

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 21st day of March, 2023

O.S.No.150/2021

Plaintiff/s: 1. Smt. Bhagyamma

(By Sri. V.H., Adv.)

V/s.

Defendant/s : Raju

(By Sri M.K.N, Adv.)

I.A.NO.II

Applicant: : Smt. Bhagyamma

V/S

Respondents : Sri. Raju

U/O XXXIX RULE 1 AND 2 R/w Sec.151 OF CPC

1. The plaintiff has filed this application seeking temporary injunction against the defendant, his agent, servants, followers or anybody claiming

under him from in any way interfering with the plaintiffs' possession, occupation and enjoyment of the suit schedule property till disposal of this suit.

2. In support of the application the plaintiff has filed affidavit stating that the suit is for the relief of permanent injunction against the defendant and prays to averments there in be perused as part and parcel of this affidavit also. Further stated that he is the absolute owner in possession and enjoyment of the suit schedule A properties. Katha is in his name. They are ancestral properties. There are coconut trees in some lands and others, he has been doing agriculture with labours. He has paying kandayam also regularly. The defendant has no manner of right, title or interest nor possession over any portion of the suit schedule properties. In suit item 2 there is house consisting of RCC roofed, tiled roofed portions. The defendant who is known to him requested permission to store agricultural implements in a portion of the house, which is described as suit schedule B property in this suit. He also agreed. But the defendant now since june 2021 being instigated by otherse has been interfering with his peaceful possession and enjoyment of the suit schedule A properties. He obstructing him form carrying on agriculture, and he is plucking coconut and

enjoying the proceeds for himself. He is also making very serious and hectic attempts to dispossess him from his lawful possession of the suit schedule A properties. He approached the police, but they have issued endorsement to effect that it is civil dispute and he may approach competent civil court. If the defendant were to in any way interfere, or dispossess him, he would suffer irreparably. But, the defendant being very powerful and influential person both politically and financially, and he being an aged, innocent, ignorant, law abiding person, cannot resist or restrain the defendant without an order of his court. It is therefore just and necessary that the defendant be restrained by an order of temporary injunction. No loss or prejudice will be caused to the defendant if an order of temporary injunction is granted, but if the same is refused, he would be put to great loss and injury which cannot be compensated by any means. The balance of convenience is therefore in favour of granting the temporary injunction. Hence prays to allow the application.

3. The defendant has filed objection to the suit and filed memo to treat the objections to the suit as objection to the 39 R 1 and 2 of CPC and contended that the defendant is enjoying the suit schedule item No.1 on the basis of lease since 2013 till today, given by the plaintiff

and her son late Prakash, plaintiff and her son both of them have received Rs.3,00,000/- advance. Every year he is paying Rs.30,000/-rent to suit item No.1, plaintiff and her daughter in law are receiving the rent for the defendant. Plaintiff and her daughter in law of plaintiff by name Savitha are dividing the rent given by the defendant. Plaintiff without disclosing the true fact came with false facts before this court. In suit item no.3 there is a house, behind that a mobile tower is located so the rent come from the mobile tower is going to the plaintiff and she peacefully enjoying the rent , suit item no.3 is not fit for cultivation there is no question of interference by the defendant over suit item No.3. defendant is nothing to do with the suit item No.3. With respect to suit item No.2 is concern location of the property unidentified, where about the property is not known to the plaintiff or the defendant, the plaintiff with mollified intention to harass the defendant has filed false suit against the defendant claiming that defendant is interfering with the peaceful possession and enjoyment of the suit schedule property. During the life time of plaintiff son Prakash, he was working in police department and he was residing at channapatna, the plaintiff is age old lady and both of them can not take care and engaged themselves in the agricultural operations, because of this reason plaintiff and his son has came near the house of defendant and

requested defendant to carry out of the agricultural operations. In the suit item No.1 on the basis of lease. Plaintiff and her have receive Rs.3,00,000/- from the defendant as advance and Rs.30,000/- rent fixed to the suit item No.1, defendant agreed to the offer given by the plaintiff and his son trusted their words and advanced the amounts to the plaintiff and her son entering into the contract orally. Since today the defendant is in possession and enjoyment of the suit item No.1. When such being the case when the contract is in existence, plaintiff son Prakash was died, after the death of plaintiff son Prakash there was misunderstanding between the plaintiff and her daughter-in-law with respect to receiving of rent from the defendant till the death of Prakash everything was quiet and calm. Plaintiff always demanding the defendant to hand over entire rent to herself, in the meanwhile plaintiff daughter in law instating defendant to delivered the rent to her deceased Prakash wife Savitha who is non other then the daughter in law of the plaintiff have received few years rent from the defendant, there after plaintiff have started to giving threat and trouble to this defendant. The plaintiff has to return the advance amount paid him. Defendant has developed the land investing large amount he was planted malbari and banana in suit item No.1 by trust the words given by the plaintiff and her son, now the

