

KAUK620021842023



IN THE COURT OF PRL CIVIL JUDGE AT: HONNAVAR

Present : Sri. Chandrashekhar Banakar.,B.A.,LL.B., LL.M.,

Prl. Civil Judge & JMFC.,Honnavar.

Dated this the 2nd day of January, 2024

O.S. No. 127/2023

Plaintiff:

Sri. Gajanana Parama Hegde,

Age: 74 years, Occ: Agriculture,

R/o. Kavalakki, Mugwa Village,

Tq: Honnavar, U.K.,

//Vs//

Defendant:

Sri. Biliya Sambayya Gouda,

Age: 65 years, Occ:Agriculture,

R/o. Guddebala Paiki, Hammudikeri,

Hosakuli, Tq: Honnavar.,

Parties to I.A. No. IV:

Applicant/plaintiff:

Sri. Gajanana Parama Hegde,

Age: 74 years, Occ: Agriculture,

R/o. Kavalakki, Mugwa Village,

Tq: Honnavar, U.K.,

(By Advocate Sri. SVA).

//Vs//

Opponents/defendants:

Sri. Biliya Sambayya Gouda,

Age: 65 years, Occ:Agriculture,

R/o. Guddebala Paiki, Hammudikeri,

Hosakuli, Tq: Honnavar.,

(By Sri. CG Adv)

ORDER ON I.A. NO. IV

The defendant has filed I.A. No. IV under Order XXXIX Rules 1 and 2 read with section 151 of CPC 1908, praying this Court to issue an order of temporary injunction against the Opponent/ plaintiff, his people, agents, or any person claiming under him from interfering with the defendant's peaceful possession and enjoyment of the suit schedule property till the disposal of the counter claim.

2. The above application of the defendant is supported with his affidavit, wherein he has stated that he has filed his counter claim and sought for the relief of permanent injunction against the plaintiff. Further he deposed that his father by name Sambayya s/o Billiya Gouda had purchased the agricultural land bearing Sy.No. 313/1A1 measuring 2.29.0 acres out of 2.38.0 at Mugwa village from Subraya Jatti Gouda for the sale consideration of Rs.15,000/- vide registered sale deed dated 22/11/1985. Since then his father was in the actual possession and enjoyment of the said property. His father died on 28/09/1995 and thereafter his wife by name Smt. Ammani and her children including the plaintiff came on record of the counter claim schedule property. Same came to be effected on varisa entry. He is looking after the affairs of the counter claim schedule property being the manager of the joint family.

2.1. Further he deposed that the Asst Commissioner, Bhatkal vide his order dated 30/12/2017 had declared that

the land measuring 0-7-8 is kharab land in the land bearing Sy.No. 313A/1 and declared that land measuring 0-11-0 is excess in RTC pertaining to the land bearing Sy.No. 313/1A1. The Asst Commissioner had order that the land measuring 2-29-4 has to be corrected as 2-18-4 in the revenue records. The plaintiff being the party to the petition has not challenged the said order. Thereafter, based on the said order, mutation entries were entered and as per phodi order, the property was bifurcated into several hissas and he got Sy.Nos. 313/A/4 and 313/A/9.

2.2. Further he deposed that he had filed an application before ADLR and sought for phodification and same was allowed by ADLR vide his order dated 16/03/2020. Aggrieved by the said order, the plaintiff had preferred an appeal before the DDLR. The DDLR had dismissed the said appeal and upheld the order of the ADLR.

2.3. Further he deposed that the plaintiff is the adjacent land owner of the schedule property and he has land measuring 1-19-0 in the same survey number. Taking the undue advantage, the plaintiff and his family members are trying to interfere with the peaceful possession and enjoyment of the counter claim schedule property. The plaintiff and his family members are obstructing to do agricultural work and to maintain and to develop the property. Hence, he filed this counter claim along with the

present application. Hence, he prayed to grant temporary injunction as sought in the application.

3. On the other hand, the learned advocate for the plaintiff filed the rejoinder to the counter claim and same is adopted as objection to the present application. In his objection, he has denied the contentions raised in the counter claim. Further he stated that the counter claim of the defendant is not maintainable.

3.1. Further it is contended that the defendant in collusion with the revenue officials got podified the said land and based on false podification, the false sketch was prepared. Further it is contended that the no where the land of the plaintiff is adjacent to the Gerusoppa national highway. Further he has reiterated the plaint averments and prayed to dismiss the application.

4. I have heard the arguments of learned Advocate for the plaintiff and learned Advocate for defendant.

5. The points which arise for my consideration is:

- 1) Whether the applicant/defendant made out a prima-facie case for the grant of temporary injunction against the opponent/plaintiff?
- 2) Whether the applicant/defendant proves that the balance of convenience lies in his favour?

3) Whether the applicant/defendant 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 No.1**:- The plaintiff has filed this suit against the defendant for seeking the relief of permanent injunction. In this application, the defendant is seeking for the relief of temporary injunction against the plaintiff.

