken up these points together for common discussion to avoid repetition of facts.

8. It is undisputed that, the plaintiff has been granted with a site by the then BDO of Periyapatna Taluk. It is also undisputed

that, Hitnehebbagilu Gramapanchayath has maintained the records in respect of the suit schedule property.

9. While granting or refusal of order of temporary injunction, the court has to looked into the principles of governed under section.37 R/w Sec.41of Specific Relief Act, so also the provision U/o XXXIX Rule 1 & 2 R/w Sec.151 of CPC, the following principles have to bear in mind, which is as follows:

The existence of what is referred to as a Prima facie case may be considered as almost an indispensable requirement or the sine-qua-non for grant of a temporary injunction . Prima facie evidence means evidence that is sufficient to establish a factor to raise a strong presumption of the truth of a fact unless controverted. The rule that before the issue of temporary injunction, the court must satisfy itself that the plaintiff has a prima facie case does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed, as this would amount to prejudging the case. All that the Court has to see is that on the fact of it person applying for injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects, but which has also balance of convenience in plaintiff's favour. To understand prima facie case Court are bound to appreciate each and every circumstance that is necessary for forming opinion. If opinion is formed solely on the basis of un rebuttable pleadings there is every likelihood of reaching an erroneous conclusion. When courts are required to appreciate the contention of the parties through pleadings and documents only, it is all of the more necessary to place all the cards it is not necessary for the party to prove his case to the hilt, and if fair question is raised for determination, it should be taken that a prima facie case is established.

It is settled principle of law that, injunction or interim orders are issued not on grace or on default of any person. They are granted on the basis of case made out prima facie in the pleadings and that in the interest of justice such order if necessary in order to prevent abuse of the process of law, to prevent wastage or to maintain the status quo as on the date or from recurrence of certain incidents which were existing as on the date of presenting such application or at least the presentation of main application out of which the proceeding arose. It is also to take into consideration the balance of convenience or inconvenience and other important matters.

The court must deal with prima facie case and not with prima facie title or merits of the case. Prima facie case is not to be confused with prima facie title. What is required is that plaintiff has to show that he has bonafide raised a substantial question that needs adjudication at the trial stage. The plaintiff is thus required to prima facie establish that in the event of non-interference by court it will result in irreparable injury and substantial loss. Prima facie case implies the probability of the plaintiff obtaining a relief on the materials placed before the Court at that stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of injunction. But the Court must satisfy itself that there is a bonafide contest between the parties and that there is a substantial question to be decided as to the rights of the parties in the suit. But it is not necessary for the said purpose nor is it right that the court should further examined the question in dispute or anticipate the decision of the question in the suit itself.

While the existence of a rather strong prima facie case is essential and a sine qua non for the grant of temporary injunction , its existence alone would not suffice to induce the court to exercise its discretion in granting it. The existence of a prima facie case alone is not

the be-all the end-all of temporary injunction proceedings.

Grant of temporary injunction only on basis of prima facie case and in absence of finding of factors of irreparable loss and balance con convenience is not permissible. The plaintiff should establish that the balance of convenience is in his favour, or, in other words, his inconvenience in the event of withholding the relief of temporary injunction will in all events exceed that of the defendant in case he is restrained.

Where a court grants temporary injunction without considering the question of irreparable or serious injury and balance of convenience, the order is vitiated by material irregularity. It is only after careful comparison between the convenience of two side that the court should arrive at its judicial verdict as to the grant or refusal of interim temporary injunction. It is not enough for the plaintiff to show that he has prima facie case; he must further show that, (a) he will suffer and irreparable injury if the temporary injunction is not granted; (b) In the events of success, he will not have the proper remedy of being awarded the adequate damages; (c) the balance of convenience is in his favour, or, in other words, his convenience at all events will exceed that of the defendant in case he is restrained and (d) lastly, he must show a clear necessity for affording immediate protection to his alleged right or interest which should otherwise be seriously injured or impaired. The mere prospect or apprehension of injury or the mere belief that act complained of may or will be done is not sufficient. A man seeking an injunction must show that the act complained of is in fact a violation of his right and which if carried into effect will necessarily result in the violation of his right. The plaintiff must show that the questions raised by hi are all well founded and there are fair chances of their being decided in his favour. Merely raising serious question is not enough. Where a party to the proceedings seeking interim T.I fails to

make out a prima facie case, it could neither be said he would suffer irreparable injury nor can it be said that the balance of convenience is in his favour to justify the grant. Even in the face of a prima facie case whether balance of convenience is in favour of the applicant is a must, that is, whether it would cause greater inconvenience to the applicant if injunction is refused, than the inconvenience to which the other side would be put to if it is granted and whether the applicant would suffer irreparable injury if his prayer for injunction were not be declined. The existence of a prima facie case is not really the sole criterion governing the issue of temporary injunction."

