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

**PRESENT: SRI.MAHENDRA.M** B.A, LL.B.,  
Prl. Civil Judge & JMFC,  
Channapatna.

**Dated this 9<sup>th</sup> day of February-2023**

**O.S. NO.373/2022**

**PLAINTIFF** : Smt.Sunandamma  
-V/s-

**DEFENDANT** : Sri.B.R.Vishwanath  
**I.A.No.II**

**APPLICANT/  
PLAINTIFF** : Smt.Sunandamma,  
W/o Late C.L.Nagaraju,  
Aged about 55 years,  
R/at Chikkanadoddi Village,  
Kasaba Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Smt.V.T.G.Advocate)**

-V/s-

**OPPONENT/  
DEFENDANT**: Sri.B.R.Vishwanath,  
S/o Late B.S.Ramaiah,  
Aged about 63 years,  
R/at Do.No.1174, 2<sup>nd</sup> Main,  
5<sup>th</sup> Stage, BEML Layout,  
Rajarajeshwarinagara,  
Bengaluru.

**(By Sri.M.K.N., Adv.,)**

**ORDERS ON I.A No.II FILED U/O XXXIX RULE 1 AND 2****R/w Sec.151 OF CPC BY THE PLAINTIFF**

The learned counsel for the plaintiff has filed I.A. No.II u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendant, his agents, servants or anybody acting under him from in any way putting up any fence or compound around B schedule property or any portion thereon pending disposal of the suit.

2. The plaintiff has filed sworn to an affidavit in support of I.A. No.II and stated that, the plaintiff has filed this suit for the relief of declaration of easement right over the C schedule property and permanent injunction in respect of B schedule property. The plaintiff acquired the right over the A schedule property and Katha stands in the name of plaintiff and she in possession and enjoyment over the A schedule property by growing crops. The C schedule property is the only access to reach the A schedule property through B schedule property from Kanva Chanel Road. Except C schedule property there is no access to plaintiff to reach A schedule property. The C schedule property is in existing in B schedule property which has been recently purchased by the defendant. The defendant is trying to put up fence and compound around the B schedule property. The defendant has collected all the materials for putting up fence or compound in B schedule property. If the compound or fence put up around the B schedule property the C schedule

property is not available for the plaintiff to reach the B schedule property. The act of the defendant is illegal. The defendant without survey trying to put up the fence or compound in the B schedule property by encroaching the Kanva Chanel Road towards eastern side. The plaintiff has made out prima-facie case and balance of convenience in her favour and if this application is not allowed the plaintiff will be put to irreparable loss and injury which cannot be compensated. **Hence prayed that grant on temporary injunction against the defendant by allowing the I.A. No.II.**

3. The defendant appear before this court through his counsel and filed a memo seeking written statement may be treated as objection to I.A No.II, the same was allowed. The defendant contented that, the B schedule property originally belong to one Shashikumar. He sold the said property in favour of the defendant on 06.10.2022 through registered sale deed. The C schedule property is the part and parcel of B schedule property. Since the date of sale the defendant has been in continuation of the possession and enjoyment over the B and C schedule properties. There is no bifurcation in B schedule. No point of time there was no any path way as alleged by the plaintiff in the C schedule property. The vendor of the defendant earlier established the poultry form and he leave the space to his convenience scientifically. Any point of time the plaintiff nor any person including L. Shivaraju not using the said space. The B

schedule property is located the western side of the Kanva Chanel Road. Towards the western side of the B schedule property A schedule property is located. Towards southern side of A and B suit schedule properties there is land bearing Sy No.29/2 is located. The revenue records or sale deeds are not disclosed the alleged path way. The plaintiff possess her joint family own land towards southern side of A and B schedule property which commence from the Kanva Chanel Road. The suit of the plaintiff is not maintainable. **Hence prayed that dismiss the I.A No.II filed by the plaintiff with cost.**

4. Now the following points arise for consideration of this court:-

**POINTS**

1. Whether the plaintiff has made out prima-facie in her favour?
2. Whether the plaintiff has made out balance of convenience in her favour?
3. Whether this I.A. No.II is rejected, the plaintiff will be put to irreparable loss and injury which can not be compensated?
4. What order?

