



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC ,

AT: HONNAVAR

**Present: Chandrashekhar E Banakar, B.A.LL.B.LL.M,
Principal Civil Judge and JMFC, Honnavar**

Dated this the 1st day of August, 2024

O.S. No. 67/2024

Plaintiff:

Smt. Saleema B. Shekh.,

Age: 40 years, Occ:Household,
R/o. Vasko, Goa, At/present: Nakhuda
Mohalla, Halematha Village Manki ,
Tq: Honnavar, U.K.,

//Vs//

Defendants:

01. Irfhan Bin Ahammad Kampa,

Age: 55 years, Occ: Meenugarike
R/o. Manki Village Halematha,
Nakhuda Mohalla, Tq: Honnar,
U.K.,

02. Smt. Afiya Mujokar Rahamatulla,

Age: 36 years, Occ: Household,
R/o. Manki Village Halematha,
Nakhuda Mohalla, Tq: Honnar,
U.K.,

Parties to I.A. No. III:

Applicant/plaintiff:

Smt. Saleema B. Shekh.,

Age: 40 years, Occ:Household,
R/o. Vasko, Goa, At/present: Nakhuda
Mohalla, Halematha Village Manki ,
Tq: Honnavar, U.K.,

(By Advocate Sri. VMB).

//Vs//

Opponents/defendants:

- 01. Irfhan Bin Ahammad Kampa,**
Age: 55 years, Occ: Meenugarike
R/o. Manki Village Halematha,
Nakhuda Mohalla, Tq: Honnar,
U.K.,
- 02. Smt. Afiya Mujokar Rahamatulla,**
Age: 36 years, Occ: Household,
R/o. Manki Village Halematha,
Nakhuda Mohalla, Tq: Honnar,
U.K.,
- (By D-1 Smt. SNN & D-2 Sri. SGC Advs)**

ORDER ON I.A. NO. III

The plaintiff/applicant has filed I.A. No. III under Order 39 Rule 1 of CPC praying this Court to issue an order of temporary injunction against the defendant No.1 restraining him from continuing the construction of house which is constructing over the suit schedule property.

2. The application is supported with the affidavit of the plaintiff, wherein she deposed that the suit schedule property originally allotted to share of her father by name Jakriya s/o Abdul Khadir Kampa as per oral partition and after the death of her father, the suit schedule property was mutated in her name and in the name of defendant No.2. Therefore she in the actual possession and enjoyment of the suit schedule property and she has ½ share in the suit schedule property and defendant No.2 is having ½ share in the suit schedule property. Further she deposed that in the partition entered during her father's lifetime, the defendant No.1 was allotted with the land measuring 0-3-12 in the suit survey number and since from then, the defendant No.1 is in the actual possession and enjoyment of the said property. But the defendant No.1 had started

to encroach the suit schedule property and even he tried to encroach and tried to build house over the suit schedule property and same is resisted by her. If the defendant No.1 succeeds in building the house over the suit schedule property, then it will cause irreparable injury to her and hence, she filed this suit along with the application.

3. On the other hand, the defendants have appeared before the Court through their advocate and defendant No.1 filed his written statement and adoption memo to adopt the contentions raised by him in the written statement as his objection to the present application. On the other hand, the defendant No.2 has failed to file her written statement even after lapse of 90 days.

4. In his written statement, the defendant No.2 has denied the contents of the para Nos. 1 to 3 of the plaint. Further he stated that it is true that he is in the actual possession and enjoyment of the land measuring 0-3-12 in the suit schedule survey number. Further he stated that he is the absolute owner in possession of the land measuring 0-3-12 in Sy.No. 1017 of Manki village and since from lat 30 years his family is having a house over the said land and the house number of the said house is 1137. Now the said house is in dilapidated condition and therefore he is trying to renovate his house and by seeing that act, the plaintiff has filed this false suit. Hence, he prayed to dismiss the suit.

5. I have heard the arguments of learned advocate for the plaintiff and learned advocates for the defendants.

6. The points which are arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction against the opponent/ defendant No.1?
2. Whether the plaintiff proves that the balance of convenience lies in her favour?
3. Whether the plaintiff proves that she will be put to great loss and hardship if T.I. is not granted?
4. What order?

7. By considering the materials on record, my answers to the above points are 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 final order, for the following:

REASONS

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

9. I have already discussed the rival contentions raised in this case. Therefore, I directly move to discuss about the documents produced in this case.

