



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
J.M.F.C.,
AT MAGADI.**

:-Present:-

Sri. Shrinivasa K.R. B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 21st day of June, 2024

OS No.3/2021

PLAINTIFFS : Smt. Kempamma,
C/o Ramakrishnappa & Ors.

:V/s:

DEFENDANTS : Sri. Lingegowda
S/o Dasegowda & Another.

I.A. No.

**APPLICANT/
PLAINTIFF No.2:**

Sri. Jayaram,
S/o Ramakrishnappa,
Aged about 48 years,
R/at Mudalapalya,
Udukunte Dhakle,
Soluru Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. S.V., Advocate)

:Vs:



OPPONENTS/

DEFENDANTS :

1. Sri. Lingegowda,
S/o Late Dasegowda,
Aged about 42 years,

2. Sri. Shivashankaraiah,
S/o Late Dasegowda,
Aged about 38 years,

Both are R/at Mudalapalya,
Udukunte Dhakle,
Soluru Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. K.H.P., Advocate)

**ORDER ON I.A.NO.I FILED U/O XXXIX RULE 1 AND 2 OF
C.P.C.**

The plaintiff No.2 has filed application U/O XXXIX rule 1 & 2 C.P.C., with a prayer to restrain the defendants from not to put up any construction over the suit schedule property. The application filed in respect of land bearing Sy.No.70/2, measuring 0.26 guntas situated at Udukunte Village.

2. The application is supported with an affidavit sworn by the plaintiffs stating that, the suit schedule property is the ancestral property of plaintiffs and they are the lawful owners



and in possession over the suit schedule property. The plaintiffs and defendants are joint family members and the joint family member of plaintiff by name Late Dasegowda and his LR's filed suit for their respective share over the suit schedule property in O.S.No.196/2005 and the same was decreed and the plaintiffs of O.S.No.196/2005 filed F.D.P.No.6/2008 and the same was decreed by way of compromise petition dated 09.12.2017. As per compromise decree, the plaintiffs are in possession over the suit schedule property. The defendants without having any right interfered with the plaintiffs possession and enjoyment over the suit schedule property. Hence, prays to allow the application.

3. The defendants filed objections and contended that, the application filed by the plaintiffs is not maintainable either on law or on facts. The plaintiffs have filed the present suit for the relief of permanent injunction. The plaintiffs have no right, interest and possession over the suit schedule property. The



defendants are in peaceful possession and enjoyment over the suit schedule property. The plaintiff with an intention to grab the property have filed present suit on the basis of bogus documents. Hence, prays to dismiss the application. On 09.12.2017 the plaintiff and defendants have filed compromise petition and as per compromise petition the plaintiff and defendants have prepared sketch and in the said sketch the suit schedule property was fallen to the share of defendants. Since, the date of compromise the defendants are in peaceful possession and enjoyment over the said property and as per compromise petition an extent of 0.18 guntas fallen to the share of plaintiffs but the plaintiffs mistakely stating that an extent of 0.26 guntas fallen to their share. Hence, prays to reject the application

4. Heard argument by plaintiffs and defendants counsel.



5. Upon hearing arguments and materials placed on record, following points that arise for my consideration:

1. Whether plaintiffs have made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiffs ?
3. Whether irreparable injury and hardship would cause to the plaintiffs, if temporary injunction is not granted ?
4. What order?

6. My answer to the above points are as under.

Point No. 1 to 3 : In the ***Negative***.

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

REASONS

7. **POINT No.1**: Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105***



(Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff’s interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party’s case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts



and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The plaintiff has filed suit for the relief of permanent injunction stating she is in peaceful possession over the suit schedule property as per compromise decree and since, compromise decree she is in



possession over the suit schedule property. The defendants without having right causing interference.

9. The contention of the plaintiff counsel is that, the plaintiff is the absolute owner and in possession over the suit schedule property. The defendants without having any right, title and interest and possession over the suit schedule property causing interference and trying to put up the construction over the suit schedule property. Hence, prays to allow the application.

10. On the other hand the counsel for defendants contended that, the application filed by the plaintiff is not maintainable as the plaintiff is not absolute owner and possessor of entire suit schedule property. The plaintiff is the owner and possessor of 16 guntas of property in Sy.No.70/2. Hence, the application filed by the plaintiff is not maintainable hence, prays to reject the application.



11. The plaintiff in support of her contention has produced the certified copy of order sheet of FDP No.6/2008, Certified copy of amended petition of FDP No.6/2008, certified copy of compromise petition dated 23.02.2019 and certified copy of compromise petition dated 09.12.2017 and survey reports. I have carefully gone through the compromise petition dated 09.12.2017, in the said compromise petition it is stated that, the plaintiff is entitled an extent of 26 guntas in Sy.No.70/2. But after filing said compromise petition again the plaintiff and defendants have filed another compromise petition dated 23.02.2019 and in the said compromise petition the property bearing Sy.No.70\2 measuring an extent of 16 guntas fallen to the share of plaintiff. On perusal of last compromise petition it clearly shows that, the plaintiff is entitled to share only with respect to 16 guntas in Sy.No.17/2 not an extent of 26 guntas as per old compromise petition dated 09.12.2017 and as per compromise petition the



commissioner conducted survey and filed report. On perusal of records the plaintiff has not established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Defendants have challenged the prima-facie material placed by plaintiff. Under the circumstances, I am of the opinion that plaintiff has not made out prima-facie case in her favour. Accordingly, I answer point No.1 “in the ***Negative***”.

12. **POINT No.2 and 3:-** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favour and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in her favour.



13. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. If the temporary injunction is granted definitely the defendants will be put into more hardship than plaintiff. Therefore has discussed supra plaintiff has not established prima-facie, balance of convenience. Accordingly, I answer points 2 and 3 in the ***Negative***.

14. ***POINT No. 4:*** In view of my findings to points No.1 to 3, I am of the considered opinion that, plaintiff has not made out prima-facie in his favor. Besides this the plaintiff has not established that balance of convenience lies in her favour and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the plaintiff is certainly not entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following :



ORDER

I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC, is hereby rejected.

No order as to cost.

(Directly dictated to Stenographer directly on the Computer, typed by her, then corrected and pronounced by me in the open Court on this the **22nd day of June, 2024.**)

**Prl. Civil Judge & J.M.F.C.,
Magadi.**