

KAUK030016402022



IN THE COURT OF THE PRL.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.173/2022

Dated: 13th Day of January 2023.

Plaintiff : Sudhakar Mahadev Bandekar

(By Sri.P.B.T.,Adv)

V/s

Defendant: Smt. Meena Vinu Bandekar

" (By Sri.C.D.N.,Adv)

IA NO.I

Applicant: Sudhakar Mahadev Bandekar

(By Sri.P.B.T.,Adv)

V/s

Opponent: Smt. Meena Vinu Bandekar

" (By Sri.C.D.N.,Adv)

"

ORDER ON I.A. No. 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 the relief of ad-interim order of temporary injunction restraining the defendants, their agents, servants or anybody on their behalf from construction of house structure in the suit schedule property till disposal of the suit.

2. In support of I.A. the Plaintiff has filed accompanying affidavit contending that plaintiff has filed the suit for permanent injunction. The defendant by taking law into her hand entered the suit schedule property with an intention to construct the house at the southern portion of the suit schedule property. Defendant started acting detrimental to the interest of the plaintiff and started to clear the southern portion of the suit land to construct the house. Under that intention she had dumped two loads of stone to build foundation for construction of permanent house

structure at southern portion of the land. The defendant is in hurry to start house construction in the suit schedule property. The plaintiff has objected for the same but the defendant did not give any heeds and she is busy in preparation of construction of house colluding with the persons having local influence. On all these grounds, the plaintiff prays for allowing the application.

3. On the contrary, the defendant has filed objections to the I.A. denying all the averments of the affidavit as false. It is contended that plaintiff has not approached this court with clean hands. Defendant is the joint owner in possession of the land bearing Sy. No. 156/2D. Not just the defendant, other persons are also owner of the said land. Defendant is just renovating the house which was collapsed few years earlier due to heavy flood. The Gram panchayat has given them permission to renovate the house. The revenue officials and the officials of gram panchayat have inspected the place and they have given their assent. Plaintiff has constructed the

house abutting to defendants land. The defendant is reconstructing the house which was collapsed and she has not at all encroached the plaintiff's land. It is in fact the plaintiff who has encroached the defendant's land. On all these grounds the defendant No. 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 defendant for the relief of permanent 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 defendants from constructing the building premises in the suit schedule property till disposal of the suit.

8. The plaintiff in order to prove his claim has produced RTC pertaining to Sy. No. 156/5 of Shirwad village, certified copy of map of Sy. No. 156/5, letter issued by plaintiff to Tahasildar, Karwar and 4

photographs. The defendant has produced RTC bearing Sy. No. 156/2D, Sketch, photographs and house paid receipts.

9. At this stage without going in to 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 plaintiff, it stands in the name of plaintiff. On perusal of photographs it can be seen that the construction is yet to commence. In fact plaintiff has written a letter to Tahasildar, Karwar to take action against the illegal construction being carried out by the defendant. . Per contra defendant has produced the house tax receipt.

14. I have gone through the entire papers on record. The purpose of granting the interim record is to preserve the things as it is till the disposal of the case. Both the parties to the suit have contented they have not encroached any portion of land. When such is the case, the fact of encroachment will be revealed during the course of trial. I believe at this juncture that, the house of the defendant which is to be constructed is in very early stage. For now, I believe that balance of convenience is slightly in the favour of plaintiff. The building which defendant is constructing is at early stages. A lot of activity has to be done before the building can be completed. No possible prejudice can be caused to the defendant by it being restrained from construction. If any damaged is caused to the house of plaintiff, irreparable loss will be caused to him. For the said reasons, plaintiff has made out prima facie case, balance of convenience lies in his favour and irreparable loss will

be caused to him if temporary injunction is refused.
Accordingly, the point No.1 to 3 are answered in the Affirmative.

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

ORDER

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

Defendant is hereby restrained
from constructing the house in the
suit schedule property till the
disposal of the suit.

No order as to costs.

(Typed by me on my laptop, corrected, signed and then pronounced in the Open Court on this the 13th day of January, 2023)

