

**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 22<sup>nd</sup> day of September-2021**

**O.S. NO.161/2020**

**PLAINTIFF** : Sri.Channappa C.

-V/s-

**DEFENDANTS** : Sri.Rizwan & Others

**I.A.No.II**

**APPLICANT/  
PLAINTIFF:**

Sri.Channappa C.  
S/o late Channegowda,  
Aged about 63 years,  
R/at Keremegaladoddi Village,  
Kasaba Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Sri.K.T.T., Advocate)**

-V/s-

**OPPONENTS/  
DEFENDANTS** :

1. Sri.Rizwan  
S/o Rasual Khan,  
Aged about 40 years,
2. Sri.Syed Safi,  
S/o Syed Hussain,  
Aged about 55 years,
3. Sri.Syed Jeelu,  
S/o Syed Pasha,  
Aged about 45 years,
4. Sri.Syed Saleem,  
S/o Syed Khader,  
Aged about 38 years,

All are R/at New Makhan,  
Behind Ashraya Hotel,  
Near Tol Gate, B.M.Road,  
Channapatna Town,  
Ramanagara District.

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

**I.A.No.V**

**APPLICANTS/  
DEFENDANTS**

:

1. Sri.Rizwan  
S/o Rasual Khan,  
Aged about 40 years,
2. Sri.Syed Safi,  
S/o Syed Hussain,  
Aged about 55 years,
3. Sri.Syed Jeelu,  
S/o Syed Pasha,  
Aged about 45 years,
4. Sri.Syed Saleem,  
S/o Syed Khader,  
Aged about 38 years,

All are R/at New Makhan,  
Behind Ashraya Hotel,  
Near Tol Gate, B.M.Road,  
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**(By. Sri.N.S., Adv.,)**

**-V/s-**

**OPPONENT/  
PLAINTIFF:**

Sri.Channappa C.  
S/o late Channegowda,  
Aged about 63 years,  
  
R/at Keremegaladoddi Village,  
Kasaba Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Sri.K.T.T., Advocate)**

**ORDERS ON I.A No.II & V FILED U/O XXXIX RULE 1 AND 2**  
**R/w Sec.151 OF CPC & U/O XXXIX RULE 4 R/W SEC.151 OF**  
**CPC**

I.A. No.II is filed by the learned counsel for the plaintiff u/o 39 rule 1 and 2 of C.P.C for seeking the relief of temporary injunction in favour of the plaintiff and there by temporarily restraining the defendants, their agents, servants or any body acting on them behalf of interfering with possession of the plaintiff over the suit schedule property till the disposal of the suit.

2. I.A. No.V is filed by the learned counsel for the defendants u/o 39 rule 4 r/w.Sec.151 of C.P.C for seeking the relief of vacate the interim order granted by this court.

3. The plaintiff sworn to an affidavit in support of the I.A.No.II wherein he has stated that, the plaintiff filed this suit against the defendants for the relief of permanent injunction. The suit schedule property purchased by the plaintiff through registered sale deed dtd.27.03.1997 in Sy No.124/2B and 124/3A measuring 3¼ guntas each from C.R. Shivakumar S/o Late K.Rajaiah. As per sale deed the plaintiff is in possession and enjoyment over the suit schedule property by getting Khatha into his name. The plaintiff intended to construct the house in the suit schedule property when that time the defendants interfere with possession of the plaintiff in respect of suit schedule property. The defendants have no manner of right, title over the suit schedule property. **With these averments the plaintiff has sought for allowing the I.A.No.II.**

4. The defendants have filed the written statement and contended that, the suit of the plaintiff is not maintainable under the or on facts the same is liable to be dismissed. The defendants further contended that, the suit schedule site is not at all formed in Sy No.124/2B and 124/2A at Honniganahalli Village. The boundaries and measurements mentioned in the sale deed are not tallied. The plaintiff is not the absolute owner in possession of the suit schedule property. The plaintiff created the documents and filed this suit. **Hence dismiss the I.A No.II filed by the plaintiff.**

5. The defendant No.2 has filed sworn affidavit in support of I.A No.V and reiterated the averements in the written statement. And prays that vacate the interim order granted by this court in favour of plaintiff.

6. The plaintiff has filed an objection to I.A No.V and contended that, the application filed by the defendants is not maintainable. The defendants appeared and filed there written statement without disclosing their status over the suit schedule property. Earlier to that, they filed application u/o 7 Rule 11(d) of CPC. The plaintiff clearly established his possession over the suit schedule property by producing the documents. **Hence prayed that dismiss the I.A No.V filed by the defendants.**

7. 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 I.A.No.II is not allowed?
4. Whether there is a ground to vacate the interim order passed by this court?
5. What order?

