

KARN020006882021



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, RAMANAGARAM**

Dated This 27th day of September 2022

PRESENT:

Sri. Mahesh B.T.,

B.Com., LL.M.,

**Addl., Senior Civil Judge and JMFC,
Ramanagara.**

O S 270/2021

Plaintiffs :- Sree Seetha Lakshmana
Hanumantha Sametha
Sree Kodandarama Temple
Private Family Trust
R/by its Trustees
Sri. T.S.Venkatesh Murthy and others

(By Sri. S.K.S., Advocate)

V/s

Defendants :- Sree Kodandarama Swamy Seva
Samithi Trust (R)
R/by its Trustees
Sri. Mariyappa and others

(D.1 to 9 Sri. S.H., Advocate)

(D.11, 12, 13, 15, 16, 18 22 Sri. C.R.S., Advocate)

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ORDERS ON I.A No.1 AND 2 FILED BY THE PLAINTIFFS
U/O 39 RULE 1 AND 2 R/W SEC.151 of CPC

The plaintiffs have filed I.A No.1 U/o 39 Rule 1 & 2 r/w 151 of CPC praying to restrain defendant No.1 to 10 from interfering with the peaceful possession and enjoyment of the “A” to “C” and “E” schedule properties either by putting any construction or by demolishing the existing construction or in any other manner, till the disposal of the suit. I.A No.2 praying to restrain the defendant No.1 to 10 from interfering the peaceful possession and enjoyment of the “C” suit schedule house by Purohit and his family members either by disposing him or in any other manner till disposal of the suit.

2. In the accompanied affidavits the plaintiffs stated that, plaintiff No.2 is one of the trustees of the plaintiff No.1 trust, which is their private and family trust. The plaintiff No.3 also one of the trustees as per the registered trust deed. Further stated that, on 15.07.2021 the defendant No.2 to 10 have dumped the bricks in front of the gate situated on the southern side of the “A” schedule

property to construct the shop in the passage by removing the big gate and then to let out the same to earn rent. They are producing the photographs of the bricks which they have dumped in front of the gate. By seeing the dumping of the bricks, the purohit who is residing in the "C" schedule house has informed them over phone. They are residing in Bengaluru and immediately went near the "A" schedule property and thwarted the defendant No.2 to 10 from dumping building materials to put up construction of the shop. The police also warned them from putting up any construction. The defendant No.2 to 10 kept quiet some days and then again on 09.08.2021 they were started to demolish the existing building in "D" schedule property with an intention to construct new shop by including the entrance passage which is the main entrance to the temple and the "C" schedule house from the Bidadi main road on the southern side. The Purohit has again thwarted them and questioned it. Thereafter, the said purohit has informed the same to them. They went to the "A" schedule land and asked the defendant No.2 to 10 to stop the illegal activities. But they did not stop it.

Hence, they have filed instant suit and also said application. Therefore on the other grounds plaintiffs prayed to allow the application.

3. The defendant No.1 to 9 have filed common objection to both the applications and contended that, the suit schedule properties are the public properties and the same has been meant for the public service by the then Mysuru Maharaja. Hence, the plaintiffs have no right to institute the present suit claiming that the suit schedule properties are ancestral properties. Since 1935 temple is in existing in suit "A" schedule property and the same is functioning. In the suit "B" schedule property commercial shops are existing. In suit "C" schedule property houses are existing, wherein, the Archakas of the temple and their family members are residing. So far as "E" schedule property is vacant land and the same was acquired by the defendants by virtue of compromise decree in O.S 251/2007 for the benefit of temple and to the said suit, the plaintiffs are not parties. Earlier the said temple was functioning by the villagers. Subsequently, in the

year 1980 to the said temple committee has been formed by the village elders. After that in the year 1991-92 by passing the resolution by the then committee in the suit "B" schedule property the then committee put up the commercial shops for the benefit of the temple and since then the income arrived from the suit "B" schedule property has been utilizing to the improvement of the temple. Further, in the year 1992 by the order of the then Deputy Commissioner, Bengaluru Rural District new committee has been formed to the said temple by including the Mujarai Department as per the order dated DVSC CR/6/2002-03 dated 13.09.2002. The trust relating to the said temple trust came into existence by virtue of a registered trust deed dated 05.01.2008. Since, the said trust has been managing the affairs of the temple and also maintaining the temple property i.e., A to E properties and no where concerned to the said temple as well as the suit. Further contended that, the plaintiffs are the stranger to the temple as well as A to E schedule properties. Hence, the plaintiffs have no right to institute the present suit against the defendants who are the trustees of the

temple. When the plaintiffs are nothing to do with the suit "A" to "E" schedule properties, the plaintiffs have no right to sought for an ad-interim order of temporary injunction as against the defendants, who are the sitting trustees. Moreover, they are not at all putting up any construction and not at all demolishing any old construction and they have appointed the archakas. Hence, the question of dispossessing the archakas and their respective families by themselves would not arise at all. Hence, prays to dismiss the applications filed by the plaintiffs.

4. Counsel for the plaintiffs have produced the citation is as under :-

1. 2020(3) KCCR 1966
2. (1969) 3 SCC 129
3. AIR 1957 SC 133
4. (1972) 2 SCC 329
5. (1981) 2 SCC 226
6. (1986) 4 SCC 162
7. (1992) 3 SCC 14
8. 1995 Supp (1) SCC 485
9. AIR 1999 SC 2131
10. AIR 1955 MADRAS 430
11. 1997 (3) Kar.L.J 83.

