

KAUK410014272022



IN THE COURT OF THE CIVIL JUDGE AT: DANDELI

Present: Smt.ROHINI D BASAPUR. LLM
Civil Judge & JMFC, Dandeli.

ORIGINAL SUIT.No 117/2022

DATED THIS THE 05th DAY OF AUGUST 2023

Plaintiff/Applicant: Shri Roshan Jeet S/o Late Shri K.P.
Shivdasan

A/a: 42 years, Occ: Business,

R/o: Sainagar, Dandeli, Tq: Haliyal

[Represented by Sri. M.C.H., Advocate]

-V/s-

Defendant/Opponent: Smt. Ratan Kaur

A/a: 78 years, Pvt Service

R/o: J.N. Road, Dandeli, Tq: Haliyal

[Represented by Sri. S.G.N. Advocate]

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 C.P.C.

The present application is filed seeking for ad-interim injunction against the defendant restraining her from interfering with peaceful possession and enjoyment of plaintiff over suit schedule property by evicting him.

2. Brief contentions of plaintiff as mentioned in the application is as under:

The plaintiff is running an Emission Test Centre in the one portion of shop which is leased on rent by defendant bearing building No. IV/522 situated at Kulgi road, Dandeli. The defendant is the owner of the said premises which is leased on rent to the plaintiff since 2013 and the said lease agreement is further renewed and is valid from 28-10-2019 to 22-10-2022. The plaintiff is paying the rent regularly. Though the lease period is not yet over the defendant is trying to take law into her hands and trying to evict the plaintiff without following due procedure of law. Accordingly, prayed to allow the application.

3. Per contra, Ld. Counsel for defendant has filed objections admitting the fact that plaintiff is in the possession of suit schedule property since 2013 on the basis of lease. But has denied the fact that the lease agreement is renewed. Plaintiff

was paying a rent regularly till 2017. But has become defaulter thereafter. The plaintiff has produced forged lease agreement and filed this present suit. Hence, prayed to dismiss the application.

4. Having heard learned counsel for the parties and perusing the record, the points that arise for my consideration are as follows:-

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the balance of inconvenience is in favor of the plaintiff?
3. Whether the plaintiff would suffer irreparable loss or injury if the prayer for injunction is not be granted?
4. What order?

5. **My answer to the above points is as follows:-**

POINT No.1 :- In the affirmative

POINT No.2 :- In the affirmative

POINT No.3 :- In the affirmative

POINT No.4 :- As per my final order,
for the following :-

REASONS

6. **Point No.1 to 3 :** All these three points are taken up together for common discussion for brevity. At the outset it is undisputed by the defendant that the plaintiff is in possession

of suit property since 2013. It is the specific contention of the defendant that the plaintiff is irregular in payment of rent. Hence, she is intending to evict him from the suit property.

7. It is well settled principle of law that, even a trespasser cannot be evicted without due process of law. In a suit for injunction simplicitor, mere the fact of possession is considered. In the present suit, the possession is openly admitted. The question as to whether a lease agreement is forged or concocted does not arise at all, especially at this stage. Supposing, even if the defendant contends that the lease agreement is not renewed, she has to approach the court following the due process of law to evict the plaintiff as such the plaintiff whether legally or illegally is in possession of suit property, as he has protection under law.

8. Accordingly, the plaintiff has made out prima-facie case in his favour. As such, if the temporary injunction is not granted, it would cause greater hardship to the plaintiff as the balance of inconvenience lies in his favour. Accordingly, I answer point No.1 to 3 in the affirmative.

9. POINT No. 4:- Therefore for the aforesaid reasons I pass the following:

O R D E R

IA No.I under Order 39 Rule 1 & 2 R/w. Section 151 of CPC filed by the plaintiff is allowed.

In the result, defendant is restrained from interfering with the

peaceful possession and enjoyment
of suit schedule property till the
disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the 05th day of August-2023)