

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 1st day of August 2022

O.S. NO.221/2020

PLAINTIFF : Sri. Nagaraju

-V/s-

defendantsS : Sri. Boregowda and Others

I.A.No.I

APPLICANT/
PLAINTIFF : Sri. Nagaraju
S/o late Channaboraiah
Aged about 41 years,

R/at: Sogala Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara Distirict.

(By Sri.P.L.N, Advocate)

-V/s-

OPPONENTS/
DEFENDNATS : 1. Sri. Boregowda
S/o Late Basavegowda
Aged about 75 years,

2. Sri. Ravi
S/o Late Boregowda
Aged about 37 years,

3. Sri. Chandru
S/o Boregowda
Aged about 35 years,

All are R/a: Sogala Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara Distirict.

(By. Sri. K.T.T., Adv.)

ORDERS ON I.A No.I 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 defendants, thier agents, servants or any body acting on their behalf from to interfere with the plaintiff possession and enjoyment over the suit schedule property till the disposal of the suit.

2. The plaintiff filed sworn to an affidavit in support of the application wherein he has stated that, the suit schedule property was granted in favour of plaintiff by the government. The plaintiff is in possession and enjoyment over the suit schedule property. The defendants are strangers to the suit schedule property. **With these averments the plaintiff has sought for allowing the I.A.No.I.**

3. The defendants have appeared through their counsel and filed a memo and stated that written statement may be treated as objection to I.A. No.I, the same was allowed. The defendants are denied the plaint averements. The defendants further contended that, the plaintiff not pleaded in which year land was granted to him. There is no property granted in around to defendants and form No.1 was issued on 14.03.1985 to an extend of 10 acre 10 guntas in Sy.No. 375 . The said Survey Number is gomala land. 1 acre 10 guntas was granted to the defendants and one Chikkanna jointly to an extent of 5 acres 10 guntas out of that 4 acres belongs to chikkanna through official memorandum dtd. 22.08.1985. The form No.1 was issued in the year 1985. Earlier to grant the defendant and chikkanna cultivating the lands. The defendants continued the possession over the said property. The plaintiff claimed defendant property. The defendant filed a suit against the plaintiff in O.S.No. 185/2020, thereafter he filed present suit. The plaintiff filed his suit mentioning deferent boundary. The defendant are in possession and enjoyment in above property. **Hence prayed that dismiss the application 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 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 is not allowed?
4. What order?
5. Heard the learned counsels appearing for the parties and perused the materials on record.
6. 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

7. **POINT NO.1:-** The learned counsel for the plaintiff vehemently argued before the court that, the suit schedule property was granted in favour of plaintiff. The plaintiff is in possession and enjoyment over the suit schedule property. The defendants are interfered with plaintiff possession over the suit schedule property. **Hence filed this application.**
8. Per contra the learned Counsel for the defendants argued that, the plaintiff filed this suit by claiming defendants

property. The property granted in favour of defendants and one chikkanna. The plaintiff interfere with possession of the plaintiff, that time the defendants filed a suit against the plaintiff, then the plaintiff filed this false suit. **Hence, IA.No.I as to be rejected.**

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 have 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 defendants 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 and defendants.

10. 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** hand written RTC's , Tax paid receipts, Sketch, agricultural pass book and Xerox copy of Adhar card.

11. The documents produced by the defendants consist of Xerox copies of grant certificate, official memorandum, revenue sketch, information furnish by the Tahasildar, Endrosement issued by the Tahasildar, Village map, Adhar card and hand written RTC's.

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 defendantss if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at he 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 assertion the prima-facie case this court as carefully perused the materials on record, the plaintiff filed this suit against the defendants for the relief of Declaration and permanent injunction in respect of suit schedule property. As per the plaint averements the suit schedule property granted in

favour of the plaintiff. In this regard the plaintiff not produce the grant certificate. The plaintiff only furnish katha extracts. The defendants claimed that the property granted in their favour. The plaintiff and defendants are claimed one property. As per the contention of the defendants one more suit pending between the plaintiff and defendants in respect of suit schedule property. The documents produced by the plaintiff are not shown the possession of the plaintiff over the suit schedule property. The plaintiff is not produced any document to show the his possession over the suit schedule property. It is prima-facie shows that the plaintiff is not in possession over the suit schedule property. **Hence with these observations this court answer the point No.1 in the Negative.**

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

17. 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 defendants threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors,*

c) *that the defendantss 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.

18. 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.**

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

O R D E R

**I.A.No.I filed by the plaintiff u/O
XXXIX Rule-1 and 2 R/w sec.151 of CPC., is
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 **1st day of August-2022**).

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