

IN THE COURT OF THE ADDL. CIVIL JUDGE
CHANNAPATNA.

Present: Smt. Usharani B.N.,
B.A.LL.B.,L.L.M.,
Addl. Civil Judge and JMFC.,
Channapatna.

Dated this the 14th day of June , 2023

O.S.No.50/2017

Plaintiff/s: Sri. Puttaswamy & another
(By Sri. D.N.H., Adv.)

V/s.

Defendant/s : Sri. Ramakrishnaiah & others
(D1 - Exparte)
(By Sri S.S, Adv. - D2)
(By Sri P.V.K, Adv. - D3 & 4)

I.A.NO.VI

Respondents : Sri. Ramakrishnaiah & others

V/S

Applicant: : Sri. Puttaswamy & another

ORDER ON I.A.NO.VI

The Defendant No.2 has filed this application u/O.39 R.1 & 2 r/w Sec. 94 (E) and Sec.151 of CPC seeking

temporary injunction, restraining plaintiffs, their agents, servants, or anybody claiming on behalf of them directly or indirectly from not to interfere with the dwelling house which was situated in suit schedule item No.3 property, till disposal of this suit, in the interest of justice and equity.

2. In support of the application the defendant No.2 has filed affidavit stating that this suit has been filed against the defendants for the relief of partition and separate possession and other reliefs, further submitted that he is constructed a house in the Sy.No.169 measuring to an extent of 01 guntas out of 07 guntas situated at B.V. Halli Village, Virupakshi pura Hobli, Channapatna Taluk. Which was mentioned as suit schedule property item no 3 in this case. That property came to him through partition deed dated 13.03.1990 from his fater. Initially the said property was purchased by his father late Kunnegowda. During his life time he given this to him through the partition deed or panchayath parikath. In that property there is a dwelling house belongs to him and he is the lawful owner and residing with his wife and children's. Such being the case plaintiff's

and their wife's making harassment and interference to his possession of the house property (item No.3). With respect to that incident he is complained to the Akkur police and give protection to his family. But the police authorities did not taken any action against the plaintiff's and their family members. The police authorities simply given the endorsement. The same is herewith filed for kind peusal of this court. There is no loss or prejudice will be caused to the plaintiff's if the application is allowed. If the ssame is refused he will be put to great loss and injury, which can not be compensated by any means.

3. The plaintiff has filed objections to the application and submitted that, the application is liable to be dismissed. Further stated that the defendant No.2 stated in his affidavit these things are created and produced created documents which are not change the nature of the suit and defendant No.2 is filed this application only drag on the proceedings. Hence, prays to reject the I.A.

4. On the basis of above, the point for consideration is that:

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff establishes that balance of convenience lies in their favour?
3. Whether the plaintiff establishes that if temporary injunction is not granted, they will be put to great loss or hardship?

4. What order?

5. Heard arguments. Perused the materials on record.

6. On that basis, my findings on the above point are as under:

Point No.1	:	In the Affirmative;
Point No.2	:	In the Affirmative;
Point No.3	:	In the Affirmative;
Point No.4	:	As per final order for the following:

REASONS

7. **POINT No.1** : The plaintiff has filed suit for partition and separate possession. When the matter posted for cross of PW1. The defendant No.2 has filed the present application and submitted that he has

constructed house in Sy.No.169. Which is mentioned as suit schedule property item No.3. The said property is acquired by him through partition deed dated 13.03.1990 from his father. The said property is a dwelling house belongs to him and residing with his wife and children. The plaintiffs are making harassment and interference to his possession with respect to the same he has lodged complaint against then in Akkur police station to give protection to his family. But the police authorities have not taken any action. Hence filed this application.

8. The plaintiff filed objection and stated that the defendant has created the documents. At this stage the application filed by the defendant No.2 is not maintainable. Hence prays to reject the same.

9. The plaintiff has not produced any documents.

10. The defendant No.2 produced copy of Panchayath Parikath, Akkur police station acknowledgment, endorsement, complaint given to police station.

11. On perusal of the pleadings it appears that the defendant No.2, clearly contended that he is living with his wife and children in the said suit schedule item no.3 at this stage in the interest of justice and equity the application is to be allowed, Hence, defendant No.2 has made out prima- facie case in his favour and balance of convenience also lies in his favour. Though injunction cannot be granted between Co-sharers, only in the interest of justice and equity and to protect the shelter of the defendant No.2, this court opines that in this case, if temporary injunction is granted, the defendant No.2 on strength of this order defendant No.2 can only protect his shelter and this protection need till the disposal of the suit i.e., till all the contention between the parties are finally adjudicated. If the TI is not granted defendant No.2 will be put to hardship rather than plaintiff. However, it is made clear that this court has expressed the said opinion only for the adjudication for the present application filed under Order 39 Rule 1 and 2 of C.P.C and the said expression cannot be turned as an expression on merits of this case. Accordingly, Point No.1 to 3 are answered in **Affirmative**.

12. Point No.4: - In view of the above said discussion, this court proceeds to pass the following;

ORDER

I.A. No. VI filed by the defendant No.2 Under Order-XXXIX Rule-1 and 2 rw.s. 94 E and Sec.151 of CPC., is hereby allowed.

Restraining the plaintiffs, their agents, servants or any other claiming on behalf of them directly or indirectly from not to interfere with the dwelling house which was situated in suit item No.3 property till disposal of this suit.

(Dictated to the Typist copyist on online computer, Order corrected and signed by me, then pronounced by me in the Open Court on this the 14th day of June 2023).

Addl. Civil Judge & JMFC.,
Channapatna.

Order pronounced in open court

(vide separate order)

ORDER

I.A. No. VI filed by the defendant No.2 Under Order-XXXIX Rule-1 and 2 rw.s. 94 E and Sec.151 of CPC., is hereby allowed.

Restraining the plaintiffs, their agents, servants or any other claiming on behalf of them directly or indirectly from not to interfere with the dwelling house which was situated in suit item No.3 property till disposal of this suit.

For cross of PW1 by 24.07.2023.

**Addl. Civil Judge & JMFC,
Channapatna.**

