

KATK510101122023



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KUNIGAL.

-.PRESENT:-

Smt. Sujatha A.B. B.A.L, LL.B.
Prl Civil Judge & JMFC., Kunigal.

Dated this the 19th Day of April 2025

O.S. No.723/2023

BETWEEN:

Plaintiff-

B.Vinay Kumar
(By Sri.AB., Advocate)

AND:

Defendants-

Smt. Ningamma and others
(D-3 by Sri. CG., advt.,
D-4 by Sri. MAC., advt.,
D-1 is exparte and D-2 is abated)

I.	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC
II.	Relief sought for	To grant temporary injunction order against defendants
III.	The date on which the	10.11.2023

	application is filed	
IV.	Number of the application	I and II
V.	The date on which the objections are filed by	14.08.2024 11.01.2024
VI.	The date on which the order were passed on the said application	19.04.2025

RANKS OF THE PARTIES IN IA No.I and II

Applicant/Plaintiff-

B.Vinay Kumar

Vs.

Opponents/Defendants-

Smt. Ningamma and others

COMMON ORDERS ON I.A.No.I and II

I.A.No.I is filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of CPC, seeking an order of Temporary Injunction to restraining the defendants or their representatives from alienating or creating charge or encumbrance over the suit schedule property in any manner in favour of any third parties, pending till disposal of the suit.

I.A.No.II is filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of CPC, seeking an order of Temporary Injunction to restraining the defendants or their

representatives from interfering with the plaintiff possession over the suit schedule property in any manner in favour of any third parties, pending till disposal of the suit.

2. It is the case of the plaintiff that, the defendants are the absolute owners of the suit schedule property and said property is intended for the purpose of establishing a gravel crusher under the ownership of Balaji Aggregates company and suit schedule property has been acquired both as self acquired and ancestral property by the defendants. According to plaintiff with the aim of sustaining their family obligation and discharging incurred debts they have duly executed a rental agreement for the purpose of establishment of gravel crusher and Pursuant to said arrangement, an annual sum of Rs.3,00,000/- has been contractually committed to the Government of India as ground rent for the utilization of the designated land and the aforementioned land rent agreement encompasses sum of Rs. 3,00,000/- for the schedule land and it extends over the duration of Ten years. The plaintiff stated rent agreement stipulates that the rent for the

schedule property will increase by 10% for every 5 years and in that regard individual deeds have been executed for each year with a corresponding endorsement of a ground rent amounting to Rs. 3,00,000/- for each annual term.

3. Plaintiff contended that he has made a payment of Rs.50,000/- through cheque No.933759 to late Shivanna and sum of Rs.2,50,000/- at the time of entering into an agreement for the year 2023 on 25.07.2023 the sum of Rs.2,40,000/- was paid through RTGS and Rs.60,000/- through the cash to the defendants. The defendants have willingly granted their consent for the installation of gravel crusher machine on the schedule property, along side seeking necessary power authorization from pertinent government and local entities for the operation of the aforementioned gravel crusher. It is stated that defendants have raised no objection to these outlined pursuits and subsequently, the plaintiff has duly obtained the license for the establishment of a stone crusher which is valid until 31.03.2041.

4. Plaintiff stated that after receiving the land he purchased materials worth Rs.1,28,62,000/- including items like Dump Hopper, crusher, Hydro cyclone, conveyor and other materials for the business operations at the schedule property. Again he alleged the defendants asserted that subsequent to entering into a rental agreement with him, no compensation had been extended to any other party in the past. Additionally the defendants committed personally addressing and resolving any potential land disputes at their own cost and accountability. Further plaintiff contended that in compliance with all relevant regulations, he has obtained the requisite certificates from BESCO and diligently fulfilled the obligations and accordingly he facilitates the conduct of business activities in that regard. Again plaintiff alleged that after a few days of executing the said agreement, defendants initiated disruptions for him by forcibly encroached upon the plaintiff property and initiated demands for varying a sums, despite having received and duly deposited all the considerations as per the agreement. The defendants

persistently sought additional funds and escalated matters by personally visiting the property outlined in the plaintiff schedule and issuing threats contributing to a consistent pattern of harassment against the plaintiff.

5. According to plaintiff defendants have illegally entered the properties and preventing him from conducting the business and demanding further financial payments outside the terms of the agreement. The plaintiff stated that the actions of defendants have led to a significant disruption in his ability to peacefully carry out their business activities and failed to comply with the terms of the agreement. The plaintiff alleged that the defendants issued life threats to him by cautioning him that if he had continuing to operate on the schedule property in this manner would result in dire consequences, including the loss of the plaintiff life, these threats were explicitly conveyed by them and then he lodged complaint to the jurisdictional police. Hence plaintiff constrained to file the suit and prayed to allow the applications.