10. In order to prove her case, the plaintiff has produced the RTC pertaining to the land bearing Sy.No. 1017/3A and the land measuring 0-3-12 acre is shown in the name of defendant No.1 and land measuring 0-6-14 is shown in the joint of plaintiff and defendant No.2. She also produced the mutation entry and mutation

extract. She also produced the tax paid receipt and photos. In this case, the plaintiff and defendant No.2 are the joint owners of the land measuring 0-6-14 is not at all disputed.

11. On the other hand, the learned advocate for the defendant No.1 produced the same RTC which was produced by the plaintiff. Further he produced the tax paid receipt and a photo.

12. In this case the plaintiff has not denied the fact that the land measuring 0-3-12 in the suit schedule survey number was allotted in favour of defendant No.1. On the other hand, the defendant No.2 has not denied the fact that the land measuring 0-6-14 in the suit schedule survey number was allotted in the joint name of plaintiff and defendant No.2. The plaintiff is contending that the defendant No.1 has encroached the suit schedule property and started to construct his new house over the suit schedule property. On the other hand, the defendant No.1 has contended that he has not encroached any portion of the land belongs to the plaintiff, but he is just renovating old house as it was in dilapidated condition and therefore according to him, he has not encroached any portion of the land belongs to the plaintiff. These aspects requires to be decided by a full fledged trial and these questions cannot be answered only based on the RTC and mutation entries.

13. On meticulous perusal of pleadings and documents filed and produced by both the parties, it appears that both are contending that they are in the actual possession and enjoyment of the suit schedule property. Both are submitted several documents in that regard. But, this Court is of the opinion that in order to decide who is in the actual possession and enjoyment of the schedule

property, a full fledged trial is necessary. Without a full fledged trial, it is not possible to decide the crux of the suit.

14. At this point of time, it is proper and necessary to cite the following judgment. In the State of Karnataka and others v/s S. Venkatraj, reported in AIR 1975 KANT 119, the Hon'ble High Court of Karnataka has held as follows,

"5. I do not want to express any opinion as to the merits of the plaintiff's case as that may prejudice one or other of the parties in the trial of the suit. The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual — vide Preston v. Luck, (1884) 27 Ch. D 497. A temporary injunction maintaining the status quo may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted. The party who seeks the aid of the Court in that behalf must as a rule, be able to satisfy the Court on three points; (a) that there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words, that he has a prima facie case to go to the trial; (b) that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right is established at the trial; and (c) that the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it."

15. The Hon'ble High Court of Karnataka in the above cited judgment has held that the object of an interim injunction is to keep thing in status quo, so that if at the hearing the plaintiff obtains judgment in his favour, the defendants will have been prevented from dealing with the property in such a way as to make that judgment ineffectual. Further held that for grant of temporary injunction, whether the plaintiff has a prima facie case, and the existence of a triable question, are to be considered, and is not to involve an enquiry into the merits of the case. 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. Here 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. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. The court has to further satisfy that non-interference by court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. "Irreparable injury" however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages. The third condition is that the "balance of convenience" must be in favour of grant of interim injunction. The court while

granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. These principles are laid down in Dalpat Kumar and another vs Prahlad Singh and others, reported in (1992)1 SCC 719 and in Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira(dead) through LRs, reported in (2012) 5 SCC 370.

16. Therefore, 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 prima facie case may not be confused in prima facie success, but simply if there is serious question to be tried the test of prima facie is satisfied and further court's interference is necessary without which a right accrued in favour of the party concerned, cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to cause in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour.

17. So on perusal of the records, it appears that there is a triable question in this suit. In this case, the plaintiff has made out grounds for trial, thereby she has made out prima facie case.

Further if this Court refuses to grant the relief sought in this application, obviously it is the plaintiff, who will suffer irreparable injury. Because, if the defendant starts to construct a house over the suit schedule property, then it will cause irreparable injury to the plaintiff. Further, on comparing the inconvenience, it is the plaintiff who will suffer greater inconvenience on refusal of the relief sought in the application. On the other hand, no injustice will cause to the defendants. Hence, I answered point Nos. 1 to 3 in the affirmative.

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

ORDER

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

The defendant No.1 is restrained from constructing and continuing the construction of a house over the suit schedule property till the disposal of this suit.

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 1st day of August, 2024).

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