

KAUK710002242024



**IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., KUMTA, AT : KUMTA.**

Dated this the 1st day of June, 2024

PRESENT : Smt Joyline Mendonca, B.A. LLB.
Prl. Civil Judge and J.M.F.C. Kumta

O.S.No.17/2024

Plaintiffs: 1. Shri Alisab Abdul Karim Sab,
Age: 62 years, Occ: Business,
R/o: Santheguli, Taluk: Kumta and another.

V/s

Defendants: 1. Assistant Executive Engineer, Public
Works Department, Kumta,
Kumta Sub-Division, at Kumta (U.K)
Karnataka-581343 and others.

In I.A.No.IV

Applicants: 1. Shri Alisab Abdul Karim Sab,
Age: 62 years, Occ: Business,
R/o: Santheguli, Taluk: Kumta and another.

V/s

Opponents: 1. Assistant Executive Engineer, Public
Works Department, Kumta,

Kumta Sub-Division, at Kumta (U.K)
Karnataka-581343 and others.

ORDER

The plaintiffs filed I.A.No.IV under Order 39 Rule 1 and 2 R/w. Section 151 of CPC at the time of filing of suit praying to restrain the defendants and their men, agent, servants or anybody claiming under them from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties pending disposal of the suit.

2. The plaintiff No.1 has sworn affidavit filed in support of the accompanying application wherein specifically stated that, the present suit is for declaration and perpetual injunction to restrain the defendants from demolishing and interfering with peaceful possession and enjoyment over the suit schedule properties and Mandatory injunction to remove the illegal unauthorized construction over the eastern side wall of the suit schedule properties. Further plaintiff contended that plaintiffs being legal owners of the suit schedule properties holding exclusive possession over the suit schedule properties. Plaintiffs apprehension is that defendants being influential and wealthy persons is taking illegal steps to forcibly dispose plaintiffs from the suit schedule properties and go for illegal construction over the same by demolishing the

existing structure. On this apprehension, plaintiffs seeking temporary injunction by contending that, they have got prima facie case, balance convenience lies in their favour. If injunction is not granted, they will put to great hard ship and loss. On this grounds, prays to allow.

3. Inter alia, Ld AGP on behalf of defendant No.1, 3 to 6 have filed statement of objection to the present application and wherein specifically denied the contentions of the plaintiffs. It is further contended that, application is not maintainable. Further contended that plaintiffs are not the owners of Sy.No13 hissa 5 situated in Kumta Taluka Kujalli Hobli Santheguli village. As per the resolution passed on 11.03.1996 by Mandal village panchayat Santheguli license was given to defendants only to running a shop in front of Santheguli Urdu school. Further contended that there is no single document to show that plaintiffs are the owners of suit schedule properties. Further contended that as per Section 69 of the Panchayat Raj act 1993 provides that no place within the jurisdiction of a Grama Panchyat shall be used as a shop either permanently or temporarily except under a license granted or renewed by the Grama Panchayat except for the shops mentioned in Section 67 and 68. Further contention of the defendant No.1 is that the license granted by the Grama Panchayat Santhegui has renewed

the license only till 2019 and from 31.03.2019 plaintiffs have not renewed the licensee to running a shop. In the year 2020 plaintiffs have constructed unauthorized building. Several notice issued to the plaintiff to dismantle the illegal structure over the suit schedule properties and final notice has been issued by the defendant No.1 through office order dated 27.11.2023. It is further contended that, the plaintiffs have filed the present suit with an intention to harass the defendants and they have specifically stated that the application filed by the plaintiffs is false and frivolous and the contents stated in the affidavit in support of the application are false and denied and the application filed by the plaintiffs is not maintainable and the plaintiffs have filed the present suit only with an intention to harass the defendants. Hence, prays to dismiss the IA.

4. The defendant No2 also filed statement of objections wherein specifically denied the contentions of the plaintiffs. It is further contended that, application is not maintainable and the plaintiffs have filed the present suit only with an intention to harass the defendants. Hence, prays to dismiss the IA.

