

IN THE COURT OF CIVIL JUDGE & JMFC, MANVI

Present: Sri. ASHAPPA,
B.Com., LL.M.

Civil Judge & JMFC, Manvi.

Original Suit No.20/2023

Dated this 21st day of November -2023

Plaintiffs:

1. Dr. Anil Raj and others

(By Sri.S.G.K, Adv.)

// Versus //

Defendants:

1. Smt Pavithra and others

(By Sri.A.R.T Adv.)

-I.A.No.I-

Applicant/plaintiffs:

1. Dr. Anil Raj and others

-Versus-

Opponent/ Defendants:

1. Smt Pavithra and others

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: ORDER ON IA No.I :

This is an I.A under Order 39 Rule 1 & 2 of C.P.C filed by plaintiffs seeking to grant order of Temporary Injunction restraining the defendants or their agents or any other persons claiming through them from interfering with the peaceful possession and

enjoyment of plaintiffs over the schedule "A" property H.No. 6-122 and 1-123, suit schedule "B" properties land Sy.No. 230/*/௪ measuring 4 acres 04 guntas out of total measuring 9 acres 17 guntas, suit schedule "C" properties land Sy.No. 230/*/௪ measuring 02 acres 17 guntas out of total measuring 9 acres 17 guntas and plot No. 6-124, suit schedule "D" property land Sy.No. 97/*/1 measuring 3 acres 26 guntas out of total measuring 9 acres 11 guntas, suit schedule "E" property land Sy.No.97/*/1 measuring 1 acres 25 guntas out of total measuring 9 acres 11 guntas, land Sy.No. 97/*/2 measuring 1 acres 15 guntas and plot bearing Panchayat No.13956, suit schedule "F" property land Sy.No. 230/*/௪ measuring 3 acres 03 guntas out of total measuring 9 acres 17 guntas and suit schedule "G" property land Sy.No. 97/*/1 measuring 4 acres 04 guntas out of total measuring 9 acres 11 guntas as shown in the plaint, till disposal of the suit.

2. In the supporting affidavit, the plaintiff No.1 stated that, the plaintiff No. 2 is his mother and plaintiff No. 2 to 6 are his sisters. It is stated, the suit schedule properties are their ancestral properties and they have settled as per compromise decree passed in OS.No.146/2022 on the file of Civil Judge and JMFC Gangavathi. The suit schedule "A" property still un-divided joint family property of the plaintiffs but the suit schedule "B to G" properties have been divided and as per decree they are enjoying their respective lands as absolute owners and possessors.

It is stated that, the defendant No.1 is legally wedded wife of plaintiff No.1. The defendant No. 2 and 3 are parents and defendant No.4 is brother of defendant No.1. The differences arose in between the plaintiff No.1 and defendant No.1 and also several criminal cases were registered. Now, the defendants in order to

take revenge and to harass the plaintiffs started to interfere in the peaceful possession and enjoyment over suit schedule properties. The defendants illegally obstructing paddy plantation in the suit land Sy.No.97. The defendants also stated they will come with more persons and forcibly disposes the plaintiffs from suit properties. Hence, it resulted for filing of this suit and present application seeking temporary injunction order against defendants till disposal of the suit.

3. After service of suit summons and notice on IA issued to the defendants, the defendants appeared through counsel and filed their contesting written statement. Memo filed for adopting the written statement as objection to IA No.I. Accordingly, memo allowed. In the written statement the contents of plaint averments are specifically denied. It is denied that, the plaintiffs are in the possession of suit lands Sy.No. 97/*/1 and land Sy.No. 230/*/௧. It is also denied that the plaintiffs are joint family members and they have settled the matter as per compromise decree passed in OS.NO. 146/2022 before Hon'ble Civil Judge at Gangavathi. The defendant No.1 and her minor son challenged the said compromise decree.

It is stated that, this court granted residence order in favour of defendant No. 1 in criminal Misc No. 820/2022 and the defendant No. 1 is in possession in the house No. 6-124. It is stated the defendant No. 1 also in the possession of H.No. 6-122 and 6-123.

It is further stated that, after 6 months of marriage of plaintiff No.1 with defendant No.1 difference arise in between defendant No.1 and plaintiff No.2. After Shrimantha function, the defendant No. 1 went to her maternal home and gave birth of son namely

Vinan @ Sunny on 02.02.2019. Thereafter she went to Sirwar stayed there for one month and later went to Gangavathi. The mother in law not allowed the defendant No.1 in the house at Gangavathi initially but after Panchayat she allowed to join the plaintiff No.1 and his son in their house. The first birthday of son of plaintiff No. 1 and defendant No. 1 also celebrated at Gangavathi.

