

**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 5<sup>th</sup> day of October 2020

**O.S. NO.173/2019**

**PLAINTIFF** : Sri. M.K. Venkatesh

-V/s-

**DEFENDANT** : Smt.Akkamahadevamma

**I.A.No.I and II**

**APPLICANT** : Sri.M.K.Venkatesh,  
S/o late Kempaiah,  
Aged about 55 years,

R/at: Mudagere Village,  
Maluru Hobli,  
Channapatna Taluk,  
Ramanagara Distirict.

**(By Sri. S.B.D., Advocate)**

-V/s-

**OPPONENT /  
DEFENDNAT**

: Smt.Akkamahadevamma,  
W/O Late Kendaiah,  
Aged about 60 years,  
R/a: Near Shambhavi Gas Egency,  
Behind K.E.B.,  
Kanakapura Main Road,  
Malavalli Town,  
Mandya District.

**(By. Sri. S.S., Adv.)**

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

I.A. No.I is filed by the learned counsel for the plaintiff U/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction in favour of the plaintiff and there by temporarily restraining the defendant, his agents, servants or any body acting on his behalf from not to interfere with the plaintiff possession over the suit schedule property till the disposal of the suit.

2. I.A. No.II is filed by the learned counsel for the plaintiff U/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction in favour of the plaintiff and there by temporarily restraining the defendant, his agents, servants or any body acting on his behalf from not to alienate the suit schedule property till the disposal of the suit.

3. The plaintiff sworn to an affidavit in support of the applications wherein he has stated that, the suit schedule property belongs to Kempaiah, he purchased the suit schedule property from his brother Kendaiah who is husband of the defendant through registered sale deed dated.15.03.1965. From the date of sale he was in possession over the suit schedule property. After the death of said Kempaiah his wife Huchamma who is mother of the plaintiff was in possession over the suit schedule property. The said Huchamma applied for change the Khatha to her name. The Assistant Commissioner, Ramanagara has dismiss the said petition. The same is challenged by the

plaintiff and his mother, but the same was also dismissed. The plaintiff and his mother jointly possession over the suit schedule property. The defendant interfere with plaintiff possession over the suit schedule property and trying to alienate the suit schedule property. If this applications are not allowed the plaintiff will be put to irreparable loss and injury which cannot be compensated. **With these averments the plaintiff has sought for allowing the I.A.No.I and II.**

4. The defendant has appeared through his counsel and filed a memo stating that the written statement may be treated as objection to I.A. No.I and II. Hence, this court allow the memo. The defendant contended in his written statement that, the defendant denied the all the allegations made by the plaintiff in his plaint. The defendant further contended that the plaintiff and his mother not in possession over the suit schedule property in any time. The suit schedule property is the ancestral property of the defendant. The suit schedule property originally belongs to Thanaiyah who is the propositor of the family of plaintiff and defendant. The said Thanaiyah had two sons by name Narayanaiah and Huchaiah. The khatha of the joint family property standing in the name of Huchaiah. After death of Huchaiah the said Narayanaiah partition the joint family properties. The husband of the defendant not having any right to execute the sale deed in favour of father of plaintiff. The father of the plaintiff created the sale deed.

5. The defendant further submitted that, the plaintiff and defendant are partitioned their properties on 08.12.1985 through Panchayath Palu Parikath. As per the Panchayath Palu Parikath the suit schedule property fallen to the share of the husband of the defendant. After that the husband of the defendant was in possession and enjoyment over the suit schedule property. At present Survey Number of suit schedule property is 202/1B1. The plaintiff and his mother executed relinquishment deed in favour of husband of the defendant on 31.12.1997. The revenue Court dismissed the petition of the plaintiff. At present Khatha of the suit schedule property standing in the name of defendant. The defendant is in possession over the suit schedule property. **Hence, prayed that dismiss the I.A. No.I and II filed by the plaintiff with cost.**

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

**POINTS**

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if IA.No.I and II are not allowed?

