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

**PRESENT : Sri. Narendra B.R. B.Sc. LLB..
Prl. Civil Judge and J.M.F.C. Kumta**

O.S.No.93 / 2022

Dated this the 31st day of October, 2022

**Plaintiff/Applicant: Nelson Jokim Fernandes,
R/at Honmav, Tal. Kumta.**

(By Sri. V.G.H. Advocate)

/ VS /

**Defendants/Opponents: 1. Charlie bin Juje Vallado,
R/at Honmav, Tal.Kumta
and others.**

**(By Sri. R.G.N Adv. For D1)
(D2 to 5 -Exparte)**

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ORDERS ON I.A.NO.III

The plaintiff filed the present suit against the defendants seeking the relief of permanent injunction with respect to suit properties. The plaintiff filed I A No III under order XXXIX rule

1 and 2 R/w S. 151 of CPC, along with the suit, seeking an interim injunction order to restrain the defendants from interfering with the possession and enjoyment of suit property pending disposal of the suit property.

2. The plaintiff sworn to the affidavit filed along with the application wherein it is contended that he is in possession and enjoyment of the suit schedule premises. The ancestors of plaintiff are living in the house situated in the suit property with the permission of ancestors of defendants. The plaintiff and his ancestors have been residing in the suit property and none have objected the plaintiff. When such being the case, defendant no 1 came near the suit property and asked the plaintiff to vacate the suit property stating that he is intending to sell the suit property. The plaintiff stated that he is not having any alternative residence for which defendant no 1 threatened to dispossess the plaintiff from the suit property.

3. Defendant no 1 represented through the counsel and filed objection to the application. In the objection, defendant no 1 denied the contention of plaintiff. Defendant no 1 contended that the plaintiff or his ancestors are not in possession of suit house from 40 years as contended by plaintiff. Further, it is contended that the plaintiff and his brother constructed a new house in their ancestral property and they are residing therein. The said house is situated at a distance of 100 meter from suit house. About 3 to 4 years

back, the plaintiff requested the defendant No.1 to provide temporary accommodation for him till completion of construction of his house. At the request of plaintiff, the defendant permitted the plaintiff and his brother to reside temporarily in the suit house till completion of construction of their own house, but, the plaintiff not vacated the suit house property inspite of construction of his house being completed. The plaintiff misused the kindness of defendants and not ready to vacate the suit house though he is having separate abode for his residence. The plaintiff got filed the present suit as well as interim application only to have an unlawful gain and to harass these defendants. The plaintiff does not have prima face case and no balance of convenience lies in his favour. On the said grounds, defendant No.1 sought for rejection of application.

4. Heard the arguments addressed by the counsel for the plaintiff and the defendant No.1. Perused the materials placed on record.

5. On consideration of the materials placed before the court, the below mentioned points arise for consideration:

POINT NO 1 : Whether the plaintiff/applicant made out a prima facie case?

POINT NO 2: Whether the balance of convenience lies in favour of the applicant/plaintiff?

POINT NO 3: Whether the applicant/plaintiff would be put to irreparable loss or injury in the event the application is not allowed?

POINT NO 4: What order?

6. This court answers the above said points 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 final order

for the following:

REASONS

7. **POINT NO 1** : The suit of the plaintiff is for the relief of permanent injunction with respect to suit property. It is the contention of the plaintiff that he is in possession of suit property. The plaintiff stated that house is situated in the suit property and he is residing in the said house. The existence of the house does not appear to be in dispute. Defendants also appear to have admitted the existence of house in the suit property. The plaintiff contended that his ancestors entered into possession of the suit property and residing therein since many years. On the other hand, defendants contended that plaintiff is not in possession from many years and he entered into possession of suit property only about four years back with the permission of defendants. The defendants does not