8. At this point of time, it is very appropriate to note the judgment of the Hon'ble High Court of Karnataka. In Smt. Shakunthamma and others vs Smt. Kanthamma and others, reported in ILR 2014 KAR 6025, wherein the Hon'ble High Court of Karnataka has held as follows,

"13. Clause (a) of Order XXXIX Rule 1 CPC provides that where in any suit it is proved by affidavit or otherwise, that any property in dispute in a suit is in danger or being wasted, damaged or alienated "by any party" to the suit, or wrongfully sold in execution of a decree, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting,

damaging, alienation, sale, removal or disposition of the property. The reason is obvious. After institution of the suit, the plaintiff may act detrimental to the interest of the defendant in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse to making application under Order XXXIX Rule 1(a) CPC.

14. What Clause (b) of Order XXXIX Rule 1 of CPC envisages is that a plaintiff can seek temporary injunction when there is a threat by the defendant to dispose of the property with a view to render the decree that may be passed in the suit useless or infructuous. Similarly, under Clause (c) of Order XXXIX Rule 1 CPC whenever the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may restrain dispossession of the plaintiff until the disposal of the suit or until further orders.

15. The Legislature has consciously used the words "any party to the suit" in Rule 1(a) of Order XXXIX CPC but the same is conspicuously missing in Clauses (b) and (c). However, the words "the defendant threatens" appearing in Clauses (b) and (c) of Rule 1 of Order XXXIX CPC make it clear that the Court can grant an order of temporary injunction only in favour of the plaintiff because the Legislature has expressly not included the words "plaintiff threatens" and also not used the words "any party to the suit" in these clauses.

18. From the above, it is clear that in a suit filed by the plaintiff, it is open to the defendant to file an application only under Order XXXIX Rule 1(a) of CPC seeking

temporary injunction and the Court on being satisfied that a case is made out for grant of such injunction, can grant the same in its discretion. But, the defendant cannot maintain an application under Order XXXIX Rule 1(b) and (c) of CPC at all.

33. The correct legal position as is clear from the statutory provision is as under;

(I). Both the plaintiff and the defendant can maintain an application under Order XXXIX Rule 1(a) of the Code for the reliefs set out in the said provision."

9. So, as per the above judgment of the Hon'ble High Court of Karnataka, even defendant can also seek temporary injunction against the plaintiff. The relevant provision of law is as follows,

Order XXXIX Rule 1 of CPC

1. Where in any suit it is proved by affidavit or otherwise-

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

10. So, on perusal of the above provision of law, it appears that court can grant injunction in favour of either party if it is proved that **any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit.** So, in a suit filed by the plaintiff,

it is open to the defendant to file an application only under Order 39, Rule 1(a) of CPC seeking temporary injunction and the Court on being satisfied that a case is made out for grant of such injunction, can grant the same in its discretion. The relief under Order 39, Rule 1(b) and (c) is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However, it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39, Rule 1(b) and (c) of the Code.

11. At this point of time, it is very appropriate to reproduce the prayer sought in the I.A.No. IV. It reads as follows,

“For the reasons stated in the accompanying affidavit the defendant prays that the Hon’ble Court may be pleased to issue an ad-interim injunction restraining the plaintiff, his family members, agents, servants, henchmen, representatives or any other person/s claiming through or under him from interfering with the defendant’s peaceful possession and enjoyment of the suit schedule property pending disposal of the counter claim and grant such other and further reliefs as are deemed to just and appropriate in the facts and circumstances of the case and in the interest of justice and equity.”

12. So, on perusal of the prayer sought in the application, it is clear that the prayer sought in the application will fit in Order 39 rule 1(c) of CPC and not fit within the ambit of Order 39 rule 1(a) of CPC. Because, the defendant is claiming that the plaintiff is trying to interfere in his actual possession and enjoyment over the suit schedule property. Therefore, the present case will fall under Order 39 rule 1(c) of CPC. Insofar as relief under Order 39, Rule 1(b) and (c) is concerned, such relief is available only to the plaintiff and the defendant can not maintain an application for the said reliefs in a suit filed by the plaintiff irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit.

13. Therefore, this Court is of the opinion that the plaintiff has failed to prove the maintainability of the I.A.No. IV, thereby the plaintiff has failed to prove his prima facie case. Hence, I have answered point No.1 in **negative**.

14. **Point Nos.2 and 3:-** As discussed supra, the defendant has failed to prove his prima facie case against the plaintiff and therefore there is no necessary to discuss about the irreparable loss, hardship and the balance of convenience. Because, to entitle for a temporary injunction, the applicant must prove all the three ingredients. But the applicant failed to prove his prima facie case. Therefore, the applicant is not entitled for the equitable relief of temporary

injunction against the plaintiff. Hence, I have answered point No.2 and 3 in the **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. IV filed by the defendant under Order XXXIX Rule 1 and 2 read with section 151 of CPC is dismissed as not maintainable.

No order as to costs.

(Typed by me in my laptop and corrected and signed by me and then pronounced in the open Court on this 2nd day of January, 2024).

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