

**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 20<sup>th</sup> day of July-2020

**O.S. No.283/2019**

**PLAINTIFF** : Sri. Mollechallaiah.

-V/s-

**DEFENDANT** : Sri.Shivaprasad.

**I.A.No.1 and 2**

**APPLICANT** : Sri.Mollechallaiah,  
S/o Kempori Chikkaidaiah,  
Aged about 60 years,  
R/at:Appagere Village,  
Kasaba Hobli,  
Channapatna Taluk,  
Ramanagara Distirict.

**(Represented By Sri.D.K., Advocate)**

-V/s-

**OPPONENT /  
DEFENDNAT:**

Sri.Shivaprasad,  
S/o Madaiah,  
Aged about 48 years,  
  
R/at: Appagere village,  
Kasaba Hobli,  
Channapatna Taluk,

Ramanagara District.

(Represented by Sri.B.G., Advocate)

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

IA. No.1 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 are any body acting on his behalf from interfering with plaintiff peaceful possession in respect of suit schedule property till disposal of the suit.

2. IA. No.2 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 are any body acting on his behalf from in any way putting up construction in any portion of the suit schedule property till disposal of the suit.

3. The plaintiff sworn to an affidavits in support of the applications wherein he has stated that, the plaintiff is absolute owner is in possession over the suit schedule property. The suit schedule property is originally survey number is 109/1A, totally measuring 0.28 guntas belongs to Yajaman Siddaiah and

Puttaswamaiah. They are jointly sold an extent of east to west 56 feet and north to south 55 feet out of the total extent in favour of plaintiff through registered sale deed dated.18.02.1992. Subsequently the said property included to Rampura Gramapanchayath. From the date of purchase the plaintiff is in possession and enjoyment over the suit schedule property. The defendant do not have any manner of right, interest, title or possession over the suit schedule property, but the defendant is trying to illegally encroach upon a portion of the suit schedule property in order to construct. The plaintiff lodged the complaint against defendant before Channapatna Rural police station. The police have issued acknowledgement on 15.11.2019. The defendant interfere with plaintiff peaceful possession and enjoyment over the suit schedule property. If I.A. No.1 and 2 are rejected the plaintiff will be put to irreparable loss and injury which cannot be compensated. **With these averments the plaintiff has sought for allowing the IA. No.1 and 2.**

4. The defendant has appeared through his counsel and filed a memo stating that the written statement may be treated as objection to IA.No.1 and 2. Hence, this court allow the memo. The defendant contended in his written statement that, denied the all the allegations made by the plaintiff in his plaint. The defendant further contended that, the suit schedule property originally belongs to K.Venkataiah, the same was purchased on 11.02.1980. The defendant is in possession and enjoyment of the property to

the extent of east to west 36 feet and north to south 70 feet. The said Venkataiah sold the property in favour of Smt.Shanthamma through registered sale deed dated.04.12.2015. The said Shanthamma gifted the property in favour the defendant on 09.11.2017. As per gift deed the defendant is in possession in the said property.

5. The defendant further contended that, after the obtained the Khatha the defendant was obtained license on 22.02.2019 for the purpose of constructed a commercial building and residential house. The defendant completed the construction work and opening ceremony also performed. From the date of the commencement of construction to till today plaintiff was not questioned any thing, when the construction work of staircase is commenced the plaintiff was interfere to the construction work and trying to put up a live wire iron fence, defendant was resisted the illegal acts of the plaintiff. The plaintiff has not disclosed about the defendant is what extent encroached the his property. As per license the defendant was constructed a building within the boundary. Between the plaintiff and defendant property there is a 6 feet space left by the defendant in respect of construct a staircase. **The defendant prayed that dismiss the suit of 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.1 and 2 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 originally belongs to Yajaman Siddaiah and Puttaswamaiah, they are jointly sold the suit schedule property in favour of plaintiff

