

IN THE COURT OF THE ADDL CIVIL JUDGE AND JMFC AT

GUBBI.

**Present : SRI PREMKUMAR., M.A., LL.B.,
Addl. Civil Judge and J.M.F.C,
Gubbi.**

Dated this 30th day of March-2022

O.S.No.198/2021

APPLICANT/PLAINTIFF : Basavalingaiah

(By Sri.S.K. Advocate)

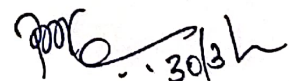
V/s

OPPONENTS/DEFENDANTS : Annapoorna

(By Sri.K.M.S. Advocate)

ORDERS ON IA No.1

IA No.1 is filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 of CPC for seeking the relief of Temporary Injunction infavour of the Plaintiff and thereby restraining the Defendant from interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property till the disposal of the suit.

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2. The Plaintiff sworn to an affidavit in support of the application wherein he has stated that the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that the plaintiff is the owner and in possession of the suit property through registered sale deed dated:07.12.1990. It is further stated that the Defendant without having any manner of right, title and interest and also possession over the suit schedule property is interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property. It is stated that the Plaintiff has got prima-facie case, the balance of convenience lies in favour of the Plaintiff and if Temporary Injunction is not granted infavour of the Plaintiff, then Plaintiff will be put to irreparable loss and hardship. With these averments the Plaintiff has sought for allowing IA No.1.

3. The Defendant filed the memo for considering the written statement as objection to IA No.1, wherein she has denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. The Defendant in her written statement has stated that husband of defendant has purchased the suit property in the name of the plaintiff from the income of joint

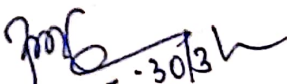
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family. She has further stated that suit schedule property is the joint family property of plaintiff and defendant. It is stated that the Plaintiff has not made out prima-facie case, the balance of convenience does not lies infavour of the Plaintiff and if the Temporary Injunction is granted infavour of the Plaintiff, the Defendant will be put to irreparable loss and hardship. With these contentions the Defendant has sought for rejection of IA No.1.

4. Heard the Learned Counsel for the parties and perused the materials on record

5. Now the points that arise for the consideration of this Court are as follows:

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 hardship, if IA is not allowed?***
4. ***What order?***

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6. The findings of this Court on the above said Points are as under:

POINT No.1: In the Affirmative

POINT No.2: In the Affirmative

POINT No.3: In the Affirmative

POINT No.4: *As per final order for the following:*

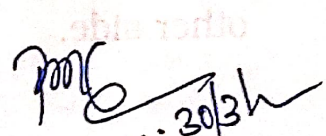
REASONS

7. **POINT NO.1:** The Learned Counsel for the Plaintiff vehemently argued before the Court that the plaintiff is the owner and in possession of the suit schedule property through registered sale deed dated:09.12.1990. It is further argued that the Defendant without having any manner of right, title and interest and also possession over the suit schedule property is interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property. It is further argued by the Learned Counsel for the Plaintiff that the Plaintiff has made out prima-facie case, hence the equitable relief of Temporary Injunction has to be granted infavour of the Plaintiff till the disposal of the suit. With these contentions the learned counsel for the Plaintiff sought for allowing I.A No.1

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8. Per contra the Learned Counsel for the Defendant argued before the Court that the husband of defendant was purchased the suit property in the name of plaintiff from the joint family income, hence the suit property is the joint family property of plaintiff and defendant. It is stated that the plaintiff has no absolute right in the suit property. It is further stated that the plaintiff has filed the suit with creating some documents, hence the Plaintiff is not entitle for the equitable relief of Temporary Injunction. With these contentions the Learned Counsel for the Defendant sought for rejection of IA No.1.

9. At this stage, without going in to 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 principles 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.


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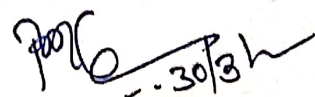
10. The primary purpose for granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, 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.

11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

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12. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

13. In order to ascertain the prima-facie case, this Court has carefully perused the list of documents produced by the Plaintiff. He has produced the registered sale deed dated:07.12.1990, RTC extract of suit property. On perusal of these documents it is clear that the suit property is standing in the name of the plaintiff. On perusal of these documents it is disclosed that the plaintiff is in possession of suit schedule property. On the other hand, the defendant has failed to produce any documents in her favour.

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14. On perusal of all the documents, it is noticed that, the plaintiff is in possession of the suit property and this clearly establishes the right of the plaintiff over the suit property. These documents prima-facie make it clear that the plaintiff is in possession of the suit property as on date of the suit. On the other hand, the defendant has come-up with a new plea before the court by stating that, the suit property was purchased by her husband in the name of plaintiff and she is in joint possession and enjoyment over the suit property. All the above pleas taken-up by the defendant is new to the case put-forth by the plaintiff. But at this stage the defendant has not produced any documents to show that the suit property is joint family property and she is in joint possession and enjoyment over the suit property.

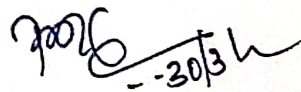
15. It is the contention of the plaintiff that, he is in possession of the suit property. If this aspect of the matter is considered, the revenue records and sale deed depict plaintiff as the person in possession of suit property. At this juncture, the only reliable documents is the revenue documents through which, the plaintiff has acquired his rights in the suit property. The contention

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taken by the defendant need further-proof and cannot be appreciated at this stage.

16. The Hon'ble Supreme Court of India in a ratio reported in **(2007) 13 SCC 565 in between Gurunath Manohar Pavaskar and others V/s Nagesh Siddappa Navalgund and others** has held that para-12 A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and / or continuity thereof both forward and backward can also be raised under Sec.110 of the evidence Act.

17. By applying the ratios laid down in the above said case to the facts on hand, this Court is of the opinion that the plaintiff interest is involved in the case on hand. Hence, considering all these aspects, the need of the hour is to safe-guard the possession of plaintiff over the suit-property, failing which the plaintiff would suffer irreparable-injury. Thus, the plaintiff has made out a prima-facie case for grant of Temporary injunction and the balance of convenience also leans in his favour. There are no grounds to dismiss the I.A.No.I filed by the plaintiff. Accordingly, **Points No.1 to 3 are answered in the Affirmative.**


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18. POINT No.4: For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

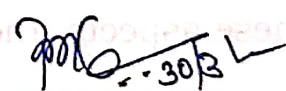
ORDER

**I.A.No. I filed U/Order 39 Rule 1 and 2 R/w
Sec.151 of CPC by the plaintiff is hereby allowed.**

**The defendant is hereby restrained from
interfering with the plaintiff's peaceful possession
of the suit property by way of Temporary Injunction
till disposal of the suit.**

No order as to cost.

(Directly Dictated to the Stenographer on laptop, typed by Stenographer and script revised and corrected and then pronounced by me in the open Court on this the 30th day of March 2022.)


(PREMKUMAR)

**Addl. Civil Judge & JMFC.,
Gubbi,**