

KARN320000902024



Presented on : 10-01-2024
Registered on : 10-01-2024

**IN THE COURT OF THE ADDL. CIVIL JUDGE &
JMFC., KANAKAPURA**

Present: Smt. Radha S, B.A., LL.M.,
Addl. Civil Judge & JMFC.,
Kanakapura.

Dated this the 31st day of August 2024

O.S./27/2024

Plaintiff/s :- Sri. Nagesh
S/o late Kala Lingegowda
Aged about 55 years,
R/at: Aralalusandra Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. V.M., Advocate)

.Vs.

Defendant/s :- 1. Sri. Udaya
S/o Prakash
Aged about 33 years,

2. Sri. Srinivasa
S/o Venkategowda
Aged about 39 years,

3. Sri. Avinash
S/o late Siddaramegowda
Aged about 35 years,
4. Sri. Devaraju
S/o Maregowda
Aged about 33 years,
5. Sri. Kantharaju
S/o Thimmanna
Aged about 45 years,

All are R/at:
Aralalusandra Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. H.D.L., Advocate)

PARTIES TO IA No.I

Applicant / plaintiff: Sri. Nagesh

Vs.

Opponents / defendants : Sri. Udaya and Others

(Smt. Radha.S)
Addl. Civil Judge & JMFC.,
Kanakapura.

**ORDERS ON I.A.NO.I FILED UNDER ORDER XXXIX
RULE 1 AND 2 OF CPC BY THE PLAINTIFF**

This is an application filed by the plaintiff praying the court to grant temporary injunction against the defendants, to restrain them, their agents, servants or anybody acting on their behalf from interfering into the plaintiff's peaceful possession and enjoyment over the suit schedule property in any manner during the pendency of the suit.

2. The defendants have appeared in the present case through their counsel. Despite sufficient opportunities being given to the defendants they failed to file objections to the present application.

3. Heard the arguments canvassed by the learned Sri. V.M Advocate for plaintiff at length in great detail on IA No.I. Scrutinized the records of the case.

4. On scrutiny of records of the case and having heard arguments, the following points would arise for consideration of this court:

- 1 Whether the plaintiff has made out prima-facie case?
- 2 Whether balance of convenience lies in favour of plaintiff?

3 Whether irreparable loss and injury would be caused to plaintiff if temporary injunction is not granted?

4 What order?

5. My answer to the above points as under;

Points No.1 to 3 : In the Affirmative

Point No.4 : As per the final order for following:

:: REASONS ::

6. REASONING ON POINT NO.1 : Admittedly the plaintiff has filed this suit against defendants for the relief of permanent injunction in respect of suit schedule property. It is the case of the plaintiff that, he is the absolute owner in possession of the R.C.C house building, Asbestos sheet house and Vacant Site bearing E Khata property No. 1152900202401920137 and property Khaneshumari No.4/4 measuring East-West-19.8112 meters and North-South-13.7161 meters. The description of the above property is clearly described in the application and herein after referred as suit schedule property. The plaintiff acquired the suit schedule property through succession and in possession and enjoyment of the same. Except the plaintiff, no one are having any kind of right and title on the suit schedule property.

7. Further it is the case of the plaintiff that, the defendants are noway concerned to the suit schedule property, they have no any manner of right, title or possession on the same. Even though the defendants are trying to interfere into the peaceful possession and enjoyment of the plaintiff on the suit schedule property by claiming larger extent of land. How ever the plaintiff tried to resist the illegal acts of the defendants but the same was also went in vain. Hence without having any alternate go to stop the illegal acts of the defendants, the plaintiff has come up with this suit along with present application with above relief. On these grounds the plaintiff prayed to allow the present application.

8. Per contra, the defendants have failed to file objections to the present application. Hence the contention taken by the plaintiff are remained unchallenged as on today.

9. In support of plaintiff's contention has produced Form No.11B pertaining to suit schedule property, Tax paid receipts, Form No.3, Notarized copy of partition deed, RTCs for the year 2023-2024, certified copy of encumbrance certificate, Photographs and CD. I have meticulously gone through the entire documents produced by the plaintiff, the documents produced by the

plaintiff are juxtaposes the possession of the plaintiff on the suit schedule property at this stage to grant temporary injunction. More over the defendants have not opposed to the present application by filing any objections. Hence the contentions taken by the plaintiff are remained unchallenged. The defendants have no right to interfere into the peaceful possession and enjoyment of the plaintiff on the suit schedule property. Hence these documents prima facie discloses the case of the plaintiff at this stage to grant temporary injunction against the defendants as prayed for. More over the genuineness of the documents can not be discussed at this stage. As per the documents produced by the plaintiff, he proved prima-facie case in his favour. As such under these findings this court answers point No. 1 in the affirmative.

10. Point Nos.2 and 3: Since these points are interconnected to each other as such they are taken together for common discussion to avoid the repetition of facts.

11. In the present case trial has to be conducted to prove the case of plaintiff but at this stage it seems to the court that, till the disposal of the suit the defendants must restrain from their acts as prayed in I.A, If the

defendants are not restrained, the very purpose of filing of the suit shall be defeated, as such no harm or injustice will be caused to the defendants if this application is allowed. Validity and genuineness of the documents can be seen at the time of deciding the case on merits. Since the plaintiff has approached the court with some relief as such I am of the considered opinion that, defendants are to be restrained from interfering into the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit. Hence this court is of the considered opinion that, plaintiff has made out prima facie case and balance of convenience is also lies in favour of plaintiff. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiff rather than the defendants. Hence this court answers Point Nos. 2 and 3 in the Affirmative.

12. Point No.4 : In view of discussion made on point No.1 to 3 above, I proceed to pass the following;

ORDER

I.A.No.I filed Under Order XXXIX
Rule 1 and 2 of CPC by the plaintiff is
hereby allowed.

The defendants, their agents, servants or anybody acting on their behalf are hereby restrained by way of temporary injunction from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property in any manner till the disposal of present suit.

Cost of this I.A will follow the final result of this case.

*(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on **31st day of August 2024**)*

(Smt. Radha.S)
Addl. Civil Judge & JMFC.,
Kanakapura.