

KAUK710019662023



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

Dated this the 31st day of August, 2024

PRESENT:

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

ORIGINAL SUIT.No.77/2023

Plaintiff: Suresh Laxman Deshbhandari.

/ VS /

Defendants: 1. Panduranga Laxman Deshbhandari and others.

IN I.A.No.III

Applicant: Suresh Laxman Deshbhandari

/ VS /

Opponents: 1. Panduranga Laxman Deshbhandari
2. Savita Kom Panduranga Deshbhandari
3. Nagaraj Panduranga Deshbhandari
4. Jayanti Kom Kamalakar Deshbhandari
5. Kamalakar Vithoba Deshbhandari

ORDER ON I.A.No.III

The plaintiff filed I.A.No.III 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 has sworn affidavit filed in support of the accompanying application wherein specifically stated that, the present suit is for Permanent injunction to restrain the defendants from interfering with peaceful possession and enjoyment over the suit schedule properties. Further plaintiff contended that plaintiffs acquired the right over the suit property by virtue of Partition through court and in exclusive possession over the suit schedule properties. Further stated OS 41 of 1996 was filed whereas the suit is decree and same affirmed by Honble Appellate court with some modification in RA 204/2006. Said order is challenged before the Honble High court of Karnataka. During the pendency of the case before Honble High Court in FDP 16 of 2012 was filed for demarcation of properties as per preliminary decree which is ended in compromise. As per the compromise between the parties possession is handed over to the respective parties in Ex.P No. 74/2017. But the

Khata jointly stands in the name of the parties. By taking advantage of the situation defendant are trying to interfere with the possession and enjoyment of the suit properties. The defendants having no right, title, interest over the suit schedule property are disturbing the enjoyment of plaintiff possession over suit property. 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, advocate for defendants 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 defendants contention is that Plaintiff was not in possession over suit property. Though defendant admitting that FDP 16/2012 ended with compromise but denied that plaintiff alone having right over the house situated in suit property. It is further contended that, the plaintiff has filed the present suit with an intention to harass the defendants and they have specifically stated that the application filed by the plaintiff 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 plaintiff is not maintainable and the plaintiff has filed the present suit only with an intention to harass the defendants. Hence, prays to dismiss the IA.

4. Heard both sides, perused materials on record.

5. The following points arise for my consideration.

1. Whether the plaintiff has made out prima facie case?

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

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

4. What order?

6. My findings 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 the final order
for the following :

-.R E A S O N S:-

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

The case of the plaintiff is that plaintiff being legal owners of the suit schedule properties holding exclusive possession over the suit schedule properties. Plaintiff apprehension is that defendant being influential and wealthy persons is taking illegal steps to forcibly interfering with the plaintiff possession and enjoyment over the suit schedule properties. On this apprehension, plaintiff seeking temporary injunction by contending that, he has got prima facie case, balance convenience lies in his favour. If injunction is not granted, he will put to great hardship and loss. Further in support of his contentions plaintiff produced the copy of Compromise decree in FDP 16/2012, Kabja Receipts, Amended petition in Ex.No74/2017, copy of panchnama, and other revenue records. On going through dais documents it appears plaintiff appears to have right and possession over the suit property which might get infringed.

8. In contrary, the defendants have filed statement of objection to the present application and wherein specifically denied the contentions of the plaintiff. It is further contended that, direct possession is not handed over to the respective parties in terms of compromise decree. Further contended that the application filed by the plaintiff is not maintainable and the plaintiff has filed the present suit only with an intention to harass the

defendants.

9. 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).**

10. 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 plaintiff 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.

11. 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.

12. 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.

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

RE: PRIMA FACIE CASE:-

The plaintiff has 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. Further contended that he has grown coconut trees in the suit property and he has been maintaining and look after the same. On 02.06.2023 when the plaintiff while plucking the coconut with the help of labors defendant came there and took up a quarrel and also threaten with dire consequences. The plaintiff in order to demonstrate their right, and interest over the suit schedule properties produced documents such as the copy of Compromise decree in FDP 16/2012, Kabja Receipts, Amended petition in Ex.No74/2017, copy of panchnama,

and other revenue records pertaining to suit schedule properties. On going through such documents it appears that Plaintiff has not prima facie established his case and right over the suit schedule properties. On the other hand defendants not produced nay document to show their possession over suit properties. Hence, on the basis of the aforesaid documents, this Court finds that there is no sufficient material on record indicating that the plaintiff has a prima facie case to be tried in their favour.

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

As Discussed above the plaintiff has establish prima facie case, on the other hand defendants have specifically contended that the plaintiff has no right over suit schedule properties. If the temporary injunction is not granted irreparable loss will be caused to plaintiff. 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 not granted, then the plaintiff will be put to more inconvenience than that of the Defendants and untold hardship and loss, which can not be compensated in terms of money.

14. Considering, the entire materials on records, with the arguments of the both the sides, it reveals that, the

plaintiff has proved 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 Affirmative.**

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

ORDER

IA No.III filed by plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

The defendants or their agents or anybody on their behalf are hereby restrained by way of ad-interim temporary injunction from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property till disposal of suit.

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 **31st day of August, 2024**)

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