

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC., GUBBI**

**Present: Smt. Radha S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated this the 26th day of June 2019

O.S.No.79/2018

Plaintiff : Basavaraju S/o Chikkanna,
75 years, R/o Heruru Village,
Kasaba Hobli, Gubbi Taluk.

(Sri. N.S., Advocate)

V/s

Defendants: 1. Srikantappa S/o Late
Channabasappa, 55 years,
R/o Heruru Village,
Kasaba Hobli, Gubbi Taluk.
Now R/lo Vinayaka Pandal
Road, Vinayaka Nagar,
Tumakuru. And others.

(Sri. B.S., Advocate)

Applicant : Basavaraju

V/s

Opponents : Srikantappa and others.

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

ORDERS ON I.A. No.6

1. This I.A No. 6 has filed by the plaintiff Under Section 151 of C.P.C. praying the court to direct the concerned police to provide protection to the plaintiff in implement of Temporary Injunction order passed in the present case on I.A No. I dated 25-04-2018.

2. The defendant No. 1 has filed his objection to the present application and prayed to dismiss the present application.

3. Heard the arguments of both parties and perused material available on record.

4. The following points would arise for my consideration;

1. Whether the plaintiff is made out good grounds to allow the present application?

2. What order ?

5. My answer to the above points are as under;

Point No.1 - In Affirmative.

Point No.2- As per final order for the following;

::R E A S O N S::

6. Point No.1 : Admittedly the plaintiff has filed the present suit against the defendants for permanent injunction in respect of suit schedule property, wherein he has filed the present application with above mentioned prayer. In the affidavit annexed with this application the plaintiff has contended that, in spite of temporary injunction order, the defendants by colluding with each other are interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property by disobeying the order passed by this court on I.A No. I. On these grounds the plaintiff prayed to allow the present application.

7. Per contra the 1st defendant has filed objection to the present application by denying the contents

of affidavit which has been filed by the plaintiff in support of his application. Further the 1st defendant has contended in his objection that, the plaintiff has filed an execution petition under E.P. No. 6/2016 for possession of the suit schedule properties and the same was dismissed, the plaintiff has not taken possession of the suit schedule properties as such he is not in possession of the suit schedule properties. The defendants have not interfered into the possession as alleged by the plaintiff in his affidavit, on these grounds the 1st defendant prayed to dismiss the present application.

8. I have perused the pleadings of both the parties.

9. By considering the facts and circumstances and documents available on record, this court has passed the temporary injunction order on I.A No. I against the defendants. It is the bounded duty of

the defendants to obey the said order till the disposal of this suit, but as per plaintiff's contention the defendants have again interfered into the suit schedule properties.

10. At this stage it is pertinent to note that, in a decision of the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1271 in the case of Papanna Versus Nagachai wherein it has been held that;

“when the court has prima facie considered the matter and has granted a temporary injunction in favour of the plaintiff after hearing the defendant, the court has to enforce the same and the contention of the defendant that he is in possession, cannot be accepted at this stage... If the court had no power to implement its own orders, then there is no purpose in the courts passing orders in matters coming before them. The remedy under order 39 rule 2 (a) of CPC is not exhaustive and court can pass appropriate orders to see that its orders are enforced. In the necessary cases, even the police can be directed to enforce the order of the court”.

And in another judgment of Hon'ble High Court of Karnataka reported in 2001 (1) Kar.L.J 23 in the case of M.S Mahadecaprasad and others versus Mahadevaiah and others wherein it has been held that;

“it has been discussed in the said judgment with reference of Papanna versus Nagachari & others case that,

““when the court has prima facie considered the matter and has granted a temporary injunction in favour of the plaintiff after hearing the defendant, the court has to enforce the same and the contention of the defendant that he is in possession, cannot be accepted at this stage... If the court had no power to implement its own orders, then there is no purpose in the courts passing orders in matters coming before them. The remedy under order 39 rule 2 (a) of CPC is not exhaustive and court can pass appropriate orders to see that its orders are enforced. In the necessary cases, even the police can be directed to enforce the order of the court”

The facts and circumstances of these judgments are applicable to the case on hand.

11. Further the counsel for the plaintiff has argued that, defendants have not preferred any miscellaneous appeal against the order passed on I.A No. I filed Under Order 39 Rule 1 & 2 of CPC by this court, hence the order passed by this court under order 39 rule 1 & 2 is in enforce. Under these circumstances and in view of above relied judgments I am of the considered opinion that, the plaintiff has made out good grounds to allow the present application. Hence I answer Point No.1 in Affirmative.

12. Point No.2 : In view of discussion made on point No.1 as above, I proceed to pass the following;

O R D E R

I.A.No.6 filed Under Section 151 of CPC by plaintiff is hereby allowed.

The Sub-Inspector of Police, Chelur Police Station is hereby directed to provide protection as prayed in the present application to the plaintiff in respect of suit property.

No order as to cost.

(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 26th day of June 2019.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.