

KAUK620031462023



**IN THE COURT OF THE ADDL CIVIL JUDGE & JMFC.,  
AT HONNAVAR**

**-:PRESENT:-**

**SRI. IRANNA HUNASHIKATTI.,  
B.COM., LL.B.  
Addl. Civil Judge & JMFC.,  
Honnavar.**

**OS No. 156/2023**

**Dated this 9<sup>th</sup> day of December- 2024.**

**Plaintiff/s :-** Sri. Salvador Duming Rodrigues,  
Aged about : 67 years,  
R/o Kelaginoor, Kasarkod,

**Represented by**

Sri. Duming Salvador Rodrigues,  
Aged about : 35 years,  
R/o Kelaginoor, Kasarkod,  
Honnavar Taluk (U.K).,

**V/s**

**Defendant/s :-** Smt. Leena W/o Ullas Rodrigues,  
Aged about : 29 years,  
R/o Kelaginoor,  
Honnavar Taluk (U.K.).

**IA No. II**

**Applicant/s :-** Sri. Salvador Duming Rodrigues,  
**Plaintiff/s**

**(By Sri. C.G., Advocate)**

**V/s**

**Opponent/s:-** Smt. Leena W/o Ullas Rodrigues,  
**Defendant/s**

**(By Sri. M.L.N., & S.G.C., Advocate)**

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**ORDERS ON I.A. No. II**

I.A. No. II U/o 39 Rule 1 and 2 R/w Sec 151 of CPC is filed by the learned counsel for the plaintiff seeking temporary injunction in favour of plaintiff and thereby temporarily restraining the defendant, her husband, family members, legal representatives, agents, servants, henchmen or anybody acting on her behalf from interfering with his peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

**2.** The plaintiff has sworn to an affidavit in support of the application and has stated that the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that, he is the absolute owner in peaceful possession and enjoyment of the suit schedule property. On 01/11/2023 the defendant, her husband and workers trespassed the schedule property and blocked the road with bricks. The schedule property is little far from plaintiff house and he is unable to walk due to his illness. Now, the defendant and her family members, agents, servants, henchmen are trying to interfere with the plaintiff's peaceful possession and enjoyment of the schedule property and are

obstructing to develop the schedule property. On 15/11/2023 the defendant has threatened to plaintiff & his family members saying that she would file one more rape case and obstruct to develop the schedule property with manhandling and trespassing illegally. The defendant is harassing plaintiff to grab the schedule property in the guise of false litigation. Further stated that, if this court is not grant the ad interim order of temporary injunction, then he will be put to great hardship and injustice and it cannot be compensated in terms of money and on other hand no harm will be caused to the defendant. **Hence, prays to allow the application.**

**3.** The defendant has appeared before the Court through her Counsel and filed a memo, wherein she has stated that the contents of the written statement may be considered as objection to I.A.No. II. The defendant in her written statement has denied the entire case of the Plaintiff as false, frivolous and vexatious one. It is contended that, the plaintiff has already filed a suit i.e OS No. 95/2020 against husband of this defendant. The suit schedule property is family property & same was granted by assistant commissioner Bhatkal in favour of plaintiff for the

benefit of his family.

**4.** Further contended that no partition has effected in the suit property and the plaintiff and defendant are in joint possession and enjoyment of the suit property. It is stated that the suit for injunction is not maintainable against another coparcener. When the plaintiff has no independent right, title or interest over the suit property, he has not entitle for the temporary injunction. If the application is allowed she will be put to irreparable loss and hardship. Hence, sought for rejection of the application.

**5.** Heard both side counsels on IA No. II.

**6.** On the basis of above contention, the following points arise for consideration:

**1.** Whether the of plaintiff/applicant proves that he has made out a prima-facie case?

**2.** Whether the of plaintiff/applicant proves that the balance of convenience lies in his favour?

**3.** Whether the plaintiff/applicant proves that he will suffer irreparable injury if temporary injunction is not granted in he favour?

