

KAUK620011732020



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC ,

AT: HONNAVAR

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

**Dated this the 01st day of July, 2023
O.S. No. 71/2020**

Plaintiffs:

01. **Shri Golibeerappa Deva Trust Sankolli,
Haldipura,
Tq: Honnavar, R/b. Trusti President,**
02. **Shri Janardhan Channappa Naik
Age: 49 years, Occ: Business,
R/o. Joganikatte, Haldipura, Tq: Honnavar.**

//Vs//

Defendant:

**Shri Nagappa Ganapati Gunaga,
Age: 58 years, Occ: Business,
R/o. Sankolli, Post: Haladipur,
Tq: Honnavar.**

Parties to I.A. No. III & IV:

Applicants/plaintiffs:

01. **Shri Golibeerappa Deva Trust Sankolli,
Haldipura,
Tq: Honnavar, R/b Trusti President,**

02. Shri Janardhan Channappa Naik

Age: 49 years, Occ: Business,

R/o. Joganikatte, Haldipura, Tq: Honnavar.

(By Advocate Sri.MLN)

//Vs//

Opponent/defendant:**Shri Nagappa Ganapati Gunaga,**

Age: 58 years, Occ: Business,

R/o. Sankolli, Post: Haladipur,

Tq: Honnavar.

(By Advocate Sri. MNS)_

ORDER ON I.A. NOS. III & IV

The plaintiffs/applicants have filed I.A. No.I under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendant restraining him from renovation the house bearing door No. 1601 and from constructing new house over the suit schedule property till the disposal of this suit. On the contrary, the defendant has filed I.A.No. IV under order 39 rule 4 of CPC, seeking grant of permission to repair the house bearing door No. 1200.

2. The I.A.No. III is supported with the affidavit of the president of the plaintiff trust, wherein he deposed the suit schedule property absolutely belongs to the plaintiff's trust and over the suit schedule property, the houses for the archakas were built. But due to increase in the number of

devotees, the houses of archakas were shifted from the suit schedule property. The father of the defendant was appointed as a archakas to conduct pooja in the said temple. Several decaded back, the father of the defendant left the said pooja work. Even though the father of the defendant had insisted to come to work in the temple, but the trust of the temple refused his request.

2.1. Earlier, when the father of the defendant was working in the temple, the trust had allotted one house to reside to him and surrounding to the said house, it consists a compound wall and total measurement of the said compound is 3 guntas. The defendant had no right and title over the said land and the defendant is in permissible possession of the said land.

2.2. The trust of the temple had requested the defendant to vacate the said house and the defendant had also agreed to vacate the said house. But, in the month of July, the defendant had started to reconstruct and rebuilt the house and for that he had collected stones, sand, etc.

2.3. On 07/08/2020 at about 10.00 a.m, the members of the trust of the temple have requested the defendant to stop the work, but the defendant had threatened that he will construct new house over the suit schedule property. Hence, they have filed this suit along with this application.

3. To the contrary, the defendant has appeared and filed his written statement. In his written statement, the defendant has contended as follows,

3.1. The plaintiffs' trust has no relation with the said temple. The plaintiff has no locus standi to file this suit. The plaintiffs have no right and title over the suit schedule property.

3.2. Since from immemorial time, Mukthesars were appointed to the Gooliberappa temple and Machi Kallamma temple as per Bombay Public Trust Act. In that trust, the brother of the defendant's grandfather by name Parameshwar Ganapati Gunaga was appointed as hereditary poojary and mukthesar. During the death of his father, the defendant was minor and therefore, the trustees have promised the defendant that till he attains the age of majority, one Hanmanth Rama gunaga was appointed as poojary. When the defendant had attained the age of 16 years, the defendant had requested the trustees and then the trustees have passed a resolution in that regard. But the Mukthesars have postponed the appointment of defendant as poojary.

3.3. But after the repeal of Bombay Public Trust Act, the administrative authority of the temple have appointed some other persons as poojaris. Thereafter several committees were made, but those committees are not registered under the law. Therefore, the plaintiffs have no right to file this suit. Hence, he prayed to dismiss the suit and application.