4. What order?

7. Heard the learned councils appearing for the parties and perused the materials on record.

8. The findings of this court on the above said points 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 the final order  
for the following:-

### **REASONS**

9. **POINT NO.1**:- The learned council for the plaintiff vehemently argued before the court that, the suit schedule property was acquired by the father of the plaintiff by name Kempaiah, he was purchased the suit schedule property through registered sale deed dated.15.03.1965 from husband of the defendant by name Kendaiah. The plaintiff and his mother are in possession over the suit schedule property. The defendant have no manner of any right, possession over the suit schedule property, but she is in interfere with plaintiff possession over the suit schedule property and she has trying to alienate the suit schedule property in favour of 3<sup>rd</sup> person. **Hence, the defendant as to be temporarily restrained till the disposal of the suit.**

10. Per contra the learned council for the defendant argued that, the husband of the defendant not having any right to execute the sale deed in favour of father of the plaintiff. The plaintiff created the sale deed. The defendant acquired the suit schedule property by way of Panchayath Palu Parikath dated.08.12.1985. The defendant is in possession over the suit schedule property by getting Khatha in her favour. The plaintiff filed an appeal seeking Khatha in his favour. The said appeals are dismissed. The plaintiff has filed false suit against the defendant. The plaintiff has not approached the court with clean hands, **hence, I.A. No.I and II as to be rejected.**

11. 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 bonafide dispute raised by the plaintiff, and there is a strong case for trail 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 he is in possession and enjoyment over the suit schedule property, and when the defendant denies the contention of the plaintiff, then, 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.

12. In light of the arguments canvased by the learned council for the parties, this court as carefully perused the documents produced by the parties to the suit. **The list of documents of the plaintiff consist of** xerox copy of registered sale deed dated.15.03.1965, xerox copy of entire order sheet in revision petition No.68/2016-17, xerox copy of order sheet in RRT No.216/2002-03, Genealogical tree affidavit, xerox copies of order passed by the Deputy Commissioner and Tahsildar, xerox copy of encumbrance certificate, M.R. copy, Hand written and computerized RTC's, 4 photos along with one C.D.

13. **The documents produced by the defendant** consist of xerox copy of un-registered Pachayath Palu

Parikath dated.08.12.1985, xerox copy of un-registered relinquishment deed dated.31.12.1997, xerox copy of order sheet and order in RRT No.216/2002-03, xerox copy of requisition submitted by the defendant for change of Khatha, xerox copy of notice issued by the Tahsildar to the defendant, xerox copy of sketch prepared by the Taluk Surveyor, computerized RTC, xerox copy of M.R and xerox copy of order passed by the Deputy Commissioner, Ramanagara in Revision Petition No.68/2016-17.

14. 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.

15. 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.

16. In order to assertion the prima-facie case this court as carefully perused the materials on record, the plaintiff filed this suit against the defendant for the relief of declaration and permanent injunction in respect of suit schedule property. The document produced by the plaintiff it reveals that the father of plaintiff acquired the suit schedule property by way of registered sale deed dated.15.03.1965. As per the said sale deed the plaintiff filed requisition to the revenue authority for change of Khatha to his name. The Revenue Authority was dismiss the requisition submitted by the plaintiff. The plaintiff has preffered an appeal before the Assistant Commissioner, Ramanagara, the said appeal also dismissed. The plaintiff preferred an revision petition against the order of Assistant Commissioner, Ramanagara before the Deputy Commissioner, Ramanagara, the said Revision Petition also dismissed. The plaintiff not filed any documents to show the his possession over the suit schedule property.

17. The defendant produced the documents i.e., Panchayath Palu Parikath and relinquishment deed, they

are not registered before the Registered Authority. The said documents are compulsory registrable document under the Registration Act. In this stage this court not discussed about these un-registered documents. The defendant also produced revenue documents in respect of suit schedule property. The survey sketch produced by the defendant it reveals that the defendant is in possession over the suit schedule property to the extent of 36 guntas. The defendant produce recent RTC's it is reveals that the khatha of the suit schedule property standing in the name of defendant under M.R No.60/2007-08. This court has draw the presumption u/Sec.133 of Karnataka Land Revenue Act in respect of RTC produced by the defendant. The plaintiff not produced any revenue documents or other documents to showing possession over the suit schedule property.

18. The counsel for the plaintiff relied upon decision reported in **AIR 1976 SC 1485 in Vishwa Vijaya Bharathi V/S Facrul Hasan and Others and another decision reported in 1999(4) Kar.L.J.68 in Smt.Lalithavva and Others V/s Assistant Commissioner, Haveri Division and Another.** With great respect these decisions are not applicable to the present facts and circumstances of the case. The plaintiff not having prima-facie suit in his favour. **Hence these**

**observations this court has answered the point No.1 in the Negative.**

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

20. 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 he court things fit, until the disposal of the suit or until further orders.***

21. 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 plaintiff not will be put to inconvenience and irreparable loss and injury. **With these observations this court answer the point no.2 and 3 in the Negative.**

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

### **ORDER**

**I.A.No.I and II filed by the plaintiff Under Order-XXXIX Rule-1 and 2 R/w sec.151 of CPC., are hereby rejected.**

**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 **5<sup>th</sup> day of October-2020**).

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