6. In pursuance the suit summons, the defendant No.1 has failed to appear before the court and she has placed exparte. On the other hand in view of death of defendant No.2 and for non taking steps against him, suit came to be abated against the defendant No.2. On the other hand, defendant No.3 and 4 have appeared through their counsel by filling written statement and same is adopted as objections to the above applications. In the written statement the defendant No.3 had denied the contentions of the plaintiff and stated that suit of the plaintiff is not maintainable and contended that suit schedule property bearing Sy.No. 307 totally measuring 4 acres 6 guntas originally belongs to Chowdaiah of Beesegowdanadoddi Village, Kunigal Taluk. He had 4 sons by name Chowdaiah, shivanna who is the husband of defendant No.1 and father of other defendants, B.C.Ramaiah and Motaiah. The 4 sons of Chowdaiah divided the said property and as per partition 1 acre 6 guntas fallen to the share of 1st son of Chowdaiah, 1 acre fallen to the share of 2nd son of Shivanna, 1 acre fallen to the share of 3rd son

B.C.Ramaiah and 1 acre fallen to the share of 4th son Motaiah. The defendants are having right, title and possession only to 1 acre property of Sy.No. 307. The plaintiff has given wrong boundaries in the suit schedule including the properties of defendant's brothers by name Chowdaiah, Motaiah and B.C.Ramaiah, the plaintiff is given the boundaries to the total extent 4 acres 06 guntas of land in the suit schedule.

7. It is stated that suit schedule property bearing No.82/P27 totally measuring 1 acre 24 guntas situated at P.H.Halli, Kunigal Taluk, originally belongs to Chowdaiah of P.Honnamachanahalli and said Chowdaiah had 4 sons have got divided the said property and as per partition 13.4 guntas fallen to the share of 1st son of Chowdaiah, 13.4 guntas fallen to the share of 2nd son of Shivanna, 13.4 guntas fallen to the share of 3rd son of B.C. Ramaiah and 13.4 guntas fallen to the share of 4th son of Motaiah. The defendants are having right, title and Possession only to the extent of 13.4 guntas of property in Sy.No.82/P27. The said property was not adjacent

to the Sy.No.307 land and Sy.No.82/P27 existed away from the Sy.No.307 property and both properties having different boundaries to the suit schedule properties.

8. Defendants contended that they are agriculturists by profession and they are carrying out their agriculture operation at their land bearing Sy.No. 82/P27 measuring 13.04 guntas and Sy.No.307 measuring 1 acre both are situated at P.H.Halli and said properties are their ancestral properties. They used to grow Raagi, Huruli, Mango trees and other allied crops in the above said properties and except them no others have nay manner of right, title, interest or possession over the same. The defendants are not entering to the alleged rent agreement with the plaintiff and they have not received any amount from the plaintiff till today in respect created rental agreement. Again defendant stated that the plaintiff possess his land towards western side of the defendants properties bearing Sy.No.306 measuring 2 acre 20 guntas and plaintiff has opened the crusher for one hundred

meter from the defendants properties. At the time of the opening the crusher, the plaintiff was requested to obtain the signatures for the purpose of consent of neighbor landlords. But defendant objected to start the crusher because the dust was covered the growing crops and damages the crops. Then plaintiff had given assurance to the defendants to give compensation of lost of the crops only and the defendants are not given property to the plaintiff for the rent purpose but plaintiff has taken law into his hand by illegally interfere with the defendants properties through dumping the dust, stone and some machine in their property. At that time they and other villagers are block the road and protest the illegal act of the plaintiff. The defendants and also villagers of the Beesegowdanadoddi were given complaint to the Huliurdurga Police. The police was registered case against the villagers of the Beesegowdanadoddi and said police acting on behalf of the plaintiff and plaintiff created the documents styled as rent agreement with forged signatures. On the strength of the same the plaintiff are oppressing the

defendants. So defendants further alleged that said created rent agreement cannot be marked as an exhibit and same ought to have been registered by paying stamp duty and same cannot be looked into even for collateral purposes under section 49 of Indian registration Act 1908 and same deserves to be legally eschewed under provision of section 33 and 34 of karnataka stamp Act. According to defendants though the area where the defendants properties are located in the green belt the plaintiff illegally installed the quarry operation machinery in his land.

