

IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT SIRA

O.S.NO.235/2015

Dated this the 22nd day of February 2016

PRESENT: Sri. Devaraju H.M.,
B.A., LL.B.,
Prl. Civil Judge & JMFC., Sira

PLAINTIFF: V.Manjunath
S/o. Veerabhadraiah,
aged about 34 years,
R/o. Hanumanthanagara,
Kallambella hobli, Sira taluk.
(By Sri. PDT., Advocate)

/Vs/

DEFENDANTS: 1.Suresh
S/o. Gangadharaiah,
major, R/o. Hanumanthanagara,
Kallambella hobli, Sira taluk.
2.Panchayath development Officer,
Seebi Agrahara,
Kallambella hobli, Sira taluk.

(D1- Sri. VSR.,
D2- Sri. RK., Advocates)

I.A.No.I

APPLICANT: V.Manjunath

-Vs-

OPPONENTS: Suresh & another

ORDERS

This is an application filed by the Applicant/plaintiff U/Or. XXXIX Rule 1 & 2 of CPC praying to grant an ad-interim order of temporary injunction restraining the defendants or anybody claiming under them from interfering in to the suit property, pending disposal of the suit.

2. In support of an application, the applicant/plaintiff has sworn to an affidavit that he filed a suit for the relief of permanent injunction in respect of suit property. The defendant is making attempt to interfere into the possession and enjoyment of the suit property. The defendant is not in possession and enjoyment of suit property. He is in possession and enjoyment of suit property. With these reasons prays to allow the application.

3. The defendants No.1 and 2 appeared through counsel. The 2nd defendant did not file written statement or objection to I.A.1. The 1st defendant filed a memo adopting written statement as objection to I.A.1. It is stated in the written

statement that the suit property granted in his favour under Ashraya Scheme. He is in lawful possession and enjoyment of suit property from the date of grant. The plaintiff playing fraud created sale deed in his name in respect of suit property. The alleged sale deed not acted upon. With these reasons prays to dismiss the application.

4. Heard the arguments of learned counsels for both sides.

5. Perused the pleadings and materials placed on record

6. The following points that would arise for my consideration:

1. Whether the Applicant/plaintiff has made out prima facie case?

2. Whether the balance of convenience lies in favour of applicant/plaintiff?

3. Whether the Applicant/plaintiff will be put to irreparable loss and injury, if temporary injunction is not granted in his favour ?

4. What order ?

7. My findings on the above points are as under;

Point No.1 : **In affirmative**

Point No.2 : **In affirmative**

Point No.3 : **In affirmative**

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

REASONS

8. Point No.1: The plaintiff filed this suit seeking for the relief of permanent injunction restraining the defendants from interfering into the suit property. As per the plaintiff's case, he purchased suit property from 1st defendant through registered sale deed dated 14-3-2011. It is the defence of defendant No.1 that he has not executed alleged sale deed. The said document is created by the plaintiff playing fraud on the 1st defendant. The said sale deed is not acted upon. The 1st defendant is in lawful possession and enjoyment of the suit property as absolute owner.

9. The plaintiff produced registered sale deed dated 14-3-2011 executed by 1st defendant in favour of plaintiff in respect of suit property. On perusal of said document, it clearly mentioned that the possession of suit property delivered in favour of plaintiff. The plaintiff also produced grant certificate dated 20-12-2003, issued by the Executive Officer, Taluk Panchayath, Sira, in favour of 1st defendant in respect of suit

property. The plaintiff produced certified copy of M.R.16/2009-10, certified copy of tax demanded register extract of suit property for the year 2009-10 standing in the name of 1st defendant and office copy of application given to the concerned Grama Panchayath to mutate the name of plaintiff in respect of suit property.

10. The 1st defendant has not produced any documents in support of his defence. It is the defence of 1st defendant that the sale deed claimed by the plaintiff is not acted upon and created by the plaintiff playing fraud on 1st defendant. In order to know whether said sale deed is created by the plaintiff, full pledged trial is necessary. While considering interim application, the court cannot hold mini trial. While disposing of interim application, the court should proceed with the prima facie material placed on record. In the case on hand sale deed dated 14-3-2011 produced by the plaintiff clearly establishes at this stage that the 1st defendant sold suit property in favour of plaintiff and also delivered possession of the same to the plaintiff. The plaintiff has made out prima

facie case at this stage that he is in possession and enjoyment of suit property as on the date of suit. There is nothing contrary available on record to disbelieve the document produced by the plaintiff. Taking into consideration of the facts and circumstances and also the reasons stated above, the plaintiff has made out prima facie case at this stage that he is in possession and enjoyment of suit property as on the date of suit. The plaintiff also made out prima facie case for trial to decide, who is in possession of suit property. Accordingly, this point is answered in '**affirmative**'.

11. Point No.2 & 3: - Since both the points are inter-linked, they are taken together for discussion.

It is the case of the plaintiff that the 1st defendant is making attempt to interfere into the possession and enjoyment of suit property. If he continues his attitude, he being in lawful possession of suit property, he cannot enjoy the same in peaceful manner. He will be put to great loss and hardship. The balance of convenience lies in favour of plaintiff to enjoy the suit property. It is held while considering

point No.1 that the plaintiff is in possession and enjoyment of suit property as on the date of suit. If the defendant interfere into the suit property, naturally plaintiff will be put to great loss and hardship. No hardship or injustice would be caused to the 1st defendant, if he is restrained from interfering into the suit property. Viewed from any angle, balance of convenience lies in favour of plaintiff to enjoy the suit property. Taking into consideration of the facts and circumstances and also reasons stated above, if an order of temporary injunction is granted, the defendant will not be put to any loss and hardship. Accordingly, points No.2 and 3 are answered in '**Affirmative**'.

12. Point No.4 : In view of my findings on Point No.1 to 3, I proceed to pass the following;

ORDER

**I.A.I filed by the Applicant/Plaintiff
U/Or. XXXIX Rule 1 & 2 of CPC is hereby
allowed.**

**An exparte ad-interim order of
temporary injunction granted on I.A.1 is
made absolute till disposal of the suit.**

Considering the relationship between the parties, they are directed to bear their own cost.

(Dictated to the stenographer, transcribed, computerized and printout taken by him, then corrected, signed and pronounced by me in the open Court on 22-2-2016)

**(Devaraju H.M.),
Prl.Civil Judge & JMFC.,
Sira.**