



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

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

O.S.No.117/2022

Dated: 20th Day of March 2023.

Plaintiff : Smt. Anandibai W/o. Gopal Biliye.
(By Sri.V.M.K.,Adv)

V/s

Defendant: Sri. Sanjay S/o. Gopal Bilye & 1 other
(By Sri.K.S.N., Adv Def No.1 & 2)

IA No.I

Applicant: Smt. Anandibai W/o. Gopal Biliye.
(By Sri.V.M.K.,Adv)

V/s

Opponent: Sri. Sanjay S/o. Gopal Bilye & 1 other
(By Sri.K.S.N., Adv Def No.1 & 2)

ORDER ON I.A.I FILED U/O. XXXIX RULE 1 & 2
R/w.151 OF CODE OF CIVIL PROCEDURE, 1908

The Applicant/Plaintiff has filed this application U/o. XXXIX Rule 1 and 2 of CPC seeking for the relief of ad-interim order of temporary injunction restraining the defendant No.1 and 2, their men, agents, family members from constructing the house in the suit schedule property till disposal of the suit.

2. In support of I.A. the Plaintiff has filed accompanying affidavit contending that the plaintiff has filed the suit for the relief of mandatory injunction against the defendants. Applicant is the GPA holder of the plaintiff. Plaintiff is the mother of defendant No. 1 and the defendant No.1 is the husband of defendant No. 2. The plaintiff is the absolute owner of Sy. No. 46/3A and Sy. No. 46/3B. Both the SY. No.s are abutting to each other. The suit schedule properties devolved upon the plaintiff in terms of Will and mutation entry is effected at MR NO.

4247. Defendants have no manner of right in the properties. Plaintiff is temporarily residing in Thane. Taking undue advantage of the same, defendants have started to construct the building in the suit schedule property. Defendants were directed by the plaintiffs to stop the construction. Defendants did not bother to it. The illegal construction was reported to CMC, Karwar. It yielded no fruits. If, the defendant No.1 and 2 proceed to construct the house, the very purpose of filing of the suit will fail. Hence, prays to allow the application.

3. On the contrary, the defendant No. 1 and 2 have filed objections to the I.A. denying all the averments mentioned in the affidavit as false. The GPA holder of the plaintiff has instituted the suit without informing the same to the plaintiff. The father of the plaintiff and defendant have bequeathed his property in terms of Will. The plaintiff has given permission to defendants to construct the building under Pradhan Mantri Awaza Yojana. Hence,

the defendant may be allowed to construct the building. Now, 90% of the construction is already carried out. Hence, there is no reason to stop the construction. On all these grounds, the defendant No. 1 and 2 prays for the dismissal of application.

4. Heard both sides. Perused materials available on record.

5. On perusal, following points arise for my consideration:

1. Whether the Plaintiff has made out prima-facie case?

2. Whether balance of convenience lies in favour of Plaintiff?

3. Whether Plaintiff would be put to irreparable loss and hardship if the injunction is not granted?

4. What order?

6. My answers to the aforementioned 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 the final order
for the following;

REASONS

7. **Point No. 1 to 3:** Since these points are inter-linked, they are taken together for discussion to avoid repetition of facts. This suit is filed by the plaintiff against the defendants for the relief of mandatory injunction. The plaintiff has also filed an application U/o. XXXIX Rule 1 and 2 of CPC seeking the relief of temporary injunction restraining the defendant No.1 and 2 from constructing the house in the suit schedule property till disposal of the suit.

8. The plaintiff in order to prove his claim has produced notarized copy of General Power of Attorney, Adhar card of plaintiff, RTC bearing Sy.No.46/3A, RTC

pertaining to Sy. No. 46/3B, MR NO. 4247, photographs and CD. The defendant No.1 and 2 have produced MR No. 3595, Form No. B, RTC bearing Sy. No. 46/3B, RTC bearing SY. No. 46/3A, photographs.

9. At this stage without going into merits of the case and holding mini trial this court has to consider the aspect of prima-facie case. At this stage this court makes it clear that this court is looking towards prima-facie case and not prima-facie title. It is well settled principal of law that, at the time of the disposing the temporary injunction application the court cannot go into prima facie title and only to consider whether the plaintiff has made out prima-facie case for granting of interim relief.