9. On the other hand defendant No.4 has filed written statement and same is adopted as objection and in the same he has stated that he has not received any amount from the plaintiff till today. The plaintiff opened the crusher 200 meters from the defendant No.4 properties and at the time of opening the crusher, the plaintiff was requested to obtain the signature for the purpose of consent neighboring land lord to start the crusher business and as a result because of the dust

it damages the crops and plaintiff had given assurance to him to give compensation for that. But asserted that defendants are not given any property to the plaintiff for the rent purpose. But plaintiff has illegally interfere the defendant properties through dumping the dust, stone and some machine into his property. Hence the defendant and other villagers are have give complaint to the Huliurdurga police. But they were acting on behalf of the plaintiff. The plaintiff was created the document styled as rent agreement with forged signature. The defendant No.4 contended that the suit schedule properties are his ancestral properties and there is no partition or legal division between their family. But the defendant No.4 family members are refuse to effect the same and also colluded with the plaintiff. Among these grounds he prayed to reject the applications.

10. Heard arguments from both sides. The learned counsel for the defendant has filed written arguments.

11. The points that would arise for my consideration are:-

(1) Whether the plaintiff has made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiff?

(3) Whether the plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?

(4) Whether the plaintiff has made out grounds to allow this application?

(5) What order?

12. Heard arguments.

13. My findings on the above Points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : Partly in the Affirmative

***Point No.5 : As per final orders
For the following:***

REASONS

14. **Points No.1:-** Admittedly, the plaintiff has filed this suit for the relief of permanent injunction. It is the case of the plaintiff that, he is the tenant and defendants are the landlords of the suit property, since he entered into rental agreement with them to run their business but the defendants started to interfere by demanding more rent. Hence, this suit. On the other hand, defendants set up a defence that they have not executed any rental agreement and said agreement is a created document and they also denied the receiving of money from the plaintiff. Hence they prayed to dismiss the same.

15. In order to support his case, the plaintiff has produced photocopy of rent agreement dated 23.09.2019 which was entered between plaintiff and defendants. Further the defendants have not denied that the suit schedule property is not belongs to them and though in this case defendant No.3 and 4 denied the execution said rent agreement, but

defendant No.1 inspite of service of summons remained absent and defendant No.2 also during his life has not filed any objection. Further on perusal of alleged rent agreement which was executed on 23.09.2019 for the period of 10 years and defendants are agreed to receive Rs.3,00,000/- every year. Further the plaintiff has produced the copy of the transaction details and in the same the plaintiff has transferred an amount of Rs. 2,40,000/- in favour of defendant No.1 on 27.05.2021.

16. Further the plaintiff has also produced the copy of license for stone crusher, VCB test, panel test certificate and copies of invoices and also letters issued by BESCO and above documents shows that plaintiff has obtained necessary permission for their stone crusher business. Further the plaintiff has also produced photographs by claiming that they are running stone crusher business. In this case business carrying by the plaintiff though denied but at Para No.25 of written statement goes to show that because of business of the plaintiff, crops raised by them in their properties became

destroyed. So this indicates that the plaintiff is in possession of suit property and carrying their business over the same. So as a result whether the alleged rent agreement is created by plaintiff as contended by the defendants is a matter of trial. Moreover there is no explanation on behalf of defendants that why the defendant No.1 has received on Rs.2,40,000/-. Further more, if the defendants are not satisfied with business of the plaintiff then they could have terminated the tenency of the plaintiff in accordance with law.

17. It is further noted that plaintiff has also produced photocopy of acknowledgment dated 25.09.2023 and same goes to show that the plaintiff has lodged the complaint against the defendants and others by requesting the police officials to take necessary action against the persons who are obstructing their business inspite of rent agreement as well as receiving of amount as per agreement. On the other hand defendants contended that plaintiff has filed false suit based on wrong boundaries and extent, but to support their contention there is no document on their behalf either. Again

the plaintiff has sought prayer to restrain the defendants from alienating or creating charge or encumbrance over the suit property but the said relief covers under I.A.No.2 itself when defendants are restraining from interfering with plaintiff then any act of the defendants with regard alienation or creation of any charge amounts to interference with the plaintiff. So on this regard plaintiff has not made out grounds to allow I.A.No.1 as sought for. So, on considering the above facts this court is of the opinion that the plaintiff has made out triable case before the court and hence he has made out prima-facie case in his favour. Accordingly, I answered Point No.1 in the **Affirmative.**

18. **Point No.2:-** Since in this case plaintiff being the tenant is having right to protect his possession. No doubt, the defendants have contended that they have not executed rent agreement and anyhow receiving of certain amount by defendant No.1 and carrying the business by the plaintiff is not denied and though defendants claimed that the plaintiff claiming excess extent other than the property belongs to him

and said contention has to be established by them at the time of trial. Further the defendants at one breath denied the possession and at another breath claiming that plaintiff is in excess land and act of the plaintiff was objected, hence to answer all this points are triable issues.

