

KARN220037362021



**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 21st day of April-2023

O.S. NO.197/2021

PLAINTIFFS : Smt.Padma & Others,
-V/s-

DEFENDANT : Sri.Byraiah,

I.A.No.II

**APPLICANTS/
PLAINTIFFS:**

1. Smt.Padma,
W/o Late Puttalingaiah,
Aged about 56 years,
2. Smt.Hema,
W/o Ramachandra,
D/o Puttalingaiah,
Aged about 41 years,
3. Sri.Swamy H.P.
S/o Late Puttalingaiah,
Aged about 39 years,

All are R/at Haruru Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.H.S.H., Advocate)

-V/s-

**OPPONENT/
DEFENDANT:**

Sri.Byraiah,
S/o Late Boodigowda,
Aged about 80 years,

R/at No.165, 8th Main,
J.Block, Koramangala,
Bengaluru.

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

IA No.III

**APPLICANT/
DEFENDANT:**

Sri.Byraiah,
S/o Late Boodigowda,
Aged about 80 years,

R/at No.165, 8th Main,
J.Block, Koramangala,
Bengaluru.

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

V/s

**OPPONANTS/
PLAINTIFFS:**

1. Smt.Padma,
W/o Late Puttalingaiah,
Aged about 56 years,
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D/o Puttalingaiah,
Aged about 41 years,
3. Sri.Swamy H.P.
S/o Late Puttalingaiah,
Aged about 39 years,

All are R/at Haruru Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.H.S.H., Advocate)

COMMON ORDERS ON I.A No.II AND III FILED U/O XXXIX
RULE 1 AND 2 R/w Sec.151 OF CPC BY THE PLAINTIFFS
AND DEFENDANT

The learned counsel for the plaintiffs has filed I.A. No.II u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendant, his agents, servants or anybody acting under him from interfere with possession and enjoyment of the plaintiffs over the suit schedule property pending disposal of the suit.

2. The learned counsel for the defendant has filed I.A. No.III u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the plaintiffs, their agents, servants or anybody acting under them from interfere with possession and enjoyment of the defendant over the suit schedule property pending disposal of the suit.

3. The plaintiff filed sworn to an affidavit in support of I.A. No.II and stated that, the plaintiffs have filed this suit for the relief of declaration and permanent injunction in respect of suit schedule property. The plaintiffs are the legal heirs of one Puttalingaiah and they have inherited the suit schedule property through Puttalingaiah. After the death of Puttalingaiah the plaintiffs are in possession and enjoyment over the suit schedule property. The plaintiffs are paid tax tot he concerned authority. The defendant is the retired

Tahasildar of Revenue Department. The defendant colluded with revenue officials got Katha into his name by illegal. The plaintiffs are in possession and enjoyment over the suit schedule property. The defendant is interfere with possession of the plaintiffs over the suit schedule property. If this application is not allowed the plaintiffs will be put to irreparable loss and injury which cannot be compensated. **Hence prayed that grant on temporary injunction against the defendant by allowing the I.A. No.II.**

4. The defendant has appear before this court through his counsel and filed a memo seeking written statement may be treated as objection to I.A No.II, the same was allowed. The defendant is denied the averements of the plaint. The defendant taken contention that, the defendant was working in government service and now retired. His brother Puttalingaiah carrying agricultural operation in the village. Whatever the properties purchased by family it was in the name of Puttalingaiah only. Since brothers of defendant resided separately and cultivated the property independently but Katha not changed. They are partition the properties. The said Puttalingaiah purchased the 10 guntas of land on behalf of the family of Boodegowda. The written Parikath took place on 01.10.1998. As per the partition deed the suit schedule property fell to the share of defendant. As per the Parikath the Katha of the suit schedule property transferred into the name of defendant. The plaintiffs are not in

possession and enjoyment in the suit schedule property. The family arrangement in Puttalingaiah family held within 20.12.2004. The defendant has produced the document to show his possession over the suit schedule property. The plaintiffs are filed false suit against the defendant. **Hence prayed that dismiss the I.A No.II filed by the plaintiffs with cost.**

5. The defendant has filed sworn affidavit in support of I.A No.III and stated that, the defendant is working in the state government. He was purchased the 10 guntas of land in the name of Puttalingaiah. Thereafter, the division held between his brothers on 01.10.1998. As per the partition the suit schedule property fell to the share of defendant. The Katha also transferred into the name of defendant. The plaintiffs are interfere with possession of the defendant over the suit schedule property. The defendant produced the documents to show his possession over the suit schedule property. **Hence filed this application.**

6. The plaintiffs are filed the objection to I.A No.III and contended that, the plaintiffs are in possession and enjoyment over the suit schedule property. The 36 guntas of land is ancestral property and remaining 10 guntas of land self acquired of property of husband of the plaintiff No.1. The defendant forged the documents and filed the present application. The defendant not in possession and enjoyment

over the suit schedule property in any point of time. **Hence reject the application filed by the defendant with cost.**

7. Now the following points arise for consideration of this court:-

POINTS

1. Whether the plaintiffs have made out prima-facie in their favour?
2. Whether the defendant has made out prima-facie in his favour?
3. Whether the plaintiffs have made out balance of convenience in their favour?
4. Whether the defendant has made out balance of convenience in his favour?
5. Whether this I.A. No.II is rejected, the plaintiffs will be put to irreparable loss and injury which can not be compensated?
6. Whether this I.A. No.III is rejected, the defendant will be put to irreparable loss and injury which can not be compensated?
7. What order?

8. Heard the arguments from counsel for the plaintiffs and the defendants

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

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : In the Affirmative

Point No.4 : In the Negative

Point No.5 : In the Affirmative

Point No.6 : In the Negative

Point No.7 : As per the final order

for the following:-

R E A S O N S

10. **POINT NO.1 and 2:-** These two point are interrelated, hence they were taken together for discussion to avoid repetition.