5. Heard the arguments from counsel for the plaintiff and the defendant.

6. This court has perused the materials on record and answer the above said points are as follows:-

**Point No.1 : In the Negative**

**Point No.2 : In the Negative**

**Point No.3 : In the Negative**

**Point No.4 : As per the final order**

**for the following:-**

### **R E A S O N S**

7. **POINT NO.1:-** The learned counsel for the plaintiff vehemently argued before the court that, the suit schedule A property was acquired by her husband through registered sale deed dtd.17.03.1997. As per the sale deed the plaintiff is in possession and enjoyment over the suit A schedule property as a absolute owner. The plaintiff has used C schedule property to reach the A schedule property through B schedule property. The defendant is trying to put up fence or compound around the B schedule property by block the C schedule property. **Hence, the defendant as to be temporarily restrained till the disposal of the suit.**

8. Per contra, the learned counsel for the defendant argued before that, the A schedule property belongs to plaintiff is admitted. The defendant purchased the B schedule property through registered sale deed. The defendant is in possession and enjoyment over the suit B and C schedule properties. The sale deeds or any revenue documents are not disclosed the alleged path way. The plaintiff has alternative way to reach A schedule property. The C schedule property is not a path way it is attached to the B schedule property. The

plaintiff has filed false suit against the defendant. **Hence the application filed by the plaintiff may be dismissed.**

9. Keeping in view the rival contentions raised by the parties, now, this court proceed to discuss that what is meaning of the word **prima-facie case**. It is well **settled** that the plaintiff has to make out a prima-facie case to get the relief of injunction. In other words, the court must be satisfied that there is a bona-fide dispute raised by the plaintiff, and there is a strong case for trial which needs investigation and decision on merits and on the facts before the court there is a probability of the plaintiff being entitled to the relief claimed by the plaintiff. This view of this court receives support from the law declared by the **Hon'ble Apex Court in the decision reported in AIR 1993 SC 276 between Dhalpath Kumar V/S Prahalad Singh**. Keeping in view this meaning of the word 'prima-facie case' once again this court perused the entire case of the plaintiff. It must be noted that this court have already stated about the contention raised by the plaintiff in the preceding paragraph of this order itself. In the view of this court, when the plaintiff alleges that the defendant has interfere with possession of the plaintiff over the suit C schedule property. The defendant denied the contention of the plaintiff, it becomes clear that dispute has to be investigated by this court. Keeping in view this fact, now this court proceed to discuss the documents produced by the plaintiff and defendant.

10. In light of the arguments canvased by the learned counsel for the plaintiff and defendant this court as carefully perused the documents produced by the parties to the suit. **The list of documents of the plaintiff consist** of original sale deed dtd.17.03.1997, mutation register extract in MR No.12/1996-97, hand written RTC and computerized RTC, xerox copy of sale deed dtd.06.10.2022, representation given to Tahasildar by the plaintiff, representation given to police by the plaintiff, hands sketch, 18 photos, 2 CD's, notarized copy of Adhar card of plaintiff, legal notice dtd.10.11.2022, representation given to post office and endorsement issued by Postal Authority.

11. **The list of documents of the defendant consist of** xerox copies of sale deeds dtd.06.10.2022, 28.06.1997, 22.10.2007, 02.05.1968, 22.01.1997, 15.06.1971, 17.03.1997, xerox copies of 11-E sketch, Village map of Komanahlli Village, Tippani, Survey settlement, Akar Bandh, Hissa Tippani, computerized RTC's, Rough Sketch and xerox copy of partition deed.

12. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principle of law that at the time of disposing the Temporary Injunction application,

the court cannot go into the prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.

13. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situations, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

14. The power to grant a temporary injunction is at the discretion of the court. This discretion, however should be exercised reasonable, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

15. In order to ascertain the prima-facie case this court as carefully perused the materials on record, the plaintiff has filed this suit against the defendant for the relief of declaration of to use of C schedule property as easement right, permanent injunction from putting up the fence and compound around B schedule property and closing or blocking the C schedule property. The plaintiff is the owner in possession of A schedule property is not disputed fact. The defendant is the owner of B schedule property is not disputed by the plaintiff. Only dispute between the parties to the suit that, whether the C schedule property is the path way it is attached to the B schedule property or not?.

