

2.6.2022

ORDERS ON I A No II and III

The plaintiff filed present suit against the defendants seeking relief of permanent injunction. The plaintiff also filed I.A.No.II under order 39 rule 3 of CPC seeking to dispense with service of prior notice of I.A.No.III to defendants and filed I.A.No.III under Order 39 Rule 1 and 2 R/w Sec.151 of CPC seeking to grant to ad-interim injunction restraining defendants from forcefully dispossessing the plaintiff from the suit property pending disposal of the suit

It is contention of the plaintiff that he is in possession and enjoyment of suit property and he has been in possession since 40 years. When such being

case, defendant No.1 came near suit property and asked the plaintiff to vacate the property stating that he is intending to sell the suit property. Further, defendants threatened the plaintiff to dispossess him from the suit property if he will not vacate suit property. The plaintiff is residing in the house situated in the suit property and if he is dispossessed by defendants then he will be put to irreparable loss and injury. If the plaintiff is to serve notice on I.A.No.III to defendants as contemplated under 39 Rule 3 of CPC then the purpose of filing suit will get defeated plaintiff will be put to loss and injury.

The plaintiff furnished RTC extract pertaining to the suit property along with photographs with respect of the suit property. The RTC extract furnished by plaintiff reveals the name of defendants. The photographs furnished by the plaintiff prima facie discloses the existence of house in suit property. The apprehension of the plaintiff regarding dispossession appears reasonable and justifiable at this juncture. If the defendants succeed in dispossessing plaintiff forcefully from the suit property then plaintiff might be put to irreparable loss and injury and it may also lead to multiplicity of proceedings. The documents furnished by the plaintiff prima facie reveals regarding possession of plaintiff in the residential house situated in the suit property. The plaintiff appears to have right and interest over the suit property which needs to be

protected from the interference of defendants. If defendants succeeded in dispossessing the plaintiff, as apprehended by plaintiff then he may have to lose his possession over the suit property which in turn might affect his right and interest which he may have in the suit property. Further it may also lead to multiplicity of proceedings. The right and interest of plaintiff over the suit property needs to be protected. If the plaintiff is to serve prior notice to defendants on I.A.No.III then the purpose of granting injunction might get defeated. The plaintiff made out prima facie grounds for grant of ad-interim injunction. Hence this court deems it appropriate to pass the following:

ORDER

I A No II filed the plaintiff under Order XXXIX rule 3 of CPC is hereby allowed and issue of notice to defendants on I.A.No.III is hereby dispensed.

The defendants or his agents or anybody on their behalf are hereby restrained, by an order of injunction, from dispossessing plaintiff forcefully from the house situated in the suit property, till next date of hearing.

The plaintiff is directed to comply with the provisions of order XXXIX rule 3(a) of CPC.

Issue suit summons, emergent notice on I A No III and order of Ex-parte injunction to defendants.

Call on 14-06-2022

sd/-

Prl. CIVIL JUDGE, KUMTA

The plaintiff has filed the present suit against the defendants seeking the relief of specific performance of agreement and other consequential reliefs. The plaintiff also filed I A No II under Order XXXIX rule 3 of CPC to dispense with service of prior notice of I.A.No.III to defendants.

The plaintiff also filed I A No III under Order XXXIX rule 1 and 2 of CPC seeking to pass ad interim order of temporary injunction to restrain the defendant NO.4 from alienating the suit property or creating charge over the same pending disposal of the suit.

