

ORDER

I.A.No.II is filed along with affidavit and documents. On perusal of the check slip there is no caveat filed in this case. The suit is for restraining the

defendants, its successor and all persons claiming through the plaintiff from evicting the plaintiff from the suit schedule shops without due process of law.

IA. No.II is filed U/o.XXXIX Rules 1 & 2 of CPC., for the relief of T.I. against the defendant, its successor and all persons acting on their behalf restraining them from illegally dispossessing plaintiff from suit schedule property without due process of law till disposal of the suit.

This is a suit filed by the plaintiff against the defendant who is none other than the Panchayat Developement Officer (PDO) Shirali Grama Panchayat, Bhatkal Taluk. **The Hon'ble High Court of Karnataka in R.S.A. No.2357/2007 Between Ningappa V/s The Grama Panchayat Committee** it was held as hereunder:-

“14. Sub Section 4 of Section 289 states that the necessity of issuing a notice to the Gram Panchayat would not arise when the suit is instituted under Section 38 of the Specific Relief Act 1963. Section 38 of the said act deals with perpetual injunction. Sub Section 3 of Section 38 speaks of invasion of the plaintiff right to the enjoyment of the property, in other words, where injunction is sought against the defendant where there is a threat to the

plaintiff's right to enjoy his property. The Karnataka Panchayat Raj Act, 1993 is a special enactment which inter alia, deals with the manner in which proceedings could be instituted against the Panchayat as opposed to Section 80 of C.P.C. which is a general provision. Therefore, the special provision Section 289 of the special enactment namely Karnataka Panchayat Raj Act would prevail over the C.P.C. in the matter of institution of the suit against the Panchayats. Having regard to sub Section 4 of Section 289 the necessity of issuing a notice to the Gram Panchayat would not arise, as the present suit is one filed under Section 38 of the Specific Relief Act, 1963 therefore, the first appellate Court was not right in holding that the suit filed by the appellant without invoking Section 80 of the C.P.C. is not maintainable."

From this it is evident that issuance of statutory notice to the defendant as contemplated U/Sec.80 of CPC is not called for. Since Section 80 of CPC itself is not applicable to the case on hand, the bar of granting ex-parte relief U/Sec.80(2) of CPC is also not applicable to the case on hand.

Heard, learned Sri.V.F.G., Advocate for plaintiff on I.A.No.II under Order XXXIX Rule 1 and 2 of CPC, since the plaintiff has filed this suit against the defendants for restraining the defendant, its successor and all persons claiming through the plaintiff from evicting the plaintiff from the suit schedule shops without due process of law, in which it is sought ad-interim exparte temporary injunction order by restraining the defendant, its successor and all persons claiming under the defendant from evicting the plaintiff from the schedule shopss, without due process of law till the disposal of the suit.

Perused the plaint averments documents and affidavit filed in support of I.A.No.II.

In spite of above said application, the plaintiff have claiming an order of ad-interim ex-parte temporary injunction against the defendant in respect to suit schedule property by restraining the defendant, its successor and all persons claiming under the defendant from evicting the plaintiff from the schedule shopss, without due process of law till the disposal of the suit. By considering the materials on record at this stage, this court found that it is an arguable case for having to pass an ad-interim temporary injunction order on I.A.No.II, therefore in view of the urgency and apprehension shown by the plaintiff, this court feels

that an ex-parte ad-interim order has to be passed on same, hence, I proceed to pass the following:-

ORDER

Ad-interim ex-parte temporary injunction is granted as here below.

Accordingly herein after the defendant, its successor and all persons claiming under the defendant is restrained from evicting the plaintiff from the schedule shops, without due process of law till the disposal of the suit.

This order shall be in force until next date of hearing, therefore the plaintiff order to comply the order XXXIX Rule 3(a) of CPC on or before 22.08.2024 after due compliance, issue emergent notice to defendant on I.A. No.II and issue suit summons to defendant, if necessary PF paid.

For appearance of defendant by 18.09.2024.

Sd/-

Addl. Civil Judge
and JMFC., Bhatkal.