

**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 31st day of March -2022

O.S.No.314/2021

APPLICANT/PLAINTIFF : Kempamma

(By Sri.C.K. Advocate)

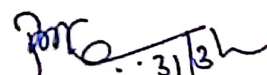
V/s

OPPONENTS/DEFENDANTS : Gangadharaiah and others

(By Sri.N.S. Advocate)

ORDERS ON IA No.2

IA No.2 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 No.3 to 8 from dispossessing the plaintiff from the suit property till the disposal of the suit.

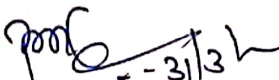
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2. The Plaintiff sworn to an affidavit in support of the application wherein she has stated that the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that the plaintiff was cultivated the suit property since 30 years as unauthorized cultivation and improved the suit property. She has further stated that the plaintiff was raised the 19 coconut trees, 19 teak trees, 1 Neem tree, 10 tamarind trees, 10 Honge trees, 3 Subabam trees, 2 Jackfruit trees, 2 drumstick trees, 1 Jali tree, 40 Mango trees and 8 Neem trees in the suit property and she is in possession of suit property. She has further stated that she has filed the application before the defendant No.2 for regularize the unauthorized cultivation. She has further stated that defendant No.3 to 5 are adjacent land owners towards the Northern side of suit property, they are taking undue advantage of the not regularization of the suit property colluding with 2nd defendant they are trying to encroach the suit property and also trying to evict the plaintiff from the suit property. It is stated that the Plaintiff has got prima-facie

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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.2.

3. The Defendant No.3 to 8 filed the memo for adopt the written statement as objections to IA No.2, wherein they have denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. The Defendants in their written statement have stated that the suit property is not existence and no land available in Sy.No.27. They have further stated that the land bearing Sy.No.27 measuring 8 acres 23 guntas are granted to the 7 persons and they are in possession of above said property. It is stated that no one has got any manner of right, title in the said property. It is stated that the Plaintiff has not made out prima-facie case, the balance of convenience does not lies in favour of the Plaintiff and if the Temporary Injunction is granted in


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favour of the Plaintiff, the Defendants will be put to irreparable loss and hardship. With these contentions the Defendants have sought for rejection of IA No.2.

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 Negative

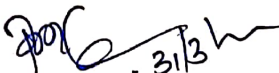
POINT No.2: In the Negative

POINT No.3: In the Negative

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

REASONS

7. **POINT NO.1 to 3:** The Learned Counsel for the Plaintiff vehemently argued before the Court that the plaintiff is in possession of the suit schedule property as unauthorized cultivation. It is further argued that the Defendant No.3 to 8 without having any manner of right, title and interest and also possession over the suit schedule property are trying to dispossess the plaintiff from the suit 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


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the learned counsel for the Plaintiff sought for allowing I.A No.2

8. Per contra the Learned Counsel for the Defendants argued before the Court that the land bearing Sy.No.27 measuring 8 acres 23 guntas are already granted to the 7 various persons and they are in possession of above said property. They have further argued that the suit property is not in existence and no land available in the land bearing Sy.No.27, hence the Plaintiff is not entitle for the equitable relief of Temporary Injunction. With these contentions the Learned Counsel for the Defendants sought for rejection of IA No.2.

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,

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the court cannot go into the prima facie title and only to consider whether the Plaintiffs have made out a prima facie case for granting interim relief.

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

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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.

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.

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13. In order to ascertain the prima-facie case, this Court has carefully perused the list of documents produced by the Plaintiff. She has produced RTC extract of land bearing Sy.No.27/P1, statement of villagers, copy of Form No.57, copy of receipt dated:22.11.2018, photos and CD, copy of complaint given by the plaintiff to the Police authority, copy of endorsement given by the CPI, Gubbi, medical certificate. On perusal of these documents it is clear that the suit property measuring 8 acre 23 guntas is standing in the Sarkari Gomala. The plaintiff not produced any documents to show that she is in possession of suit property except photos and Form No.57. On perusal of these documents it is disclosed that there is no document to considering the possession of plaintiff over the suit property. On the other hand, the defendants No.3 to 8 have produced the copy of sketch prepared by the surveyor, Gubbi, copy of Form No.51, copy of RTC extract, copy of partition deed dated:10.01.2000, copy of endorsement given by the PSI, Gubbi. On perusal of these

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documents it is disclosed that defendant No.3 is in possession of land measuring 1 acre 8 guntas in the land bearing Sy.No.27, Shivanna S/o Ugraiah is in possession of 10 guntas, Shivanna S/o Siddaramaiah is in possession of 10 guntas, Gangadharaiah S/o Thimmaiah is in possession of 2 acre 2 guntas, Annayya S/o Siddaiah is in possession of 15 guntas, Narayanappa S/o Papaiah is in possession of 2 acres and Komaiah S/o Bajjaiah is in possession of 1 gunta in the land bearing Sy.No.27. It is clearly shows that the plaintiff not in possession of suit property. Further considering the Form No.57, it is shows that, the plaintiff has filed the application for regularizing the unauthorized cultivation, but she has not produced any document to show that she is in unauthorized possession over the suit property.

14. On perusal of all the documents, it is noticed that, there is no prima-facie document to consider the possession of plaintiff over the suit property. On the other hand, the defendants have contended that suit property is not in

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existence, hence the plaintiff not in possession of suit property. At this stage, the plaintiff not proved the possession of suit property. Thus, the plaintiff has not made out a prima-facie case for grant of Temporary injunction and the balance of convenience also leans in her favour. There are no grounds to allow the I.A.No.2 filed by the plaintiff. Accordingly, **Points No.1 to 3 are answered in the Negative.**

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

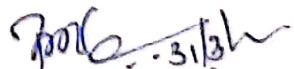
ORDER

I.A.No.2 filed U/Order 39 Rule 1 and 2 R/w

Sec.151 of CPC by the plaintiff is hereby dismissed.

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 31st day of March 2022.)


(PREMKUMAR)

Addl. Civil Judge & JMFC.,
Gubbi.