

KAUK620036282022



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC**

**AT: HONNAVAR**

**Present: Chandrashekhar E Banakar,  
B.A.LL.B.LL.M,  
Prl.Civil Judge and J.M.F.C.,  
Honnavar**

**Dated this the 2<sup>nd</sup> day of February, 2023**

**O.S. No. 105/2022**

**Plaintiff:**

**Sebestin Santa Fernandes,**  
Aged about 50 years,  
Occupation: Private Job,  
R/o. Kasarkod, Tq: Honnavar (U.K).

**//Vs//**

**Defendant:**

**Choutin Bastyanv Leema,**  
Aged about 56 Years,  
R/o. Malabarkeri, Post: Kasarkod,  
Tq: Honnavar (U.K).

**Parties to I.A. No. II:**

**Applicant:**

**Sebestin Santa Fernandes,**  
Aged about 50 years,  
Occupation: Private Job,  
R/o. Kasarkod, Tq: Honnavar (U.K).

**(By Advocate Sri.VRN)**

//Vs//

**Opponent:**

**Choutin Bastyanv Leema,**  
Aged about 56 Years,  
R/o. Malabarkeri, Post: Kasarkod,  
Tq: Honnavar (U.K).

**(By Advocate Sri.MMJ)**

**ORDER ON I.A.NO.II**

The plaintiff/applicant has filed I.A. No. II under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendant from removing the fence surrounding 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 in the actual possession of the suit schedule property and there is a fence which is surrounding to the suit schedule property and adjacent to the suit schedule property, the property of the defendant is situated and therefore the defendant is trying to encroach the suit schedule property by removing the said fence. Therefore, he filed this application seeking for the relief of temporary injunction restraining the defendant from removing the said fence. If this application is not allowed, then the plaintiff will be put to great hardship. Therefore he prayed to grant the relief of temporary injunction as sought for.

**3.** On the other hand, the defendant filed his written-statement and adopted the contentions of his written

statement as objection to the present application. In his written-statement, the defendant contended that the plaintiff is not resident of Kaarkod village. The defendant is residing in a house situated over plot No. 49 in Sy.No. 109 of Malabarkeri village. Further the boundaries shown to the suit schedule property is denied as false. Therefore the suit schedule property is not identifiable. All other averments of the plaint are denied as false.

**3.1.** Further it is contended that the plot bearing No. 49 measuring 0-2-3 in Sy.No. 109 of Kasarkod village was allotted in favour of plaintiff's mother in the year 1975. Thereafter, the mother of the plaintiff sold the said plot in favour of defendant's mother for the consideration of Rs.600/- sale deed dated 01/09/1977 and on the same day the possession of the said plot was transferred to the defendant's mother. Thereafter on 19/06/1986, the plaintiff's mother also sold the house in favour of defendant's mother. Thereafter, the defendant's mother had obtained electricity connection to the said house in her name. On these grounds, the defendant prayed to dismiss the application.

**4.** I have heard the arguments of learned advocate for the plaintiff and learned advocates for defendant.

**5.** 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 her 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?

**6.** 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**

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

**8.** In order to prove her case, the plaintiff has  
produced the RTC pertaining to the land bearing Sy.No. 109  
of Kasarkod village. This property is none other than the  
suit schedule property of this suit. On perusal of this  
document, it appears that the name of the plaintiff is shown  
in the column No. 9.

**9.** On the other hand, the defendant has produced the  
survey sketch, KDT form and service certificate issued by  
HESCL. Further he has produced mutation extracts wherein

the name of the defendant's mother is shown as grantee of land measuring 0-01-01-00. He also produced the grant certificate issued by Tahasildar, Honnavar and the granted land measuring 0-1-1. Further he produced RTCs, wherein the name of the defendant's mother is shown as actual possessor of the land bearing SY.No. 109 measuring 0-01-01-00. Further he has also produced several RTCs, wherein the name of the plaintiff's mother is shown as actual possessor of the land bearing SY.No. 109 measuring 0-2-3. He has also produced records pertaining to O.S.No. 113/2016. He has also produced the electricity bill and several receipts. On perusal of these documents, it appears that the defendant's mother is the possessor of the land measuring 0-01-01-00. But, at this point of time these documents are not helpful to the defendant to show the defendant's mother is in the possession of the suit schedule property.

**10.** 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."**

**11.** 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. 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.**

**12.** The principle upon which injunction is granted is well settled. 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**. 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.**

**13.** 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.

**14.** However, the name of the plaintiff is shown in the RTC and 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. On the other hand, the defendant has not produced the alleged sale agreement/deed before the Court. 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 he 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. Further, on comparing the inconvenience, it is the plaintiff who will suffer greater inconvenience on refusal of the relief sought in the application. Hence, I **answered point Nos. 1 to 3 in the affirmative.**

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

**ORDER**

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

The defendant is restrained from removing or destroying the fence situated surrounding to 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 2<sup>nd</sup> day of February, 2023).

**Sd/-**

**(Chandrashekhar Banakar)  
Prl.Civil Judge & J.M.F.C.,  
Honnavar**