

KARN220021202022



**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 18<sup>th</sup> day of April-2023**

**O.S. NO.147/2022**

**PLAINTIFF** : Sri.Shivalingaiah,  
-V/s-

**DEFENDANTS** : Smt.Shivamma & Others

**I.A.No.I**

**APPLICANT/  
PLAINTIFF** :

Sri.Shivalingaiah,  
S/o Late Puttalingaiah,  
Aged about 58 years,  
R/at No.2228/1, 2<sup>nd</sup> Cross Road,  
B.M.Road, Kuvempunagara,  
Channapatna Town,  
Ramanagara District.

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

-V/s-

**OPPONENTS/  
DEFENDANTS:**

1. Smt.Shivamma,  
W/o Late Murudappa,  
Aged about 65 years,
2. Sri.C.M.Mahadevaprasad,  
S/o Late Murudappa,  
Aged about 45 years,

3. Sri.C.M.Ganesh,  
S/o Late Murudappa,  
Aged about 40 years,

All are R/at No.2291/2 to 2C,  
B.M.Road, Kuvempunagara,  
Channapatna Town,  
Ramanagara District.

(By Sri.V.L.S., Adv., for D1 and 3,  
D2 is placed Exparte)

**ORDERS ON I.A No.I FILED U/O XXXIX RULE 1 AND 2**

**R/w Sec.151 OF CPC BY THE PLAINTIFF**

The learned counsel for the plaintiff has filed I.A. No.I u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendants, their agents, servants or anybody acting under them from obstructing the ABCD passage towards the suit schedule property from making obstruction over the passage which is shown as ABCD area shown in the rough sketch pending disposal of the suit.

2. The plaintiff filed sworn to an affidavit in support of I.A. No.I and stated that, the defendants have deprived the right of plaintiff from using common passage measuring 6 1/2 feet into 108 feet. The plaintiff had purchased the suit schedule property. The defendants blocked ABCD passage. The plaintiff is unable to shift the materials into the house in the suit schedule property. The defendants are trying to completely block the common passage. The defendants have colluded and they are trying to disposes the plaintiff from the

suit schedule property by blocking common passage. The plaintiff have prima-facie case and balance of convenience in his favour. If this application is not allowed the plaintiff will be put to irreparable loss and injury which cannot be compensated. **Hence prayed that grant on temporary injunction against the defendants by allowing the I.A. No.I.**

3. The defendant No.1 and 3 appear before this court through their counsel and filed a memo seeking written statement may be treated as objection to I.A No.I, the same was allowed. The defendant No.1 and 3 are denied the averements of the plaint. These defendants taken contention that, under the partition deed dtd.28.10.1999 the property allotted to defendant No.3. As per said registered partition deed had access to his property through the southern side B.M.Road and Kalammana Gudi Beedi Cross and conservancy lane on the Northern side. Apart from the same since a portion of the property is covered with portion of property allotted to the 1<sup>st</sup> defendant to access is provided to defendant No.3. In this regard the passage was created in between the properties allotted to defendant No.3 and 2<sup>nd</sup> defendant. The defendant No.3 sold a portion of said property facing the Kalammana Gudi Beedi Cross and conservancy lane in favour of the plaintiff which is northern side portion and the said property was never provided with any passage. The sale deed does not disclosed the alleged passage. The defendant No.3

had not sold any passage to the plaintiff. Now the plaintiff is attempting to take away a portion of the property and get direct access to B.M.Road. Hence the plaintiff is not entitled for mandatory injunction as sought for. The plaintiff has filed false application against the defendants. **Hence prayed that dismiss the I.A No.I 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 in his favour?**
2. **Whether the plaintiff has made out balance of convenience in his favour?**
3. **Whether this I.A. No.I is rejected, the plaintiff will be put to irreparable loss and injury which can not be compensated?**
4. **What order?**

5. Heard the arguments from counsel for the plaintiff and the defendants.

6. This court has perused the materials on record and answer the above said points are as follows:-

**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 plaintiff had purchased the suit schedule property through registered sale deed dtd.22.01.2009 from defendant No.3. The properties of plaintiff and defendants adjoining to each other. There is no dispute between the plaintiff and defendants properties. The defendant No.3 had obtained the rights over the common passage to reach the suit schedule property as per the partition deed. The said right have been continued as per the provision under The Transfer Of Property Act. Accordingly the plaintiff has acquired the said right of passage. The defendants are illegally blocked the said passage. **Hence, the defendants as to be temporarily restrained till the disposal of the suit.**

8. Per contra, the learned counsel for the defendant No.1 and 3 argued before that, the plaintiff obtained the interim order against death person i.e., defendant No.2. The defendant No.3 not sold any passage in favour of plaintiff. Hence, the sale deed not disclosed the alleged passage. The plaintiff has filed false application against the defendants. **Hence the application filed by the plaintiff may be dismissed.**

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 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 trial 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 path way is existence and the defendants are blocked the said path way when 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 and defendants.

10. In light of the arguments canvased by the learned counsel for the plaintiff and defendants this court as carefully perused the documents produced by the parties to the suit. **The list of documents of the plaintiff consist** of Notarized

copy of sale deed dtd.22.01.2009, certified copy of partition deed dtd.28.10.1999, E-Katha Extract, Tax paid Challen and photos.

11. The defendant No.1 and 3 have produced xerox copy of judgment in O.S No.208/2015 wherein one Smt.Prema who is the wife of 2<sup>nd</sup> defendant had filed the suit for declaration of civil death before Addl.Civil Judge and JMFC., Channapatna due to missing the 2<sup>nd</sup> defendant. The said suit had decreed and declared as 2<sup>nd</sup> defendant died.

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 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.

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 ascertain 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 mandatory injunction in respect of suit schedule property. The ownership of the plaintiff and defendants in respect of their properties not disputed fact. The defendant No.1 and 3 are denied the existence of passage stated by the plaintiff in the application.

16. As per the partition deed dtd.28.10.1999 the defendant No.3 acquired the suit schedule property. The defendant No.3 had sold the suit schedule property in favour

of plaintiff through registered sale deed dtd.22.01.2009. The said documents are not disputed by both the parties to the suit. The plaintiff stated that the defendant No.3 acquired the passage through registered partition deed. The defendant No.3 sold the suit schedule property including said passage in favour of plaintiff. The said fact has denied by the defendant No.3.

17. As per the plaint averements the alleged passage not available to access to plaintiff and alleged that the defendants are blocked the said passage. Hence, the question of restraining the defendants to use the alleged path way does not arise at all. The plaintiff has sought for the relief of mandatory injunction in respect of suit schedule property and seeking issuance of direction to the defendants to remove the obstruction and construction made in ABCD area in the rough sketch. Hence, the interim application filed by the plaintiff is not maintainable. As per the sketch which is furnished by the plaintiff it is prima-facie show that the alternative way available to access to plaintiff to reach the suit schedule property. The sale deed relied by the plaintiff does not reflect regarding the alleged passage. In this stage cannot come to the conclusion that the alleged passage is existence to reach the suit schedule property of plaintiff. **Hence, with these observations this court answer the point No.1 in the Negative.**

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

19. 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.*

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

21. **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 u/o 39 Rule-1 and 2 r/w  
sec.151 of CPC., filed by the plaintiff 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 18<sup>th</sup> day of April-2023).

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

**Order pronounced in open court**

**(Vide Separate Order sheet)**

**ORDER**

**I.A.No.I u/o 39 Rule-1 and 2 r/w  
sec.151 of CPC., filed by the plaintiff is  
hereby dismissed.**

**No order as to cost.**

To comply Sec.89 of CPC., by  
23.06.2023.

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