5. Heard both sides, perused materials on record.

6. The following points arise for my consideration.

1. Whether the plaintiffs have made out prima facie case?

2. Whether the balance of convenience is lies in favour of plaintiffs?

3. Whether the plaintiffs will put to great hardship and loss if injunction is not granted?

4. What order?

7. My findings to the above points are as follows

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

-: R E A S O N S :-

8. Point No. 1 to 3:- I have taken these points together to avoid the repetition of facts:-

The case of the plaintiffs is that plaintiffs being legal owners of the suit schedule properties holding exclusive possession over the suit schedule properties. Plaintiffs apprehension is that defendant being influential and wealthy persons is taking illegal steps to forcibly dispose plaintiffs from the suit schedule properties and go for illegal construction over the same by demolishing the existing structure. On this apprehension, plaintiffs seeking

temporary injunction by contending that, they have got prima-facie case, balance convenience lies in their favour. If injunction is not granted, they will put to great hardship and loss. Further in support of their contentions Plaintiffs produced photos pertaining to suit schedule properties to establish before the Court about the illegal acts of the defendants.

9. Per contra, the defendants have filed statement of objection to the present application and wherein specifically denied the contentions of the plaintiffs. It is further contended that, In the year 2020 plaintiffs have constructed unauthorized building and several notice issued to the plaintiff to dismantle the illegal structure over the suit schedule properties and final notice has been issued by the defendant No.1 through office order dated 27.11.2023. But till now plaintiffs not vacated the suit schedule properties. Further contended that the application filed by the plaintiffs is not maintainable and the plaintiffs have filed the present suit only with an intention to harass the defendants. Hence, prays to dismiss the IA.

10. This Court has given anxious consideration to the material on record as well as the submission made by the learned counsel for both the parties. The law on the

subject of grant of interlocutory injunction under Order XXXIX Rule 1 and 2 is well settled. The applicant has to demonstrate in his favour a prima facie case, balance of convenience and irreparable injury to his right, if the application is not granted. **(SEE; GUJARAT BOTTLING COMPANY PVT LTD. V/S. COCO COL 1995 (5) SCC 454).**

11. It is equally well settled in law that a 'prima-facie case' means that the Court should be satisfied that there is a serious question to be tried at the hearing and there is probability of plaintiffs obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. The Court at the initial stage cannot insist upon a full proof of case warranting an eventual decree.

12. It is also settled that balance of convenience means comparative convenience, mischief and inconvenience of the parties contesting an application for temporary injunction and the same may be equated with what had been left out after weighing the prima-facie case of the parties.

13. Similarly, irreparable loss has been held to mean an injury which is substantial and which cannot be remedied by damages. In other words, if any compensation is

ultimately payable to the applicant in case of his success in the suit, the same would not be sufficient to place him in the position in which he was before.

14. On the touchstone of the aforesaid legal principles, the facts of the case on hand may be examined.

I. RE: PRIMA FACIE CASE:-

The plaintiffs have sought the relief of temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties pending disposal of the suit. The plaintiffs in order to demonstrate their right and interest over the suit schedule properties produced documents such as License, notice issued by defendant No.1 to vacating suit schedule properties, Photos, tax paid receipts pertaining to suit schedule properties. On going through such documents it appears that Plaintiffs have not prima facie established their case and right over the suit schedule properties. On the other hand defendant No.1 produced some documents which shows that a license was given to plaintiffs only to running a shop and only on that basis they can not claim right over suit schedule properties. Hence, on the basis of the aforesaid documents, this Court finds that there is no sufficient

material on record indicating that the plaintiffs have a prima facie case to be tried in their favour. Hence, I answer point No.1 in Negative.

**II. RE- BALANCE OF CONVENIENCE and RE:
IRREPARABLE INJURY :**

As Discussed above the plaintiffs have failed to establish prima facie case, on the other hand defendants have specifically contended that the plaintiffs have no right over suit schedule properties. Moreover defendant are constructing a public road which is for the benefit of public. If the temporary injunction is granted irreparable loss will be caused to defendant as well as public. While considering the balance of convenience the Court has to look into the comparative inconvenience that would be caused to any party either by allowing or rejecting the application. If the injunction order is granted, then the Defendants will be put to more inconvenience than that of the plaintiffs and untold hardship and loss, which can not be compensated in terms of money. Hence, I answer point No. 2 and 3 in Negative.

15. Considering, the entire materials on records, with the arguments of the both the sides, it reveals that, the plaintiffs have not proved that the golden principles of

granting an injunction viz., prima facie case, balance of convenience and irreparable injury. Accordingly, I answer points No.1 to 3 are Negative.

16. Point No.4 :- In view of my above finding I proceed to pass the following:

:- O R D E R :-

The I.A.No.IV filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by him, corrected, signed and then pronounced by me in the open court, on this the 1st day of June 2024)

(Smt.Joyline Mendonca)
Prl. Civil Judge and JMFC.,
Kumta.