10. The primary purpose of granting the interim relief is preservation of the things 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 the workable formula to extent called for by the demands in the situation keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interest i.e. injuries and prejudice, likely to be caused to the Plaintiffs if the relief is refused, injuries and prejudice likely to be caused to the Defendants if the relief is granted. Under laying the delicate by granting temporary injunction in mentioning to maintain and preserve the status-quo at time of the institution of the proceedings and to prevent any change in it until the final determination of the suit. It is a nature of protective relief granted in favour of the party to prevent future possible injury.

11. The power to grant T.I. is at the discretion of the court. This discretion, however should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be likely granted as it adversely affects the other side.

12. The first rule is that the applicant must make out prima-facie case in support of the right claimed by him. The court must be satisfied that there is bonafide dispute raised by the applicant, that there is strong case for trial which needs investigation and decision on merits and on the facts before the court. There is probability of applicant being entitled to the relief claimed by him. The existence of prima-facie case of right and infraction of such right is condition precedent for grant of temporary injunction.

13. In order to ascertain the prima-facie case, this court has carefully perused the materials available on record. When perused the RTC which is produced by the plaintiff, RTC bearing Sy.No.46/3A and 46/3B stands in the name of plaintiff. On perusal of photographs produced by both the parties, it appears at this stage that construction is being carried out. The contention of defendants is that defendant is constructing the house as

the same is sanctioned in Pradhan Mantri Awas Yojana. Therefore, the question of granting TI does not arise. Per contra, plaintiff counsel submits that Defendant No.1 and 2 are constructing the house without any legal right. If, construction is carried out completely, it unnecessarily leads to multiplicity of proceedings.

14. Defendant counsel has specifically contended that plaintiff has given permission to the defendants to construct the house. This GPA holder has not informed the plaintiff about the institution of the suit. It must be kept in mind that whether plaintiff has given the permission to defendant to construct the house and whether GPA is obtained by fraud is a matter of trial. While dealing with the applications filed under Order XXXIX Rule 1 and 2, such aspects cannot be dealt with. GPA holder has produced GPA. For now, prima facie it appears that plaintiff has executed GPA in favour of the GPA holder. Defendant has produced Form No. B of Pradhan Mantri

Awaj Yojana. The name of defendant No. 1 is entered in the said form. But, the form is silent as to in which Sy. No. the permission is granted to carry out the construction.

15. The documents produced by the both parties for now establish that plaintiff is in possession of the suit schedule properties. Whether defendants have encroached upon the suit schedule property of the plaintiff is a matter of trial. It means appreciation of evidence. On perusal of photographs it is very much evident that construction is being put up by the defendants. Therefore, if at this stage defendants are not restrained from putting up construction, it leads to unnecessary further litigations and multiplicity of proceedings. Therefore, balance of convenience definitely lies in favour of plaintiff. He has also made out prima facie case, irreparable loss will be caused to him if temporary injunction is not granted.

Therefore, the point No.1 to 3 are answered in the affirmative.

16. Point No.4: In view of the forgoing observations and discussions, I proceed to pass the following :

ORDER

The I.A.I filed by the Plaintiff U/O. XXXIX R. 1 & 2 R/w 151 of C.P.C. is hereby allowed.

Defendant No.1 and 2 are hereby restrained from constructing the house or anything in the suit schedule property belonging to the plaintiff till disposal of the suit.

No order as to costs.

[Typed by me on laptop, signed by me and then pronounced the order in the open court on this 20th Day March-2023].

Order pronounced in the open court,
(vide separate Order)

ORDER

The I.A.I filed by the Plaintiff U/O.
XXXIX R. 1 & 2 R/w 151 of C.P.C. is
hereby allowed.

Defendant No.1 and 2 are hereby restrained from constructing the house or anything in the suit schedule property belonging to the plaintiff till disposal of the suit.

No order as to costs.

Prl.Civil Judge & JMFC-II.
Karwar.