8. Heard the learned counsels appearing for the parties and perused the materials on record.

9. The findings of this court on the above said points are as under:-

- Point No.1 : In the Affirmative
- Point No.2 : In the Affirmative
- Point No.3 : In the Affirmative
- Point No.4 : In the Negative
- Point No.5 : As per the final order  
for the following:-

### REASONS

10. **POINT NO.1**:- The learned counsel for the plaintiff vehemently argued before the court that, the suit schedule property is purchased by the plaintiff through registered sale deed. The plaintiff is in possession and enjoyment over the suit schedule property. The balance of convenience lies in favour of plaintiff. The defendants are interfere with possession of the plaintiff over the suit schedule property. **Hence, the defendants as to be temporarily restrained till the disposal of the suit.**

11. Per contra the learned counsel for the defendants argued that, the suit schedule site not formed in Sy No.124/2B and 124/2A. The plaintiff not in possession and enjoyment over the suit schedule property. The suit of the plaintiff is not maintainable and also application filed by the plaintiff is not maintainable under law. **Hence, I.A. No.II as to be rejected and vacate the exparte temporary injunction granted by this court in favour of plaintiff.**

12. 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 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 the defendants illegally try to interfere with the suit schedule property. The defendants 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.

13. In light of the arguments canvased by the learned counsel 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** original sale deed dtd.27.03.1997, xerox copy of sale deed dtd.17.04.1986, xerox copy of sale deed dtd.22.06.1960, encumbrance certificates, mutation register extract, settlement Akar Band, xerox copy of Hissa Tippani, Computerized RTC's in respect of Sy No.124/8, Hand written RTC's in respect 124/2, 124/3, 124/3A and 124/2B, demand register extract and tax paid receipt.

14. **The documents produced by the defendants consist of** computerized RTC in respect of Sy No.124/9, mutation register extract, three computerized RTC's.

15. 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.

16. 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.

17. 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.

18. In order to assert the prima-facie case this court has carefully perused the materials on record, the plaintiff filed this suit against the defendants for the relief of permanent injunction in respect of suit schedule property. The documents produced by the plaintiff i.e., sale deed dtd.27.03.1997 it reveals that, the plaintiff purchased the suit schedule property from Shivakumar. The boundaries mentioned in the plaint and boundaries mentioned in the said sale deed are tallied each other. As per sale deed dtd.17.04.1986 the vendor of the plaintiff by name Shivakumar purchased the suit schedule property from B.V.Sarabaiyah. The sale deed dtd.22.06.1960 it reveals that, K.Rajaiah purchased the property in Sy No.124/3 from A.S. Krishna.

19. The counsel for the defendants has relied upon the following decisions:

1. 2020(1) KCCR 494 between Smt. Sudha Rao V/s S.Srinivasa Reddy and Another,

In this decision the plaintiff not established existence of prima-facie case, irreparable injury and balance of convenience. In the present case the plaintiff established the same.

2. ILR 2021 KAR 637 between Shree Samsthana Mahabaleshwara Deva Gokarna and Other V/s UFM Anantharaj and Others.

In the above decision the principle of granting injunction explained by Hon'ble court.

20. As per the sale deed the Khatha in respect of suit schedule property mutated in the name of plaintiff. The prima-facie shows that, the plaintiff is in possession and enjoyment over the suit schedule property. The plaintiff has prima-facie case in his favour. Hence with these observations this court answer the point No.1 in the Afffirmative.

**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 defendant 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.*

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 lies in favour of the plaintiff and if the injunction is not granted the plaintiff will be put to inconvenience and irreparable loss and injury. **With these observations this court answer the point no.2 and 3 in the Affirmative.**

24. **Point No.4:-** The defendants filed an I.A No.V u/o 39 Rule 4 r/w Sec.151 of CPC seeking vacate the interim order granted by this court. In view of discussion on point No.1 to 3, it is prima-facie clear that, the balance of convenience lies in favour of plaintiff, the prima-facie case in favour of plaintiff and if I.A No.II is rejected, the plaintiff will be put to irreparable loss and injury. There is a no grounds to vacate the order of temporary injunction granted in favour of plaintiff. **With these observations this court answer the point no.4 in the Negative.**

25. **Point No.5:-** For the above discussion on point No.1 to 4 this court proceeds to pass the following :-

**O R D E R**

**I.A. No.II filed by the plaintiff  
Under Order-XXXIX Rule-1 and 2 of  
CPC., is hereby allowed.**

**I.A. No.V filed by the  
defendants Under Order-XXXIX Rule-  
4 r/w Sec.151 of CPC., 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 22<sup>nd</sup> day of September-2021).

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

**Order pronounced in open court**  
**(Vide Separate Order sheet)**

**O R D E R**

I.A. No.II filed by the plaintiff  
Under Order-XXXIX Rule-1 and 2 of  
CPC., is hereby allowed.

I.A. No.V filed by the  
defendants Under Order-XXXIX  
Rule-4 r/w Sec.151 of CPC., is  
hereby dismissed.

No order as to cost.

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