

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 22nd day of March-2022

O.S.No.152/2021

APPLICANT/PLAINTIFF : Ramesh

(By Sri.B.K.L. Advocate)

V/s

OPPONENTS/DEFENDANTS : Virupakshaiah and another

(By Sri.D.M. 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 Defendants 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 father of the plaintiff was the owner and in possession of the suit properties through registered sale deed dated:19.05.2000 and 04.04.2001. As per partition dated:13.11.2019 the suit properties are fallen to the share of plaintiff. It is further stated that the Defendants without having any manner of right, title and interest and also possession over the suit schedule property are 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 No.1 and 2 filed the memo for considering the written statement as objection to IA No.1, wherein they have denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. The Defendants

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in their written statement have stated that the land bearing Sy.No.271 measuring 23 guntas is fallen to the share of defendant No.2 and remaining 23 guntas out of 1 acre 6 guntas is fallen to the share of Mallikarjuna. The said Mallikarjuna was sold his property to the father of the plaintiff and defendant No.2 is also sold the 10 guntas to the father of plaintiff. They have further stated that the plaintiff has filed this false suit for claiming the excess of land in defendants. 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:

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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?*

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 properties through registered partition deed dated:13.11.2019. It is further argued that the Defendants without having any manner of right, title and interest and also possession over the suit schedule property are

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interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule properties. 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

8. Per contra the Learned Counsel for the Defendants argued before the Court that one Mallikarjuna was sold the 23 guntas to the father of plaintiff and defendant No.2 also sold the 10 guntas to the father of the plaintiff. It is further argued that the plaintiff has claimed the excess of land in defendants, 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.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

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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.

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.

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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.

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 copy of sale deed dated:04.04.2001, copy of sale deed dated:19.05.2000, copy of registered partition deed dated:13.11.2019, tax paid receipt, patta book, RTC extract of

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suit properties. On perusal of these documents it is clear that the suit properties are 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 defendants have not produce any documents.

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 defendants have come-up with a new plea before the court by stating that, the plaintiff claimed the excess of land in defendants. All the above pleas taken-up by the defendants is new to the case put-forth by the plaintiff. But at this stage the defendants have not produced any documents to show that the plaintiff is trying to encroach the property of defendants. Moreover, perused the documents of plaintiff it is shows that the plaintiff has filed the suit only for purchased properties of his father under registered sale deed dated:04.04.2001 and 19.05.2000.

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

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of plaintiff over the suit-properties, 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.**

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

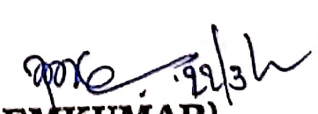
ORDER

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 defendants are 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 22nd day of March 2022.)

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(PREMKUMAR)

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