defendant because scapegoat of the quarrel between the mother in law and the sister in law, defendant is poor agriculturist the defendant have entirely depends upon the agriculture income, if the plaintiff dispossess the defendant from the suit item No.1, he will be thrown to street. The defendant have planted banana saplings and now they are aged about 5 months and invested more then Rs.2,00,000/- for the banana agriculture and defendant suffering more than 5 to 6 lakhs loss if the defendant was vacated from suit item No.1, when the plaintiff is not in possession of the suit schedule property, there is no questioning interference by the defendant the suit of the plaintiff is in fractious due to lack of possession by the plaintiff. When the defendant is in possession of suit item No.1 as a mortgage there is no question of interfering over the suit item No.1 is in fractious and same is liable to the dismissed. Hence prays to dismiss the application.

4. Heard and perused the materials on record.

5. The following points arise for my determination;

1 Whether the plaintiffs have made out a prima-facie case in his favour?

- 2 Whether the balance of convenience lies in favour of the plaintiffs?
 - 3 Whether the irreparable loss or injury will be caused to the plaintiffs if temporary injunction is not granted?
 4. What order?
6. My findings on the above 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 final order,

for the following;

REASONS

7. **Points 1 to 3** :- These points taken together for the sake of convenience and avoid repetition.

8. The case of the plaintiff is that he is the absolute owners in possession of the suit schedule properties but the defendant without having any right over the suit property trying to interfere with the peaceful possession of the suit schedule property and hence prayed for restraining it. The defendant has contended that item No.1 of the suit schedule property is

given on the lease basis, Plaintiff and her son has received Rs.3,00,000/- from the defendant has advance and Rs.30,000/- rent fixed to the suit item No.1 and entered oral contract on the trust by trusting plaintiff and her son. Since then the defendant is in possession and enjoyment of the suit item No.1. Whent the contract in existence plaintiff son was died. After the death of plaintiff son there was misunderstanding between plaintiff and her daughter in law with respect to rent reciving from defendant. The defendant has developing land investing large amount, he planted malbari and banana in suit item No.1 by investing morethan Rs.2,00,000/- and plaintiff is not in possession of suit schedule property.there is no question of interference by the defendant, when the defendant is in possession by way of mortgage. Hence prays to dismiss the application.

9. The plaintiffs have produced RTC of Sy.No.35, Sy.No.48 and 2/2, acknowledgment issued by the M.K.Doddi police, Endorsment issued by the M.K. Doddi police.

10. The defendant has not filed any documents.

11. I have perused the materials available on record. The plaintiff pleads that she is in possession of the suit property and have produced RTC to show she in possession of suit schedule property. Prima-facie shows that the katha is standing in the name of plaintiff. Where as the defendant has disputed that he is possession of suit schedule property carrying agricultural activities by planting banana and malbary over the suit schedule property and there was oral contract between plaintiff her son and defendant. Though the defendant has not produced documents to the suit schedule poroperty is being agricultural property can not ascertain who are in possession over suit schedule property. Hence these disputes needs to be decided after full pledged trial. The court can not make observation about these contention. Therefore the plaintiff as not made out prima-facie case accordingly.

12. Since both points are interconnected, they are taken together for the discussion for the purpose of avoiding repetition of facts. In Gowrishankar Swamigalu Vs. Siddhaganga Mutt and others reported in ILR 1989 KAR 1701, the Hon'ble High Court of Karnataka has held that:

"The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little purpose of being accepted by the Court, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself".

13. Since the plaintiff has not made out prima facie case in her favour, the question of balance of convenience lying in her favour and irreparable injury may be caused to her requires no discussion at this stage. The matter can be decided only after fully fledged trial. If injunction is granted the defendant may be suffer loss. Therefore, the balance of convenience does not lie in favour of the plaintiff. If at this stage the I.T. is granted no loss or hardship will be caused to the plaintiff when compared to that of defendant and if this court decides the case in the favour of the plaintiff, then the compensatory costs can be awarded to the 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**.

14. Point No.4:- As per discussion made above, I proceed to pass the following;

ORDER

I.A. No.II filed by the plaintiffs
under Order 39 R.1 & 2 r/w.Sec.151
of CPC is dismissed.

(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 **21st day of March - 2023**).

Addl. Civil Judge & JMFC.,
Channapatna

Order pronounced in the open court

(vide separate order)

I.A. No.II filed by the plaintiffs under Order 39 R.1 & 2 r/w.Sec.151 of CPC is dismissed.

Call on 19.04.2023.

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