11. The learned counsel for the plaintiffs vehemently argued before the court that, the husband of the plaintiff No.1 had purchased the 10 guntas of land in the suit schedule property and remaining 36 guntas of land is the ancestral property. As per the partition the said 36 guntas of land fallen to share of husband of the plaintiff No.1. As per the partition and sale deed entire extent of suit schedule property fallen to husband of the plaintiff No.1. Accordingly Katha also transferred into the name of husband of the plaintiff No.1. The defendant is the influenced person, he has interfere with possession of the plaintiffs over the suit schedule property. **Hence, the defendant as to be temporarily restrained till the disposal of the suit.**

12. Per contra, the learned counsel for the defendant argued before that, the defendant working as government

servant, now he is retired. He had purchased the 10 guntas of land from the suit schedule property through registered sale deed. The remaining extent of suit schedule property fallen to share of defendant as per the partition. The defendant is in possession and enjoyment over the entire extent of suit schedule property. The plaintiffs are interfere with possession of the defendant after the death of Puttalingaiah. **Hence the application filed by the plaintiffs may be dismissed.**

13. 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 plaintiffs 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 bona-fide dispute raised by the plaintiffs, 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 plaintiffs being entitled to the relief claimed by the plaintiffs. 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 plaintiffs. It must be noted that this court have already stated about the contention raised by the plaintiffs in the preceding paragraph of this order itself. In the view of this court, when the plaintiffs alleges that the

defendant is interfere with their possession over the suit schedule property when the defendant denied the contention of the plaintiffs, 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 plaintiffs and defendant.

14. In light of the arguments canvased by the learned counsel for the plaintiffs and defendant this court as carefully perused the documents produced by the parties to the suit. **The list of documents of the plaintiffs consist** of encumbrance certificate, xerox copy of IHC, xerox copy of mutation register extract, hand written RTC's, xerox copy of sale deed dtd.04.05.1981, xerox copy of sale deed dtd.03.04.1989 and endorsement issued by the Tahasildar.

15. The defendant has produced the documents consist of xerox copy of panchayath Parikath, xerox copy of Patta and Receipt book, xerox copies of tax paid receipts, hand written and computerized RTC's, xerox copy of certificate issued by Village Accountant, xerox copy of Tippani and xerox copy of endorsement issued by the Tahasildar on 05.08.2020.

16. 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.

17. 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.

18. 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.

19. In order to ascertain the prima-facie case this court as carefully perused the materials on record, the plaintiffs filed this suit against the defendant for the relief of declaration and permanent injunction in respect of suit schedule property. As per the averements of the plaint the 10 guntas of land in the suit schedule property had purchased by husband of the plaintiff No.1 through registered sale deed dtd.04.04.1981. In this regard the plaintiffs have produced xerox copy of sale deed. The said document prima-facie show that the husband of the plaintiff No.1 had purchased 10 guntas of land in the suit schedule property. The said document not disputed by the defendant. The defendant only contention that the said property purchased in the name of husband of the plaintiff No.1 from joint family fund. The said fact not disclosed in the said sale deed. As per the said sale deed prima-facie show that the plaintiffs are in possession and enjoyment over the said 10 guntas of land.

20. The contention of the plaintiffs in respect of remaining extent of suit schedule property that, the said property fallen to share of husband of the plaintiff No.1 through partition. The defendant denied the said contention and stated that the said extent of the property fallen to share of the defendant through partition. In this regard the

defendant has filed xerox copy of partition deed. The said document not registered before competent authority. The said document wrote on the plane paper. The said document is not considered under the law.

21. Recently the Katha of the suit schedule property stands in the name of defendant. In the previous hand written RTC's reveals that, the Katha of the entire extent of suit schedule property stood in the name of husband of the plaintiff No.1. As per IHC No.10/1983-84 the Katha of the entire extent of suit schedule property transferred into the name of husband of the plaintiff No.1. The documents are produced by the plaintiffs are clearly prima-facie shows that, the plaintiffs are in possession and enjoyment over the suit schedule property. The defendant failed to justify his defense. It is clear that the plaintiffs have prima-facie case in their favour. **Hence, with these observations this court answer the point No.1 in the Affirmative and Point No.2 in the Negative.**

22. Point No.3 to 6:- These four points are taken together for discretion since they require common discussion.

23. 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.

24. 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 plaintiffs and if the injunction is not granted the plaintiffs will be put to inconvenience and irreparable loss and injury. If the application filed by the defendant is rejected. The defendant will not put to

inconvenience and irreparable loss and injury. As per order 39 rule 1(a) the defendant may seeking temporary injunction when the property in dispute in a suit in danger of being wasted, damaged or alienated or wrongly sold in execution of decree. In the present circumstances the defendant file this application is not maintainable under the above provision. **With these observations this court answer the Point No.3 and 5 in the Affirmative, the Point No.4 and 6 in the Negative.**

25. **Point No.7:-** For the above discussion on point No.1 to 6 this court proceeds to pass the following :-

O R D E R

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

Temporarily restraining the defendant, his agents, servants or anybody acting under him from interfere with possession of the plaintiffs over the suit schedule property till disposal of the suit.

I.A.No.III u/o 39 Rule-1 and 2 r/w sec.151 of CPC., filed by the defendant 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 21st day of April-2023).

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

Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

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

Temporarily restraining the
defendant, his agents, servants or
anybody acting under him from interfere
with possession of the plaintiffs over the
suit schedule property till disposal of the
suit.

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

No order as to cost.

To comply Sec.89 of CPC. By
05.07.2023.

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