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 5th day of September, 2022

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.IV

Applicant: : Sri. Puttaswamy & another

V/S

Respondents : Sri. Ramakrishnaiah & others

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ORDER ON I.A.NO.II

The plaintiff has filed this application u/O.39 R.1 & 2 r/w.Sec.151 of CPC seeking temporary injunction against the defendant No.2, his agents or representative, legal heirs, power of attorney holders

or anybody from construction the house in suit schedule item No.3 of the property in the interest of justice and equity.

2. In support of the application the plaintiff 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 2nd defendant is the younger brother of the plaintiff and no partition has taken place between them and the suit is pending adjudication before this court. Such being the case the 2nd defendant started constructing the house in suit item No.3 property without obtaining the license from the concerned grama panchayath and moreover the said property is an agricultural land and it is not converted for residential purposes. When the plaintiff questioned 2nd defendant gave evasive answer and defendant No.4 lodged complaint before jurisdictional police station for which the jurisdictional police gave endorsement stating that to seek remedy from the jurisdictional civil court.

3. Further submitted that the suit schedule properties are the ancestral and joint family properties available

for partition among themselves and no piece of land is absolutely belonging to any one of them. If the defendant No.2 is not restrained from constructing the house before partition it would be cause for multiplicity of proceedings and no loss or prejudice would to the defendant if this application is allowed. On the other hand, if the application is not allowed the plaintiff would be put to irreparable loss and injury which cannot be compensated by any means.

4. The defendant No.2 has filed objections to the application and submitted that the plaintiff has filed this suit for partition seeking 2/8 share. Further submitted that the defendant No.2 when he tried to construct a house in his self-acquired property defendant No.4 instigated and included with the plaintiff and defendant No.3 to 6 and to grab the self-acquired property of the defendant No.2 lodged complaint on 28-06-2021 to Akkur police station. Further submitted that even before filing the suit there was a shed in the suit schedule property item No.3 and the defendant No.2 was residing with his family in the said shed. Due to heavy rain the shed was dilapidated and collapsed. Thereafter, the

defendant No.2 obtained permission from concerned authorities and borrowed hand loans, started to construct the house. To harass the defendant No.2 the plaintiff and the other defendants colluding filed this application. On 12-07-2022 filed memo stating that the defendant No.2 already constructed house in suit schedule property item No.3 and residing with his family. Hence, prays to reject the I.A.

5. 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?

6. Heard arguments. Perused the materials on record.

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

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

R E A S O N S

8. **POINT No.1 :** The plaintiff has averred that the suit schedule properties are the ancestral properties. But the defendant No.2 are trying to put up construction in the suit schedule property item No.3 without obtaining license from concerned authority and also the land is agricultural land without converting into residential purposes. On the other hand, the defendant No.2 have denied all the plaint averments and contended that the suit schedule property item No.3 is his self- acquired property. The defendant No.2 obtained permission from concerned authorities and borrowed hand loans, started to construct the house and further submitted that defendant No.2 already constructed house in suit schedule property item No.3 and residing with his family.

9. The plaintiff has produced the copy of the complaint, NCR, endorsement, five photographs, CD.

10. The defendant No.2 produced electricity bill and receipt, debt settlement certificate, panchayath parikatha, sale deed.

11. On a cursory perusal of the documents and the pleadings, it is seen that the plaintiff has not made out prima facie case.

12. It is well settled Law that get an order of Temporary Injunction, the plaintiff has to establish that he has made out prima facie case.

13. Further it is duty of this court to know that what is the meaning of word ‘prima-facie'. It must be need that if the materials available on record at the time of hearing the interim application are sufficient to conclude that there is a bonafide dispute and there is strong case for the trial, which needs investigation and on the facts before the court there is a probability of plaintiff being entitled to the relief claimed by him. Then one can say that the plaintiff has made out prima facie case. This view of this court receives supported from Law declared by Hon'ble Apex Court in the decision reported in **AIR 1998 SC 272 in the case of Dalpat Kumar V/s. Prahlad Singh.**

As per the ratio laid down for said Hon'ble Apex Court decision the plaintiff herein not established prima-facie case.

14. On the facts before the court there is a probability of plaintiff being entitled to the relief claimed by them. Further humble opinion of this court is that when the prima facie is not established by the plaintiff, there is no question of irreparable loss or injury cause to the plaintiff.

15. Hence this court conclude that the balance of convenience not lies in favor of 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 **Negative.**

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

ORDER

IA No.II under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C., filed by the plaintiff is hereby

rejected.

(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 5th day of September 2022).

Addl. Civil Judge & JMFC.,
Channapatna.

Order pronounced in open court

(vide separate order)

ORDER

IA No.II under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C., filed by the plaintiff is hereby rejected.

For cross of PW1.

Call on 13.10.2022.

Addl. Civil Judge & JMFC,
Channapatna.