It is stated that, the defendant No.1 came back her maternal house and there were on and off Panchayats was held. A false criminal case for the offence punishable U/sec 307 got registered against the defendant No. 1 and 2 by the plaintiff No.2. Therefore the defendant No.1 came back her maternal house. Then the plaintiff No.1 under ill advise filed divorce petition in MC No. 44/2020. At the intervention of the elders the case was not seriously conducted by the plaintiff No. 1 and Panchayat came to be held in Sirwar in the month of February/ March 2021 and in the said Panchayat it is advised the defendant No.1 should stay at Sirwar in the suit houses and the plaintiff No. 1 shall visits once in two weeks and meet his wife and son. Defendant No.1 and her son demanded maintenance from plaintiff No.1 and therefore the defendant No. 1 agreed to give half share in the land Sy.No. 97/*1 and land Sy.No. 230/*/ೃ. Accordingly the defendant No.1 came into permissive possession over said lands. The plaintiffs are not in the possession of said lands. It is stated the plaintiffs are not in the possession over said lands and therefore suit is not maintainable in eye of law. The defendants also stated registering of criminal cases against them as well as plaintiffs. They denied entire claim of plaintiff including cause of action. On these and other grounds sought to reject the IA under reference.

4. On the basis of the said pleadings, the following points arise for consideration:

- 1. Whether the plaintiffs have made out prima- facie case in their favour?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether plaintiffs will be put to hardship and injury if order of Temporary injunction is not granted?**
- 4. What Order?**

5. Heard both side and perused the entire materials placed on record. Learned counsel for the defendants filed memo with supporting affidavits.

6. My findings on the above points are as below:

Point No.1 :: In the Partly Affirmative

Point No.2 :: In the Partly Affirmative

Point No.3 :: In the Partly Affirmative

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

R E A S O N S

7. **POINT No.1:** This is a suit filed by the plaintiffs against the defendants seeking the permanent injunction, restraining them or their agents or servants from interfering with plaintiffs' possession over suit schedule "A" to "G" properties as stated supra. The pleading of plaintiffs are already described above. Hence, they are not reiterated in order to avoid repetition.

8. Herein the case, the plaintiffs come up with present I.A. under discussion praying to grant temporary injunction against the defendants restraining them from interfering in the possession of plaintiffs over suit schedule properties. The plaintiffs approached this court for the relief of temporary injunction under the present I.A, they have to make out three principles for granting the temporary injunction i.e., plaintiffs have to make out a prima-facie case to go in to trial, balance of convenience lies in their favour and they have establish that they are going to be irreparable loss or injury which cannot be compensated in terms of money if injunction is not granted in their favour.

9. As stated, the plaintiffs satisfy the court that the dispute raised by them in the present case is bonafide dispute which needs to be investigation and decision on merits by this court. The plaintiffs must also establish that there is probability of being entitle the relief claimed by them in this suit. The burden is on the plaintiffs to prove and establish that there is a prima-facie case in their favour.

10. Keeping above principles in the mind I have perused the material on record. Plaintiffs in order to prima facie substantiate their contention have produced the records of rights of suit lands from 1954-55 to 2022-2023, certified copy of order sheet in OS.No. 146/2022, CC of compromise petition, CC of compromise decree passed in OS.No.146/2022, CC of FIR's, CC of divorce petition, CC of Criminal Masculineness petition filed by the defendant No. 1 under DV Act and its entire order sheet and also tax paid receipts in respect house properties. The records of rights of suit lands and

other documents reveals that the suit schedule properties acquired by the plaintiffs from Hanumantharaya. The said Hanumantharaya none other than the father of plaintiff No.1, 3 to 6 and husband of plaintiff No.2. It is no doubt the plaintiffs have settled the properties as per Compromise decree passed in OS.No. 146/2022 by the Hon'ble Civil Judge and JMFC Gangavathi. On the basis of said compromise decree, the name of plaintiffs came to be entered in the concerned records and their names appearing as owners and possessors as per their respective shares. The revenue records and tax paid receipts in the name of plaintiffs are prima facie corroborates the plaintiffs' contention about the mode of acquisition of suit schedule properties by the plaintiffs and they are coming into possession of same.

