

IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC
AT: HONNAVAR

Present: Sri. Chandrashekhar Banakar.,
B.A., LL.B., LL.M.,
PrI.CJ & JMFC.,Honnavar

Dated this the 29th day of May, 2023

O.S. No. 67/2023

Plaintiff:

Vishnu Venkatesh Deshbhandari,
Aged about 54 years, Occ: Agriculture,
R/o.Kulakoda, Mugda, Tq: Honnavar.

//Vs//

Defendants:

01. Ramesh Manohar Shet and others,

Parties to I.A. No. II:

Applicant/plaintiff:

Vishnu Venkatesh Deshbhandari,
Aged about 54 years, Occ: Agriculture,
R/o.Kulakoda, Mugda, Tq: Honnavar.

(By Advocate Sri.GGB)

//Vs//

Opponents/defendants:

01. Ramesh Manohar Shet and others,

(Exparte)

ORDER ON I.A. NO. II

The plaintiff/applicant has filed I.A. No. II under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendants from entering into the suit schedule property and from interfering in the suit schedule property and from destroying the fence and from cutting the trees situated over the suit schedule property till the disposal of this suit.

2. The application is supported with the affidavit of the plaintiff, wherein he deposed that his ancestors have encroached the land bearing Sy.No. 38A measuring 2-0-0 acres of forest land. Since from then, his ancestors were in the actual possession and enjoyment of the said land. Thereafter, his ancestors and after their demise, he himself has planted several trees over the said land.

2.1. In the year 2001, he had filed an application and sought grant of the said land in his favour. However, in the year 1997 he got built a house over the said land.

2.2. However, the defendants having no right and title over the suit schedule property, are trying to interfere in the suit schedule property. On 25/03/2023, the defendants have threatened the plaintiff that they will dispossess him from the suit schedule property. Hence, he filed this suit and application.

3. On the other hand, even though the suit summons were served on the defendants, they remained absent. By noting their absence, this Court placed them as *exparte*.

4. I have heard the arguments of learned advocate for the plaintiff.

5. The points which arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction against the opponents/defendants?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that he will be put to great loss and hardship if T.I. is not granted?
4. What order?

6. By considering the materials on record, my answers to the above points are as follows:

Point No.1: in negative.

Point No.2: in negative.

Point No.3: in negative.

Point No.4: as per final order, for the following:

REASONS

7. **Point Nos. 1 to 3:-** These point required are interconnected with each other, to avoid repetition of facts, these points are answered in common.

8. In order to prove his case, the plaintiff has produced the RTC bearing Sy.No. 38/A, which is measuring 121.28 acres. On perusal of this document, it appears that the name of the government is shown as actual possessor of the said land. He has also produced another RTC bearing Sy.No. 27/8. on perusal of this document, it appears that the property mentioned in the RTC is nowhere concerned to this suit. He has also produced some photographs.

9. The plaintiff has also produced the copy of Form No. 53, NOC letter, postal acknowledgment, copy of notice, endorsement, copy of affidavit, Form No. A, tax paid receipts, etc.

10. On perusal of all the documents produced along with the plaint, it appears that the plaintiff has not produced the proper and sufficient documents to prove his prima facie case before the Court. Because, the plaintiff has produced several documents before the Court. But by those documents, one cannot prove his actual possession and enjoyment over the suit schedule property. Therefore, the documents which are produced before the Court are not proper and sufficient to prove the prima facie case.

11. It is settled principle of law that the party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. The same is held in Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira(dead) through LRs, reported in (2012) 5 SCC 370.

12. Therefore, the plaintiff has to fulfill three conditions in order to get the relief of interim injunctions, i.e., (i) Prima facie case, (ii) Balance of convenience and (iii) Irreparable injury. Further Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. But, in this case as discussed supra, the plaintiff has failed to prove his prima facie case. The plaintiff prima facie has failed to prove the existence of the alleged road.

13. So on perusal of the records, it appears that the plaintiff has failed to prove his prima facie case. It implies that the plaintiff has also failed to prove that the balance of convenience lies in his favour and he has also failed to prove that he will suffer irreparable injury, if this Court rejects the present application. Hence, I answered point Nos. 1 to 3 in the negative.

14. **Point No.4:-** In view of findings on point Nos. 1 to 3, I proceed to pass the following:

ORDER

The I.A. II filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this 29th day of May, 2023).

**Pri. Civil Judge & J.M.F.C.
Honnavar**