through registered sale deed dated.18.02.1992. From the date of sale deed the plaintiff is in possession and enjoyment over the suit schedule property by getting Katha to in his name. The defendant stranger to the suit schedule property, but he has interfere with plaintiff possession and enjoyment over the suit schedule property. The plaintiff lodged the complaint against the defendant, but the police have not taken any steps against the defendant. 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 suit schedule property is originally belongs to one K.Venkataiah, the same was purchased on 11.02.1980. The defendant acquired the property to the extent of east to west 36 feet and north to south 70 feet by way of gift deed dated.09.11.2017. The defendant obtained the license from concerned authority for the purpose of construct the commercial building and residential house. The construction work was fully completed. At the time of construction the plaintiff has interfere with defendant. The suit of the plaintiff is not maintainable under the law. Hence, IA.No.1 and 2 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 world **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 worlds, the court must be satisfied that there is a banafide 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 world '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 defendant trying to encroach the portion of 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 the xerox copy registered sale deed dated 18.02.1992** it reveals that Yajaman Siddaiah and his brother Puttaswamaiah are executed the sale deed in favour of plaintiff in respect of Sy. No.109/1A, Form No.9 and 11A are issued by the P.D.O. of Rampura Gramapanchayath in respect of

Khanesumari No.151/122, 3 tax paid receipts dated 02.11.2018 and 01.02.2019, acknowledgement issued by the police on 15.11.2019 and 3 photos.

**13. The documents produced by the defendant consist of** 7 photos along with 7 xerox copies of photos, xerox copy of registered gift deed dated 09.11.2017 it reveals that Shanthamma executed the gift deed in favour of the defendant in respect of Khanesumari No.612/316, xerox copy of sale deed dated.04.12.2015 it reveals that K.Venkataiah executed the sale deed in favour of Shanthamma in respect of property in Khanesumari No.612/316, xerox copy of another sale deed dated 11.02.1980 it reveals that Basavaiah S/o Siddaiah executed the sale deed in favour of K.Venkataiah in respect property in Sy.No.109, the xerox copies of Form No.9, the xerox copies of 3 demand register extract, xerox copies of 2 certificates issued by the P.D.O. of Rampura Gramapanchayath on 19.07.2019 and 15.07.2019, xerox copies of 3 tax paid receipts, xerox copy of building construction license dated 22.02.2019, and building plan.

14. 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.

15. 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 involve 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.

16. 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.

17. In order to assert the prima-facie case this court has carefully perused the materials on record, the plaintiff filed this suit

against the defendant for the relief of only permanent injunction not for declaration of title etc.,. The scope of this suit is limited. In this suit court can look into possession and interference over the suit schedule property. In this stage the court looked into prima-facie case.

18. As per the documents produced by the plaintiff the katha of the suit schedule property standing in the name of defendant. As per the plaint averments, the plaintiff was purchased the suit schedule property from Yajman Siddaiah and Puttaswamaiah, it is not denied by the defendant. The defendant stated that in his written statement he has not having knowledge about whether the plaintiff was purchased the suit schedule property or not?.

19. The counsel for the defendant argued that, the defendant already completed the construction work. In support of his argument the counsel for the defendant produced some of the photos. The said photos reveal that the defendant was already completed the construction work. Hence the question of interference or the question of restraining the defendant put up further construction does not arise at all. In these grounds the relief prayed in I.A. No.1 and 2 are infructuous or unfruitful. If I.A.No.1 and 2 are allowed and restrain the defendant not to put up further construction it is not useful to the plaintiff.

20. In this stage impossible to decide whether the defendant encroach the northern side of suit schedule property or not?, it is required to full pledge trial. The document produced by the defendant i.e., building license issued by the Rampura Gramapanchayath it reveals that the defendant before the construction of building, he has obtained license from the Gramapanchayath. Hence, this court conclude that the plaintiff has not made out prima-facie case. **Hence with these observations this court answer the point No.1 in the Negative.**

**21. Point No.2 and 3 :-** These two points are taken together for discussion 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 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.

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

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

**ORDER**

I.A. No.1 and 2 filed by the plaintiff  
Under Order-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 20<sup>th</sup> day of July-2020).

**Sd/-**

Prl. Civil Judge & JMFC,  
Channapatna.