**4.** What order?

7. Based on the contents of the present application, objection and materials available on the hand, the aforementioned points answered as under ;

**Point No.1** : In the **Affirmative**.

**Point No.2** : In the **Affirmative**.

**Point No.3** : In the **Affirmative**.

**Point No.4** : As per the final order for the following;

**:-REASONS:-**

8. **Point No. 1** :- It is the specific case of the plaintiff that he is the absolute owner in possession and enjoyment of the suit property and he is paying the tax to the concerned authority. On the contrary the same has been denied by the defendant and she contended that the suit property is the family property and same was granted by tribunal for the benefit of entire family.

The person has to establish prima facie case, balance of convenience and irreparable loss and injury to succeed in an application seeking temporary injunction order.

9. The learned counsel for the plaintiff argued before the Court that, plaintiff is the absolute owner in possession of

the suit schedule property. It is further argued that the defendant without having any manner to right, title or interest over the suit schedule property is interfering with the plaintiff's peaceful possession and enjoyment.

**10.** The learned counsel for the defendant vehemently argued before the Court that the suit schedule property is family property of plaintiff & defendant.

**11.** In light of the arguments canvassed by learned counsels for the parties, this Court has carefully perused the pleadings as well as the documents produced by the parties. The list of documents of the plaintiff consists of copy of GPA, old RTC, Form No. 7A, Form No. 1CCC, MR entry No. T270 & present RTC of suit schedule property.

**12.** At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and

only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

**13.** The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

**14.** The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be

exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

**15.** The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

**16.** In order to ascertain the prima-facie case, this Court has carefully perused the documents produced by the plaintiff. The present RTC of the suit property is standing in the name of plaintiff. The mutation extract of the suit property is also standing in the name of plaintiff. On contrary the defendant has not produced any documents before the court.

**17.** The learned counsel for defendant argued that defendant is joint possessor of the suit property, hence

injunction cannot be granted against defendant. The defendant has not produced any documents to show that defendant is the joint possessor of the suit property. Merely on the pleadings of the defendant, at this stage this Court cannot come to the conclusion that the defendant is the joint possessor of the suit property. It is left to the defendant to establish the said fact at the later stage. At this stage the defendant has not produced the documents to show that they are in joint possession and enjoyment of the suit property. On contrary the documents produced by the plaintiff appears that the name of the plaintiff is appearing in the revenue records of the suit property. It is well established principle of law that though the revenue records do not create title in favour of the person whose name appearing in the same, but the said entries have got presumptive value as per Section 133 of the Karnataka Land Revenue Act. After considering all these facts and circumstances of the case, this Court is of the opinion that the plaintiff has made out prima facie case, hence he is entitled for the equitable relief of temporary injunction. **Hence, this Court has answered Point No.1 in Affirmative.**

**18. Point No. 2 & 3 :- Balance of Convenience and Irreparable Loss and Injury :-**

The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

**19.** The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

**20.** The learned counsel for the plaintiff argued that though the defendant has no manner of right, title or interest over the suit property, she is interfering with plaintiff's peaceful possession of suit property, hence, she has to be

temporarily restrained till disposal of the suit. Except the denial of the contents of the affidavit, the defendant has not produced any documents to show that she has not interfered with the peaceful possession and enjoyment over the suit property. All these aspects require trial at the later stage. The documents produced by the plaintiff, appears to this Court that the balance of convenience lies in favour of the plaintiff. If the application is not allowed, more mischief and hardship will caused to the plaintiff when compared to the mischief and hardship caused to the defendants. If the application is not allowed the plaintiff will be put to irreparable loss and hardship. On the contrary the defendant will not put to any irreparable loss and hardship. **Hence, this court has answered Point No. 2 and 3 in the Affirmative.**

**21. Point No. 4 :-** In view of discussion of point No.1 to 3, this court proceed to pass the following:-

**ORDER**

I.A.No. II filed by the plaintiff  
U/o 39 Rule 1 and 2 R/w Sec 151 of  
CPC is hereby allowed.

The defendant, her husband,

family members, legal representatives, agents, servants, henchmen or anybody acting on her behalf are hereby temporarily restrained from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property till the disposal of the suit.

No order as to cost.

*(Typed by me in my laptop, revised, corrected and then pronounced by me in the open Court, on this the 9<sup>th</sup> day of December, 2024.)*

**(IRANNA HUNASHIKATTI)**  
**Addl. Civil Judge and J.M.F.C.,**  
**Honnavar.**

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