16. In order to prove her ownership over the A schedule property the plaintiff has produced the original sale deed dtd.17.03.1997. The said document reveals that, the plaintiff had purchased the A schedule property from Venkatalakshamma and Chikkaidegowda. The boundaries mentioned in the said sale deed that East by land of Chikkajavarayigowda and children of Vishakantegowda, West by Land of L.Shivaraju, North by Land of Somanahalli Ponnaiah's Nathappa and South by Land of vendor of plaintiff. The plaintiff given representation before Tahasildar and police authority about alleged C schedule path way.

17. The defendant has produced sale deeds of defendant, Chikkajavarayigowda, vendor of defendant namely

Shashikumar, Kadaiah, Chikkajavarayigowda, Puttananjaiah, C.L.Nagaraju and C.L.Shivaraju in respect of Sy No.29/1. The defendant also produced revenue documents in respect of Sy No.29/1. The said sale deeds are not disclosed the alleged path way as stated by the plaintiff. The defendant has denied the existence of C schedule property. The plaintiff in this stage never produced any documents to show the existence of C schedule property. In this stage cannot come to the conclusion that, the C schedule property is the access to the A schedule property through B schedule property. The evidence of both the parties are necessary to decide the alleged path way. Without trail cannot decide existence of path way as stated by the plaintiff in the plaint.

18. In the sale deed dtd.17.03.1997 executed in favour of the plaintiff in respect of A schedule property the prima-facie show that, cannot disclose the alleged path way the photos are produced by the plaintiff does not disclose the existence of C schedule property. The full-pledge trail is required to decide the alleged path way.

19. The learned counsel for the plaintiff has relied upon the following decisions;

- 1        **AIR 2016 Orrissa 44 between Smt. Jayanti Kar and another V/s Dilip Kumar Patnaik and Others**
2.        **AIR 1976 Patna 5 between Achhalal Mehto and Others V/s Harichand Mehto and Others,**

With great respect the above decisions are not applicable to present stage.

20. In the present stage the plaintiff not produce the any document to show the existence of C schedule property and she is use the said C schedule property. The full-pledge trail is required. It is triable issue. The plaintiff has not has prima-facie case in her favour. **Hence with these observations this court answer the point No.1 in the Negative.**

**21. Point No.2 and 3:-** These two points are taken together for discretion since they require common discussion.

22. This court feel it is correct to perused the **order 39 rule 1 and 2 of code of Civil Procedure** here itself for the convenient sake. The same reads as follows:-

**Cases in which temporary injunction may be granted-**  
where in any suit it is proved by affidavit or otherwise-

- a) *that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*
- b) *that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors,*
- c) *that the defendants threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,*

*The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise cause in injury to the plaintiff in relation to any property in dispute in the suit) as the court thinks fit, until the disposal of the suit or until further orders.*

23. A careful reading of the object of order 39 it becomes clear that the court has to strike a delicate balance between two conflicting interests. In the present case this court come to the conclusion that the balance of convenience not lies in favour of the plaintiff and if the injunction is not granted the plaintiffs will be not put to inconvenience and irreparable loss and injury. **With these observations this court answer the point no.2 and 3 in the Negative.**

24. **Point No.4:-** For the above discussion on point No.1 to 3 this court proceeds to pass the following :-

**ORDER**

I.A.No.II u/O 39 Rule-1 and 2  
r/w sec.151 of CPC., filed by the  
plaintiff is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 09<sup>th</sup> day of February-2023).

Sd/-  
Prl. Civil Judge & JMFC.,  
Channapatna.

**Order pronounced in open court**

**(Vide Separate Order sheet)**

**O R D E R**

I.A.No.II u/O 39 Rule-1 and 2 r/w  
sec.151 of CPC., filed by the plaintiff is  
hereby dismissed.

No order as to cost.

Sd/-  
Prl. Civil Judge & JMFC.,  
Channapatna.