19. On the other hand the defendants taken contention that rent agreement is insufficiently stamped and same is not admissible, but to consider prima facie case said document can be looked into and with regard to said objection same will be considered at the time of rendering the same to lead evidence. So, under such circumstances the balance of convenience certainly lies in favour of the plaintiff in this case. Hence, I answered Point No.2 in the **Affirmative**.

20. **Point No.3:-** Though plaintiff has produced photocopy of complaint filed by him and in the same the plaintiff has requested the concerned police to take action against the defendants from interfering with his business. Further the defendants also have not placed any documents to show that they have taken suitable action against the

plaintiff either eviction for their illegal act. Again it is noted that, If at all the defendants wants to recover the possession of the suit property for their own use or they want the same because of attitude of the plaintiff their remedy to recover the possession is to be in accordance with law. But no such attempts can be seen on the part of defendants. So, in the absence of due process to recover the possession from the plaintiff, his possession is to be protected otherwise he will be dispossessed without due course of law. So, under these circumstances, if the present application is not allowed the plaintiff will be put to irreparable loss and injury rather than the defendant.

21. The counsel for defendant has relied upon decision of Civil appeal No.1509/2019(Arising out of SLP(C) No.29417 of 2016) dated 06.02.2019. I have gone through the above decision with due respect wherein, it is stated that *when plaintiff has failed to prove that he was in actual possession of property on the date of suit, he is not entitled for decree of permanent injunction*’. But on coming to the present case on

hand here defendant themselves have admitted the business of plaintiff and at this point of time plaintiff has also demonstrated his possession over the same and hence facts and circumstance of above said case differs compared to the present case on hand and hence same will not holds hands of the defendants.

22. On the other hand again defendant has also relied upon decision reported in (2023) 299 DLT 258 : (2023) 3 RCR (Civil) 298 : (2023) 6 scale 434: (2023) 7 SCC 1 between M/S N.N. GLOBAL MERCANTILE PRIVATE LIMITED Vs M/S.INDO UNIQUE FLAME LTD. AND OTHERS Wherein it is held that '*If the original of the instrument is produced and it is unstamped, the court, acting under section 11, is duty bound to act under section 33 of the stamp act- when it does so, needless to say, the other provisions, which, in the case of payment of the duty and penalty would culminate in the certificate under section 42(2) of the stamp Act, would also apply*'. So said decision clearly says about the exigible to stamp duty when it is insufficiently stamped. But on coming to the present

application said aspect wouldn't come into the picture and more importantly at one side it is the contention of defendant that plaintiff had illegally created sale agreement and same is ought to have been registered by paying stamp duty and on the other side he never really executed any document in favour of plaintiff as alleged by him. So under said circumstance no arbitration clause is mentioned under said agreement and again whether same requires to be impounding or not will be decided at the proper stage and hence facts and circumstances of above cases are entirely different to the facts and circumstance of present case in hand. Hence same cannot holds the hands of defendants.

23. In light of my above discussion, on careful perusal of pleadings and materials placed on record clarifies that plaintiff is in possession of suit property as on the date of filing of the suit and defendants have not taken proper measures at proper time to vacate him from suit property instead they remains as a silent spectator which never really hold his hands. So in the absence of necessary their

contentions cannot be accepted. On top of that whether rent agreement got renewed or not is also not revealed. So on considering when both the parties failed to complied to the terms and conditions of said agreement, under such circumstances court has conferred that same was carried out all these years through the consent of both the parties and hence when plaintiff establishes his possession it would be suffice to the court that he is the one who subjected to irreparable loss if present application is not allowed on the other hand there is no prejudice caused to defendant if the same is allowed. Hence, I answered Point No.3 in the **Affirmative.**

24. **Point No.4:-** So on considering the above facts and circumstances it appears to this court that it is necessary to allow the present application by imposing certain condition. Accordingly I answer Point no.4 partly in the **Affirmative.**

25. **Point NO.5:-** Since In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No I filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., R/W section 151 of C.P.C., is hereby Rejected.

The I.A.No II filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., R/W section 151 of C.P.C., is hereby allowed.

Accordingly, the defendants and their representatives are hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property for the period of 12 months from the date of this order without following due process of law.

Further, this order will not come in way of the defendants to evict the plaintiff from

the suit property by filing appropriate suit against him.

Further, this order will not come in the way of plaintiff to avoid the payment of rent.

If both the parties not co-operated to dispose of the suit within the 12 months, the temporary injunction order issued above automatically stands canceled.

No orders as to costs.

*(Dictated to the Stenographer, transcribed and typed by her, revised & corrected by me and then pronounced in the open Court on this the **19th day of April 2025**)*

**(Smt.Sujatha A.B.)
Prl. Civil Judge and JMFC,
Kunigal.**