4. The defendant has filed I.A.No. IV under Order 39 rule 4 of CPC, praying this Court the permission to repair

the house bearing door No. 1200. I.A.No. IV is supported with the affidavit of the defendant, wherein he deposed that his grandfather and his ancestors were acted as archakas and trustees of the Goolibeerappa temple. When his father died, then he was a minor and then some other persons were engaged as archakas of the temple. Now, there is no trust to the said temple.

4.1. This Court has granted temporary injunction restraining him from renovating his house. But the said house is of 50 years old and it is in dilapidated condition. Except this house, he has no other house to reside. Therefore, he sought the permission from this Court to permit him to repair the said house.

5. To the application, the learned advocate for the plaintiffs have filed their serious objection and contended that the application is not maintainable.

5.1. This application is filed with a malafide intention. If this application is allowed, then it will leads to multiplication of proceedings.

5.2. This Court has already restrained the defendant from renovating the house bearing door No. 1601. But the defendant has not filed the application to seek to vacate the temporary injunction. But he has filed this application and sought permission to renovate the house bearing door No. 1200 and this is not permissible in law.

5.3. The defendant is in unlawful possession of the suit house and this suit is filed for the vacate possession of

the said house and therefore, this application is not maintainable.

5.4. The defendant has not stated any information about the house bearing door No. 1200. Therefore, Court cannot grant the permission without having all the information about the said house. Hence, he prayed to dismiss the application.

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

1. Whether the plaintiffs made out a prima facie case for the grant of temporary injunction against the opponent/defendant?
2. Whether the plaintiffs prove that the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that they will be put to great loss and hardship if temporary injunction is not granted?
4. Whether the defendant is made out grounds to allow the I.A.No. IV?
5. 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: in negative.

Point No.5: as per final order, for the following:

REASONS

8. **Point Nos. 1 to 4:-** These points are interconnected and interlinked with each other, to avoid repetition of facts, these points are answered in common.

9. In order to prove their case, the plaintiffs have produced the RTC pertaining to the land bearing Sy.No. 1465/8 of Haladipura village. In the column No. 9 of the said RTC, the name of Sri. Goolibeerappa temple, Sankoli is shown as actual possessor of the said land. On perusal of the RTC along with the schedule shown in the plaint, it appears that the property shown in the RTC is none other the schedule property of this suit. They have also produced the house tax register and on perusal of this document, it appears that the name of the defendant is shown as owner of the house bearing door No. 1601. They have also produced the trust deed under which the Golibeerappa trust was registered. They have also produced the original copy of the resolution dated 09/08/2020, under which the trustees have decided to vacate the defendant from the suit schedule property. Further they have produced the RTC pertaining to the land bearing Sy.No. 1465/6 of Haladipura village, wherein the Goolibeerappa temple trust is shown as actual possessor of the said land. Further they have produced the survey sketch of land bearing Sy.No. 1465 of Halidapura village.

10. On the contrary, the learned advocate for the defendant has produced mutation extracts of the land bearing Sy.No. 1465 are produced. In these documents, the names of the Parameshwar so/ Ganapati Gunaga along with another person are shown as muktesars of Sri. Goolibeerapa temple and based on that, their names were mutated in the revenue records. He has also produced the RTCs. Further he has produced the recent mutation extract, wherein Goolibeerapa temple trust is shown as actual possessor of the suit schedule property. Further he has produced the photocopies of tax paid receipts and photos.

11. On meticulous reading of the documents on record along with the pleadings of both the parties, it appears that even the defendant has not denied that the suit schedule property belongs to the Goolibeerappa temple. However, he denied the existence of the trust. But that must be proved by a full fledged trial. At this point of time, it is clear that the suit schedule property is absolutely belongs to the said temple.

12. However, in this case the plaintiffs have also not denied the defendant's possession over the house situated over the suit schedule property. In fact, the plaintiffs have filed this suit seeking for the relief of vacant possession of the house situated over the suit schedule property. That implies that the plaintiffs have admitted the actual possession of the said house situated over the suit schedule property is with the defendant. On the other hand, the

defendant has admitted that the said house actually belongs to the temple. However, he contended that since from immemorial, he is residing in the said house.