appear to be disputing the possession of plaintiff in the house but the main contention of defendants is that plaintiff is in permissive possession only from four years. The main contention of defendants is that plaintiff sought defendants to provide accommodation in the house situated in the suit property till construction house by him and accordingly, defendants accorded permission to plaintiff. The contention of plaintiff is that his parents resided in the house since many years and now, he is residing in the house situated in the suit property. As discussed above, the possession of plaintiff with respect to the house does not appear to be in dispute. The main dispute is whether the possession of plaintiff is from many years as contended by plaintiff or from only four years as contended by defendants. The said aspect cannot be adjudicated at this juncture. The question whether the plaintiff is residing in the suit house from many years or not, cannot be completely adjudicated at this juncture. The said aspect can be adjudicated after complete and detailed evaluation of the materials placed before the court during the course of evidence. The main dispute is pertaining to period of residence of plaintiff which can be adjudicated only after analysing and evaluating the evidence that will be placed by the parties during the evidence. At this juncture, it is not appear possible and appropriate to adjudicate about the period from which the plaintiff is in possession. On consideration of the said aspects, there exist prima facie case

which needs adjudication through trial. The plaintiff made out existence of prima facie case which requires adjudication through the trial. Hence, this court answers **point no 1 in the affirmative.**

8. **POINT NO 2 AND 3** : Since these points are interconnected with each other, they are taken up together for discussion to avoid repetition.

9. It is the contention of the plaintiff that the defendants are trying to dispossess him from the suit property. As discussed above, plaintiff made out existence of prima facie case. On perusal of contentions of the parties, plaintiff appears to be in possession of the house described in the suit schedule. The aspect appears to have been admitted by defendants. The main dispute in the matter is the period from which the plaintiff is residing in the suit house. As the plaintiff appears to be in possession of the house, if he is dispossessed by defendants forcefully then plaintiff might lose possession over the property. The period from which the plaintiff is in possession of suit property needs to be adjudicated and if he is dispossessed, then his right appears to be infringed before adjudication of the suit. The plaintiff might lose possession over the property in which he is stated to be residing from many years and it might lead to multiplicity of proceedings. The plaintiff will be put to irreparable loss and injury if an order of injunction is denied.

On the other hand, defendants do not appear to be put to any irreparable loss or injury if an order of injunction is granted. The defendants appear to have admitted possession of plaintiff over suit house and they will not appear to be put to any irreparable loss or injury by grant of injunction. The defendants not contended about initiation of any legal proceedings for recovering possession of suit house from the plaintiff. If the defendants initiated the legal proceedings, then the circumstances would be different. The defendants not stated the manner in which they will be put to irreparable loss and injury if an order of injunction is granted. The plaintiff, though stated to be in permissive possession, cannot be dispossessed forcefully without adopting due process of law. If an order of injunction is not granted then the plaintiff appears to be put to irreparable loss and injury. The plaintiff might lose his possession over the suit property and the purpose of filing of suit becomes infructuous, if he is dispossessed forcefully from the suit house property. Further, it may also lead to multiplicity of proceedings. The defendants do not appear to be put to irreparable hardship and injury as that of plaintiff. The suit involves determination of possessory right of the parties. It appears necessary to safeguard the possession with respect to property for just and proper adjudication of the dispute between the parties. If plaintiff is dispossessed as contended by him then it might also cause multiplicity of proceedings. Further, the defendants are at

liberty to initiate suitable legal action against plaintiff for recovery of possession of suit house property. On consideration of the said aspects, this court is of the opinion that the plaintiff will be put to irreparable loss and injury rather than the defendants if an order to injunction is not granted. The balance of convenience also tilts in favour of the plaintiff rather than in favour of defendants. Hence, this court answers **point no 2 and 3 in the affirmative.**

10. **POINT NO 4** : For the foregoing discussions, this court deems it appropriate to pass the following:

ORDER

I A No III filed by the plaintiff under Order XXXIX rule 1 and 2 R/w S. 151 of CPC is hereby allowed.

The defendants or their agents or anybody claiming under them are hereby restrained, by an order of temporary injunction, from dispossessing the plaintiff from the suit house property without due process of law or interfering with his possession over the suit house property in any manner, pending disposal of the suit.

The order of temporary injunction will be in subsistence for a period of one year from the date of this order.

The order of injunction will not curtail the right of defendants to seek for recovery of possession of property by adopting due process of law.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her corrected by me and then pronounced in the open court on this **31st day of October, 2022**)

(Narendra B.R.)
Pri. Civil Judge & JMFC., Kumta.