It is the contention of the plaintiff that defendant No.1 to 3 got executed Power of Attorney in favour of plaintiff by receiving consideration of Rs.4,00,000/- and also agreeing to sell the suit property in favour of the plaintiff. But the defendants No.1 to 3 in derogation of terms of Power of Attorney, got executed Power of Attorney in favour of defendant No.4 who in turn got executed a sale deed in his favour by virtue of the Power of Attorney stated to have been executed by defendants No.1 to 4 in his favour. The Power of Attorney that has been executed in favour of plaintiff has not been cancelled or revoked and the defendants No.1 to 3 have also received consideration from plaintiff under the said Power of Attorney. The plaintiff furnished the Power of Attorney wherein it reveals prima facie about the receipt of consideration of Rs.4,00,000/- under the said document. The said document prima facie substantiate the contention taken by the plaintiff. The plaintiff also furnished RTC extract, M.R. extract pertaining to the suit property wherein the name of defendant No.1 has been entered. Further, the MR extract also reveals regarding change of khata in favour of defendant No.1. The plaintiff also furnished the sale deed dated 9.2.2021 wherein defendant No.4 got executed sale deed by virtue of Power of Attorney executed in his favour. At this

junction, the apprehension raised by the plaintiff in his application regarding alienation and creation of charge, appears reasonable and justifiable one. The defendant No.4 might alienate the property or create charge over the same under the guise of sale deed standing in his favour which might cause hardship and injury to the plaintiff. It may also lead to multiplicity of proceedings if the defendant No.4 succeeds in alienating the suit property or creating charge over the same as apprehended by the plaintiff. The materials on record at this juncture prima facie substantiate the contention taken by the plaintiff. There appears necessity to prevent damage or loss being caused to the right of the plaintiff as well as to the nature of the property. There exists prima facie case in favour of the plaintiff. Under such circumstances, if the plaintiff is to serve notice on I.A.No.3 to defendant No.4 as contemplated Under Rule 2 of Order XXXIX, then the very purpose of granting injunction might get defeated and it might also lead to multiplicity of proceedings. On consideration of the above stated aspects, this court deems it appropriate to pass the following:

ORDER

I A No I filed the plaintiffs under Order XXXIX rule 3 of CPC is hereby allowed and the service of prior notice of I A No II to defendants is hereby dispensed with.

The defendant No.4 or his agents or anybody on his behalf are hereby restrained by an order of temporary injunction, from alienating the suit property or creating charge of any kind over the suit property, till next date of hearing.

The plaintiff is directed to comply with the provisions of order XXXIX rule 3(a) of CPC.

Issue suit summons, emergent notice on I A No III to defendants No.1 to 4 and order of temporary injunction to defendant No.4.

Call on 19.1.2022

Prl.CIVIL JUDGE, KUMTA

I A Order XXXIX rule 4 R/w S. 151 of CPC seeking to bring the legal representatives of deceased defendant no 3 on record. The plaintiff filed the affidavit in support of the application wherein it is stated that defendant no 3 died on 02.07.2021 and the opponents are the legal representatives of deceased defendant no 3. It is stated that right to sue subsists against opponents and in order to proceed in the suit, it is necessary to bring them on record. On the said grounds, the plaintiff sought to allow the applications.

Notice of I A No XV served on the opponents and they appeared through the counsel and counsel for the opponents submitted no objection to the application.

Heard the counsel for the plaintiff. Perused the materials on record.

It is the contention of the plaintiff that defendant no 3 died on 02.07.2021 and the right sue exists against them. The suit of the plaintiff is for the relief of partition and separate possession. The suit involves determination of right and interest of the parties in the suit property. The opponents, being the legal heirs of defendant no 3, are entitled to the estate of deceased

defendant no 3. The right and interest of the opponents appear to have been involved in the suit and their right interest can be safeguarded only if they are brought on record. The opponents appear to be necessary parties to the suit and their presence appear necessary in order to properly and effectively adjudicate the dispute between the parties. The right to sue subsists against the opponents. The opponents are necessary parties to the suit and they need to be brought on record for adjudication of the dispute. Thus, this court deems it appropriate to pass the following

ORDER

I A No XV filed by the plaintiff under Order XXII rule 4 R/w S. 151 of CPC, is hereby allowed.

The plaintiff is permitted to bring the opponents on record as the legal representatives of deceased defendant no 3 and to carry out necessary amendment to the plaint in that regard.

PRL CIVIL JUDGE,
KUMTA