13. 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.”

14. Further in Thimappa Basappa vs Krishnappa Gangadharappa Naikar, reported in 2000 SCC OnLine Kar 642, the Hon'ble High Court of Karnataka has held as follows,

“11. What is prima facie case in a suit for injunction or with reference to matter of grant of temporary injunction has been explained by the Court in various cases and in the case of Nagaraj, this Court has observed and laid down as under:

“Prima facie case has always got to be distinguished from prima facie title. The prima facie case really means that there is a case which requires trial and that the case is not the one based on erroneous and vexatious grounds. When deciding the question prima facie case, it is generally not desirable and open for the Court to record a decision on the merits of the pleas taken in the suit....Whatever findings have been recorded by the Courts below – Whether the Appellate Court or the Trial Court, those findings will not have any binding effect on the parties at the time of the final hearing of the case and it shall always be open to raise respective contentions and it is for the Court to decide according to law at that stage”.

12. This Court laid down that where there is a case in which pleas are required to be answered, then it is said to be a prima facie

case which requires trial and decision, while prima facie title of the parties had to be determined at the trial and final disposal of the suit. As regards possession whether possession had actually been delivered in terms of the agreement, no doubt, that has also to be decided at the time of final decision, but prima facie if documents reveal that possession had been delivered, then a person who is prima facie found to be in possession is entitled to protect his possession. In this case, I find that the lower Appellate Court has not considered the question whether the plaintiff prima facie was shown to be in possession and whether the finding recorded by the Trial Court was correct or incorrect. That finding remains intact and had not been interfered with by the Appellate Court. The lower Appellate Court appears to have embarked enquiries and proceeded with the decision as if it was deciding the claim made in the suit on merits which it was not open to it at this stage."

15. The Hon'ble High Court of Karnataka in the above cited judgments 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. Further it is held that 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.

C. That the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be grater than that which is likely to arise from granting it.

16. 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.

17. 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.

18. In this case, the possession of the said house is with the defendant and the said house belongs to the plaintiff as the RTC of the land in which the said house is situated is in the name of plaintiffs. It is settled principle of law the based the contents of the RTC, Court can presume about the contents of the RTC unless and until it is rebutted by the defendant. Now, whether the defendant has any right over the said house or not is to be decided. For this, a full fledged trial is required.

19. So on perusal of the records, it appears that there is a triable question in this suit. In this case, the plaintiffs have made out grounds for trial, thereby they have made out prima facie case. Further if this Court refuses to grant the relief sought in this application, obviously it is the plaintiffs, who will suffer irreparable injury. Because, if the defendant repairs or renovate the said house, then it will

cause irreparable injury to the plaintiffs. Further, on comparing the inconvenience, it is the plaintiffs who will suffer greater inconvenience on refusal of the relief sought in the application.

20. In this case, the defendant has filed I.A.No. IV and sought for permission to repair the house bearing No. 1200. Absolutely no document is produced by the defendant to show that he is in the actual possession of the said house and that house is situated over the suit schedule property. Even the defendant has not produced any document to show that the house bearing door No. 1200 is connected with the suit schedule property. On perusal of the documents on records, it appears that the house bearing door No. 1200 is nowhere connected to this suit.

21. For the reasons mentioned in the above, I answered point Nos. 1 to 3 in the affirmative and point No.4 in negative.

22. **Point No.5:-** In view of findings on point Nos. 1 to 3, I proceed to pass the following:

ORDER

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

The defendant is restrained from renovating the house bearing door No.1601 or constructing any new house over the suit schedule property till the disposal of this suit.

In view of above order, the I.A.No. IV filed by the defendant under Order XXXIX Rule 4 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 1st day of July, 2023).

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

(Orders pronounced in the open court
Vide separate order)

ORDER

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

The defendant is restrained from renovating the house bearing door No.1601 or constructing any new house over the suit schedule property till the disposal of this suit.

In view of above order, the I.A.No. IV filed by the defendant under Order XXXIX Rule 4 of CPC is hereby dismissed.

No order as to costs.

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

Honnavar.