

KAUK620011852023



IN THE COURT OF PRINCIPAL CIVIL JUDGE &
Present: Sri. Chandrashekar Banakar.,
B.A., LL.B., LL.M.,
Prl. Civil Judge & JMFC Honnavar
Dated this the 17th day of November, 2023
O.S. No. 101/2023

Plaintiff:

Bezmi S/o Kaitan Disilva
Age: 65 years, Occ: Agriculture,
R/o. Churchkeri, Post: Mutta,
Tq.Honnavar, U.K.,

//Vs//

Defendant:

Smt. Roman W/o Remend Disilva,
Age: 68 years, Occ:Agriculture,
R/o.Churchkeri, Post Mutta,
Tq.Honnavar, U.K.,

Parties to I.A. No. III:

Applicant/plaintiff:

Bezmi S/o Kaitan Disilva
Age: 65 years, Occ: Agriculture,
R/o. Churchkeri, Post: Mutta,
Tq.Honnavar, U.K.,

(By Advocate Sri. V.R.N).

//Vs//

Opponents/defendants:

Smt. Roman W/o Remend Disilva,
Age: 68 years, Occ:Agriculture,
R/o.Churchkeri, Post Mutta,
Tq.Honnavar, U.K.,

(By Advocate Sri. M.M.J)

ORDER ON I.A. NO. III

The plaintiff/applicant has filed I.A. No. III under Order 39 Rule 1 and 2 read with section 151 of CPC praying this Court to issue an order of temporary injunction against the defendant from removing fence forcefully situated around 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 he is the absolute owner in possession of the suit schedule property and he obtained the suit schedule property from his family. His name is shown in the RTC of the suit schedule property based on the podification. Even the survey department have fixed boundaries. Based on the survey conducted on 12/07/2021, the boundaries of the suit schedule property were fixed and he formed fence around the suit schedule property and plated the areca nut and coconut trees. The land of the defendant bearing Sy.No. 64/3 is situated towards northern side of the suit schedule property and the defendant is trying to encroach the suit schedule property by removing the fence situated around the suit schedule property. On 01/06/2023, the defendant had tried to remove the fence situated towards norther side of the suit schedule property. Hence, he filed this suit along with this application.

3. On the other hand, the defendant has appeared before the Court and filed her written statement.

4. In her written statement, the defendant has denied the contents of the plaint and contended that as the plaintiff had encroached the portion of land bearing Sy.No. 64/3 and therefore this defendant had filed an application for survey the land. In the survey, it is found that the plaintiff had encroached the portion land measuring 0-2-1 in the Sy.No. 64/3. The plaintiff has not come to the Court with clean hands and therefore the plaintiff is not entitled for the equitable relief of injunction. Hence, she prayed to dismiss the suit along with the application.

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

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?
- 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 of 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 negative.

Point No.2: In negative.

Point No.3: In negative.

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

REASONS

8. **Point Nos. 1 to 3:-** These point 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 his case, the plaintiff has produced some documents. He produced the RTC pertaining to the suit schedule property and the name of the plaintiff is shown as actual possessor of the said land. He has also produced the survey sketch, survey notice and photos.

11. On the other hand, the defendant has produced the RTC pertaining to the land bearing Sy.No. 64/3 and the name of the defendant is shown as actual possessor of the said land. She has also produced the mutation extract. She has also produced the copy of the notice, wherein the surveyor had issued notice to the adjacent land owners of land bearing Sy.No. 64/3, including the plaintiff. The defendant has also produced the survey sketch. On perusal of the said sketch it appears that the surveyor has opined that the land holder of Sy.No. 64/2 had encroached the land measuring 0-2-1 in Sy.No. 64/3.

12. In Kanchusthabam Satyanarayana vs Namuduri Atchutaramayya, reported in (2005)11 SCC 109, wherein the Hon'ble Supreme Court of India has held as follows,

"11 In our view, it is not necessary for us to express any considered opinion on the question as to whether in view of the provisions of Section 18 of the Andhra Pradesh Tenancy Act the suit before the District Munsif was maintainable. We shall assume in favour of the appellant for the purpose of these appeals that such a suit was maintainable though we express no considered opinion on that question. Assuming that such a suit was maintainable the question is whether the relief of permanent injunction by way of equitable relief ought to have been granted in favour of the appellant. We have earlier noticed that the appellant himself had invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act seeking eviction of the respondent who was his tenant. Though the eviction application was allowed by the original authority and the appellant was put in possession of the suit land, on the respondent's appeal being allowed, an order was passed for restitution. It was at this stage that the appellant invoked the writ jurisdiction of the High Court to stay the proceedings, and when he failed before the High Court he filed a suit for injunction for restraining the respondent tenant from interfering with his possession of the suit land. In fact the suit for injunction was filed with a view to defeat the process of restitution which followed the Appellate Authority's order. It is now sought to be contended by the learned counsel for the appellant that the tenancy courts had no

jurisdiction and therefore, the order of restitution also has no force. If we accept the contention of the appellant that the order passed by the tenancy courts at his instance was without jurisdiction and void then in equity the respondent should be put back in possession of the land in question so as to obtain status quo ante, because the appellant himself obtained possession of the land by executing the order of eviction passed under the Act at his instance. We are satisfied that equitable relief of the nature asked for in the suit in question should not have been granted in favour of the appellant so as to defeat the order of restitution passed by the Revenue Authorities under the Tenancy Act whose jurisdiction under the Tenancy Act was invoked by the appellant himself. The appellant cannot be permitted to retain possession by challenging the order as being without jurisdiction particularly when the jurisdiction was invoked by the appellant himself, only because the ultimate order has gone against him. The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter alia on considerations of equity and justice, and the appellant who is himself guilty of inequitable conduct cannot claim such relief. Therefore, we find that in the facts and circumstances of the case, assuming for the sake of argument that the civil court had jurisdiction to entertain the suit, and even going to the extent of assuming that the tenancy courts had no jurisdiction to entertain the eviction petition filed by the appellant himself, this was an appropriate case in which injunction ought not to have been granted. Having obtained an advantage by invoking the jurisdiction of the authorities under the Tenancy Act, the appellant cannot be allowed

to retain that advantage by turning around and challenging the jurisdiction of the same authorities under the Tenancy Act. Even under the Code of Civil Procedure an order of restitution is stayed only in exceptional circumstances. We, therefore, concur with the view of the High Court and dismiss these appeals."

13. So, the relief of injunction being a remedy in equity must be bestowed only on those whose reputation and hands are both spotlessly clean. If not anything else, at least this circumstance should override all other considerations.

14. On perusal of the documents produced in this suit, this Court is of the opinion that at this point of time the plaintiff has not come to the Court with clean hands. On perusal of the survey sketch, prima facie it appears that the plaintiff himself had encroached the portion of the defendant's land. Therefore, this Court is of the opinion that the plaintiff is not entitled for the equitable relief of temporary injunction as sought for. Thereby the plaintiff has failed to prove his prima facie case. Thereby the plaintiff has also failed to prove other two ingredients. Therefore, I answered point Nos. 1 to 3 in negative.

15. **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 dismissed.

The exparte injunction granted by this Court on 15/06/2023 is hereby vacated.

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 17th day of November, 2023).

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