10. The plaintiff along with the plaint has produced the documents under the list that, Xerox copy of the tax paid receipt, Xerox copy of the Encumbrance Certificate, Xerox copy of the 'Hakku patra' this is an important document, the original is not produced, even in the Xerox copy the boundaries of the site No.1 is not mentioned, that means the property belongs to plaintiff issued under this 'Hakku patra' is unidentified property, the extent is also materially altered, he has produced the license issued by the then Secretary of Hitnehebbagilu Gramapanchayath, wherein he has mentioned that "ಹೊಸದಾಗಿ ಮನೆ ಕಟ್ಟಲು ಲೈಸೆನ್ಸ್‌ಗೆ ಅರ್ಜಿ ಕೊಟ್ಟಿದ್ದು ಸದರಿ ರವರಿಗೆ ಲೈಸೆನ್ಸ್ ಕೊಡಲಾಗಿದೆ." and he has not produced the actual extent and boundaries of the property, in which, the plaintiff is going to put up construction of house. He has produced Demand Register Extract in respect of the property bearing Janjer No.372, Assessment No.598, Property No.406 standing in the name of the plaintiff, this document also doesn't disclose boundaries, but, extent is shown 60X40 feet. He has produced the Demand Register Extract for the year 2012-13. The other documents produced are Demand Register Extract in respect of property bearing Junjar No.329, Assessment No.561, property No.355 standing in the name of Gowramma W/o

Kalappa, this is not the subject matter of this case. He has produced the photographs and C.D in respect of his house, it appears in the photographs that, there is a road in front of the house of the plaintiff there are two Coconut trees towards in front of house of the plaintiff, the plaintiff has erected two pillars in the road and affixed Asbestos Sheets in the front yard of the house of the plaintiff on the pillars. So, these photographs clearly goes to show that, in front of the house of the plaintiff there is a road, thereafter house of one Siddaiah is located.

11. On the other hand, the documents produced by the defendants clearly goes to show that, the government has released amount in the scheme of Mahatma Gandhi Rastriya Grameena Udyogh Khatri Yojane (MGNREGA), wherein it was work allotment by Hitnehebbagilu Gramapanchayath to form drainage in the two sites of the road, situated in front of the house of the plaintiff from VSSN to till house of Kolinanjappa. He has also produced the Demand Register Extract i.e., Electronic Assessment register, wherein the boundaries mentioned to the suit schedule property discloses the road is situated towards northern side of the suit schedule property.

12. Subsequent to filing of the suit and insisting to pass an order on I.A.No.I, the plaintiff got filed application i.e., I.A.No.VIII U/o VI Rule 17 R/w Sec.151 CPC for amendment of the plaint, particularly for amendment of the boundaries i.e., to delete the word Siddappa's house towards northern side of the suit schedule property and its place it has to be inserted 'Galli' So, the plaintiff knowing fully well that, towards northern side of his house a Galli is situated, but, intentionally he has given boundaries towards northern side by showing house of Siddappa by including Galli property, which belongs to Panchayath. Therefore, the plaintiff has

not approached the court with clean hands and he suppressed the material facts. The defence of the defendants is very clear that, the defendants are not having any personnel interest over formation of drainage in the two sides of the Galli, it is for the benefit of public at large. So, because of filing of the suit the Panchayath authorities were unable to continue their work, so interest of the public is over ride on the interest of a particular person that to person who approach by suppressing the material facts and by giving false boundaries. Therefore, there is no prima face case at all and balance of convenience is lies in favour of the defendants rather than the plaintiff and no hardship would be caused to the plaintiff if this I.A is rejected, as because, if, road is formed and drainage is formed in the two sides of the road, it, equally helps to the plaintiff. Therefore, I am of the view that, there is no merit in the application. Hence, I answer to these points in "**Negative**"

13. Point No.4: In view of my above discussion, I proceed to pass the following:

ORDER

I.A.No.I filed by the applicant/plaintiff
U/o XXXIX Rule 1 & 2 R/w Sec.151 of CPC is
hereby rejected with cost of Rs.100/-
(Rupees one hundred).

(Dictated to the Stenographer, transcript, revised, corrected and then pronounced
by me in the open court, this the 23rd day of February, 2017)

(V. HANUMANTHAPPA)
Civil Judge and JMFC
Periyapatna

(V.HANUMANTHAPPA)