5. Now the following points emerge for consideration:-

1. Whether the Plaintiffs have made out a *prima-facie* case to allow the I.A No.1 and 2?
2. Whether the plaintiffs have got balance of convenience in their favour ?
3. Whether the plaintiffs would be put to loss and injury if the I.A No.1 & 2 are not allowed ?
4. *What Order?*

6. Having heard the arguments of the counsel for plaintiffs, I have scrutinized the application in the backdrop of materials made available by parties. Now, my answer on the points are as under for the reasons herein after assigned:-

Point No.1 :- In the Negative
Point No.2 & 3:- Does not survive
for consideration
Point No.4:- As per final order
for the following:-

REASONS

7. **Point No.1:-** I have already set out in brief as to what the case of the plaintiffs and as to what the stand taken by the defendant No.9. It is well settled principles of law that the following

prepositions are to be established in order to invoke the jurisdiction of the court to get an interlocutory order of injunction U/o 39 Rule 1 and 2 of CPC. (1) Plaintiff has to establish a prima-facie case, (2) the balance of convenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable injury if an injunction is refused. The ingredients are to be established by the party, who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the court so that the court will be satisfied about the prima-facie case in favour of the party seeking the order. It is no part of courts function at this stage of the litigation to try to resolve difficult question of facts and law, which require elaborate evaluation of evidence to be recorded at the trial. The conduct of the parties is also plays an important and vital role in considering the application of this nature.

8. The instant suit filed by the plaintiffs for the reliefs of declaration and injunction against the defendants. Further, plaintiff have filed the

instant application praying to restrain the defendant No.1 to 10 from interfering with the peaceful possession and enjoyment of the A to C and E schedule properties either by putting any construction or by demolishing the existing construction or in any other manner, which is detrimental to the interest of Plaintiffs. It is stated that, plaintiff No.2 is the one of the trustee of the of the plaintiff No.1 – Trust, which is his private and family trust. Plaintiff No.3 is also one of the Trustee as per the registered trust deed. The defendants having no right title interest over the suit schedule property trying to interfering with the peaceful possession and enjoyment of the “A” to “C” and “E” schedule property by putting up construction.

9. Per contra, the defendant No.1 to 9 have filed objection to the above application and contended that, the suit schedule properties are the public properties and the same has been meant for the public service by the then Mysuru Maharaja. Hence, the plaintiffs have no right to institute the present suit claiming that the suit schedule properties are ancestral properties.

10. To substantiate the same plaintiffs have relied on the documents such as Pahani issued by the Tahasildar, katha register extract issued by the Town municipality, Bidadi, Rough sketch showing ABCD schedule properties, photographs of A to D schedule properties, certified copy of the registered Trust Deed, certified copy of revocation of Trust, copy of the death certificate of Archaka namely Venkatanarashimachar, copy of the death certificate of Suryanarayanashetty @ Soorappa, computerized pahani, certified copy of the amended plaint in O.S 251/2007, certified copy of compromise decree, copy of the Sree Kodanda Swamy Seva samithi trust deed, original lease agreement dated 01.12.2013 and copy of the police complaint with acknowledgement, affidavits of Purohit Sree M.V.Srinivasachar. To substantiate the case of the defendants, they have produced the documents i.e., order sheet of the O.S 251/2007, Copy of the order passed by the Deputy commissioner, tax paid receipt, copy of the committee resolution.

11. On careful perusal of the documents produced by the plaintiffs, it can be seen that, as on the date of filing of the suit, all the suit schedule properties are standing in the name of the defendant No.1. Further, it is to be noted here that, defendant No.2 to 9 are the members of the defendant No.1 – Trust and as per the trust deed dated 05.01.2008 they have constituted the Trust and running the trust in the name of the defendant No.1. It is the case of the plaintiffs that, the defendants having no right, title or interest over the suit schedule properties unauthorizedly trying to interfere with the peaceful possession and enjoyment of the suit schedule property of the plaintiffs. But, plaintiffs have not produced any single document to show that, they are in possession and enjoyment of “A” to “C” and “E” schedule properties as on the date of filing of the suit. Except the Trust Deed dated 30.10.1967, they have not produced document to show that, they are in the possession and enjoyment of the suit schedule properties. Further, it is to be noted here that, the instant application is filed stating that, the defendants are interfering with the

peaceful possession of the plaintiffs and trying to construct or demolish the “A” to “C” and “E” schedule properties. Whereas, defendants have clearly stated that, they are the Trustees and members of the defendant No.1 – Trust. At this juncture, it can be seen that, if any improvements made by the defendants it will be in the interest of the Trust which helps to the betterment of the Trust only. Further, at this juncture, plaintiffs have failed to prove prima-facie case to show that, they are in possession and enjoyment of the “A” to “C” and “E” suit schedule properties and defendants are trying to interfere their possession. Further, it is no part of courts function at this stage of the litigation to try to resolve difficult question of facts and law, which require elaborate evaluation of evidence to be recorded at the trial. Therefore, at this juncture this court opines that plaintiffs have failed to prove the prima-facie case. Accordingly, the point under consideration is answered in the “Negative”.

12. **Point No.2 and 3:** I have already answered to Point No.1 in the negative holding that the

plaintiffs have failed to make out prima-facie case. It is held in the reported decision in between Sri.Gowrishankara Swamigalu V/s Siddhaganga Mutt reported in ILR 1989 KAR 1701 that proving of prima-facie case is harbinger to consider the other aspects such as balance of convenience and irreparable loss. If the plaintiffs failed to make out the prima-facie case, it is not necessary to consider the other aspects. Hence, I answered to Points No.2 and 3 holding that they do not survive for consideration.

13. **Point No 4**: The observations made above will not come in any way for the disposal of the suit on merits and for the reasons stated above, I pass the following:-

ORDER

I.A No.1 and 2 filed by the plaintiffs U/o 39 Rules 1 and 2 r/w Sec.151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 27th day of September 2022)

**Addl., Senior Civil Judge and JMFC,
Ramanagara.**