

KAUK030007302020



IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & J.M.F.C-II
AT: KARWAR

PRESENT: Sri. Shrinivas Patil
L.L.M,
Addl.Civil Judge & J.M.F.C-II of Karwar

O.S.No. 132/2020

Dated: 22nd Day of April 2022.

Plaintiff : Smt. Manorama Raghuvver Bandekar
(By Sri. G.P.T., Adv)

V/s

Defendant: Sri. Sudheer Raghuvver Bandekar & 7 others
(By Sri.V.A.T., Adv for Def. 1,2,3 & 6)
(By Sri. S.R.B., Adv for Def.4,5,7,8)

IA NO.I

Applicant: Smt. Manorama Raghuvver Bandekar
(By Sri. G.P.T., Adv)

V/s

Opponent: Sri. Sudheer Raghuvver Bandekar & 7 others

(By Sri.V.A.T., Adv for Def. 1,2,3 & 6)

(By Sri. S.R.B., Adv for Def.4,5,7,8)

**ORDER ON IA NO.I FILED BY PLAINTIFF UNDER ORDER XXXIX
RULE 1 AND 2 R/W SECTION 151 OF C.P.C.**

This instant application by the plaintiff is focused as against defendant No.5 under under Order XXXIX Rule 1 and 2 R/W Section 151 of CPC restraining him, his men, agents, servants or anybody acting on his behalf from constructing any structure in the suit schedule property Sl.No.1.

2. The application is squired with the affidavit. It is stated in the affidavit that defendant No.5 is constructing house in the suit schedule land Sl.No.1 without the consent of the plaintiff. The set construction is totally illegal. Defendant No.5 has not taken consent from CMC, Karwar. Defendant No.5 is totally constructing illegally and without the consent of any authorities. Construction if done, plaintiff will be put to great hardship and loss and hence, prayed to allow the application.

3. On the antipodal, defendant No.5 has defied to the said application by filing objections. Defendant No.5 has contended that application filed by the plaintiff is contrary to the law. Defendant No.5 is in possession and occupation of his part and share measuring 00-01-04 in Baad-2 Village Sy.No.1016 hissa 7 along with a residential house standing there and is renovated about 25-26 years back. Defendant No.5 has not constructed any new structure separately in suit land or in the property belonging to plaintiff. It is not necessary to take the consent of the plaintiff. There is a registered partition deed which is divided by metes and bounds, wherein the present plaintiff is also party to the said registered partition deed and hence prayed to dismiss the application.

4. Heard both counsel. Perused the entire materials and documents on record.

5. The understated points arise for my consideration;

1. Whether the plaintiff has prima facie case in her favour?

2. Whether the balance of convenience leans in favour of the plaintiff?
3. Whether the plaintiff will suffer irreparable loss and hardship, if TI is denied?
4. What order?

6. My answer to the aforementioned 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

7. **Point No.1 to 3**:- As these Points are interlinked and interconnected, entwined and interwoven and in order to avoid repetition of facts, they are taken up together for common discussion.

As could be seen from contentions urged in IA at this stage without going into the merits of the case and conducting mini trial, this court has to consider the aspect of prima facie case. Plaintiffs avow that Defendant No.5 without taking the

consent of plaintiff or CMC, Karwar is putting up construction in the Suit Schedule Sl.No.1 property. Admittedly, the suit of the plaintiff against the Defendants is for the relief of declaration. Defendants have produced registered partition Deed wherein this plaintiff is a party to it. The said partition deed is challenged in this case.

8. At this juncture, it is pertinent to note the object of granting Temporary Injunction. The object of the interlocutory injunction is to protect the plaintiff against the injury of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial.

9. Plaintiff at this stage in support of her case has produced photographs which can be clearly seen that there is some construction going on. Plaintiff at this stage, by challenging the alleged partition deed has shown that contentions raised by her require consideration in merit and are not liable to be rejected summarily. Thus, she has a prima facie case.

10. As per Order XXXIX Rule 1 of the CPC, when any property is dispute is in danger or when defendant otherwise cause injury to the plaintiff in relation to any property in dispute in a suit, or where as court is of the opinion that in the interest of just so requires, temporary injunction can be granted.

11. Defendants at this stage have produced RTC's bearing Sy.No.1016/1, 1016/4, 1016/7, 1016/8 which all stand in the name of defendants. But, there is no dispute with relation to relationship of the plaintiff with that of Defendant No.1 to 7. If at this stage, Temporary injunction is not granted, the very purpose of filling of suit by the plaintiff will become infructuous. The plaintiff in this case has established not only prim facie case but also irreparable loss that would be caused to her and balance of convenience lies in her favour. Be that as it may, the Hon'ble Supreme Court of India has ingeminated in many judgments that no mini trial should be conducted when deciding the grant of Temporary injunction. The purpose of interim injunction is to ensure the

protection of right to party on the basis of 3 factors namely prima facie case, balance of convenience and irreparable injury. As such, **I answer Point No.1, 2 and 3 in Affirmative.**

12. **Point No.4**:- For the reasons discussed above, I proceed to pass the following;

ORDER

IA No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/W section 151 CPC is hereby allowed.

Defendant No.5 is hereby restrained from putting up any construction in the suit schedule Sl.No.I property till the disposal of case.

No order as to costs.

[Written by me, typed by her, corrected, signed by me and then pronounced the judgment in the open court on this **22nd Day April-2022**].

Sri.Shrinivas Patil
Addl. Civil Judge & JMFC-II.,
Karwar.

ORDER

IA No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/W section 151 CPC is hereby allowed.

Defendant No.5 is hereby restrained from putting up any construction in the suit schedule Sl.No.I property till the disposal of case.

No order as to costs.

Addl. Civil Judge & JMFC-II.,
Karwar.