11. The acquisition of suit schedule properties by the plaintiffs and their names appearing in the records of rights are not disputed by the defendants nor challenged in any competent court of law. It is contention of the defendant No. 1 that she is in the possession of suit houses and this court granted residence order in criminal Miscellaneous No. 820/2022. It is further her contention that, she is in permissive possession of suit lands Sy.No. 97*/1 and land Sy.No. 230*/ and the said lands given to her for maintenance. To substantiate said contention, the defendants also submitted the documents like medical certificates, FIR's, certified copy of order sheet of Cri. Misc No. 820/2022 and Photos. The defendants also filed supporting affidavits stating the land Sy.No. 97*/1 and land Sy.No. 230*/ have been allotted to the defendant No. 1 for her maintenance. Except oral affidavits there are no any material placed by the defendant No.1 to show that, she is in permissive possession over said lands. The defendant No. 1 herein stated, the

said lands given to her for maintenance of herself and her son but these facts not stated in the Cri.Misc No. 820/2022 filed by the defendant No. 1 against plaintiffs under D.V Act. As per allegation of petitioner filed under DV Act, the respondents totally neglected her and her son and not provided any maintenance. She stated at para 13 of the petition that the land Sy.No. 97/*1 and land Sy.No. 230/* are the family properties of the respondents i.e plaintiffs herein. She also sought interim maintenance and residential order by way of interim application in the said Cri.Misc No. 820/2022 in respect of house No.6-124. Accordingly this court as per order dated 15.09.2022, granted interim maintenance amount of Rs. 5,000/- to the defendant No. 1 and Rs. 3,000/- to son of defendant No. 1. The residential order in respect of house No. 6-124 also granted. So, it is clear that, though the defendants filed supporting affidavits but they are not sufficient at this stage to come to conclusion that the land Sy.No.97/*1 and land Sy.No.230/* given to the defendant No. 1 for maintenance and she is in permissive possession. As stated above the revenue records, compromise decree and other documents produced by the plaintiffs are sufficient to prima facie that the suit lands as well as suit schedule "A" properties are in the possession of plaintiffs as on the date of filing of the suit. However already this court granted residence order in respect of house No. 6-124 in favour of defendant No.1 and directed the plaintiffs/respondents to provide residence order. There is no any materials on record to disbelieve the claim of the plaintiffs at this stage in respect of properties except house No.6-124. Hence, as of now on considering the documents produced by plaintiffs stated supra are all show possession of plaintiffs over said properties. The defendants failed to produce sufficient materials to discard the contention of the

plaintiffs. Thus, plaintiffs have prima facie shown that the title as well as possession of suit lands as well as schedule "A" properties as on the date of filing of suit. The allegation made in the plaint for filing cause of action and also registering of criminal cases are sufficient to come to the conclusion that the right of the plaintiffs denied by the defendants and also interfering in the possession of plaintiff over suit properties which resulted for filing this suit and also it appears that plaintiffs have good case to go in for trial. Hence, without much discussion the Point No.1 is answered in the partly **Affirmative**.

12. Points No.2 & 3: As these two points are interconnected, they are taken up for discussion together in order to avoid repetition of facts and circumstances of the case.

13. As discussed above, the plaintiffs showed a prima facie case in their favour. They have shown that, the suit lands acquired from their common ancestor and also their names came to be entered as per compromise decree in the revenue records as owners and possessor in their respective shares. Hence, if an injunction order is not granted, then definitely they will be put to more hardship and injury than the defendants. More mischief will be caused to the plaintiffs than the defendants. On the contrary, as the defendants failed to rebut the case of plaintiffs or shown that they are in the possession over suit lands as well as suit schedule "A" properties. If an order is granted, no hardship or prejudice will be caused to the defendants. However as already the residential order in respect of house No. 6-124 granted in favour of defendant No. 1 and therefore temporary injunction as sought against the defendants in respect of said property can not be granted. If such

order granted definitely the plaintiffs will thrown out the defendants No. 1 and her son from the said house. **Accordingly, Point No.2 and 3 are answered in the Affirmative in part.**

14. Point No.4: In view of the above said discussions and reasoning, the following:-

O R D E R

The I.A.No.1 filed by plaintiffs U/o. 39 rules 1 and 2 of C.P.C is here by allowed in part.

Defendants or their agents or servants or anybody claiming under them are hereby temporarily restrained from interfering with in the peaceful possession and enjoyment of suit schedule lands as shown in "B to G" and house schedule properties "A" and "E" till pending disposal of the suit.

IA No. I filed under order 39 rule 1 and 2 CPC by the plaintiffs in respect of house property No.6-124 is hereby rejected.

Parties to bear their own cost.

(Typed to my dictation directly on computer by the stenographer, corrected, signed by me, and then pronounced in the open Court on this **21st day of November 2023**)

(ASHAPPA)
Civil Judge & JMFC,
Manvi.