

**IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present: Sri. Chandrashekhara Banakar., B.A., LL.B., LL.M.,
II Addl. Civil Judge & J.M.F.C.,
Kundapura.**

Dated this the 18th day of June, 2018

O.S. No. 371/2015

Parties to I.A. No. II and XV:

Applicant: Rama Naika, 47 years,
S/o Narayana Naika,
R/o Kuroli, Kamalashile Village
Kundapura Taluk, Udupi District.

(By Advocate Sri/Smt. T.G.R.)

//Vs//

Opponents: 1) Gopala Naika, 50 years,
S/o Narayana Naika,

2) Bhaskara Naika, 55 years,
S/o Narayana Naika

3) Nagaraja Naika, 53 years
S/o Narayana Naika,

4) Venkataramana Naika, 58 years,
S/o Narayana Naika

All are residing at
Kuroli, Kamalashile Village,
Kundapura Taluk, Udupi district

(By Advocate Sri/Smt. Y.N.K.)

Parties to O.S. No. 371/2015:**Plaintiff** : Rama Naika

//Vs//

Defendants : 1. Gopala Naika and 3 others**ORDER ON I.A. NO. II**

The plaintiff has filed I.A. No. II under Order XXXIX Rules 1 and 2 and Section 151 of CPC, praying this Court to issue an order of temporary injunction against the Opponents/defendants for restraining the defendants, their servants and their men from plucking aracanut and coconut from the trees situated over the suit property and also from damaging the trees over the suit "A" schedule property. The plaintiff has also filed I.A.No.XV under section 151 of CPC, praying for police protection to suit property to prevent the defendants from interfering and damaging the suit property.

2. The above application of the plaintiff is supported with affidavit, wherein he has stated that he is residing in the suit schedule property situated as Kamalashile village. There he planted around 3000 araca nut trees, 20 coconut trees and 2000 banana trees. The suit property was granted by the concerned authority in favour of the plaintiff and the plaintiff is paying tax. On 20/06/2011, 26/12/2012 and 23/11/2015, the defendants tried to pluck crops over the suit property by forcefully. Then, the plaintiff has registered complaints against the defendants in the Shankarnarayana Police Station. Then the SHO, Shankarnarayana Police Station warned the defendants. But

the defendants continued their illegal acts. Hence, the plaintiff has filed this suit along with this application.

3. The plaintiff also filed I.A.No. XV under section 151 CPC by contending that this Court has granted temporary injunction against the defendants, but the defendants in violation of the order of this Court tried to interfere with the suit property. Hence, the plaintiff has filed I.A.No. XV seeking for the direction to the SHO, Shankarnarayana Police Station to provide security to the suit property to prevent the violation of the order passed by this Court.

4. The defendants have filed written statement and they adopted their written statement as their objection to the I.A.No.II. In the written statement, the defendants have denied the entire plaint averments and submitted that the defendants are the absolute owners of lands bearing Sy.No. 44/2 and 44/1, which are adjacent to the suit property and the suit property constitutes kumki right to their lands. The aracenut and coconut trees situated over the suit property were planted by them and from their father by name late Narayana Naik. The plaintiff has granted land bearing Sy.No. 139 measuring 4.90 acre situated at Amasebail village by the authority. The plaintiff never resided over the suit property. The defendant Nos. 2 to 4 have given GPA in favour of 1st defendant to develop the suit property. The plaintiff has filed application for grant of the suit property, but still the said application is pending before the authority. Accordingly, the defendants have prayed this Court to dismiss the I.A. No. II.

5. The defendants have filed objection to the I.A.No. XV, wherein they have contended that the application is not maintainable. The boundary description of the suit property is not proper. The plaintiff has produced wrong sketch. The plaintiff trying to mislead the court. Hence, they prayed to dismiss the application.

6. I have heard the arguments of learned Advocate for the plaintiff and learned Advocate for defendant No.1 to 3.

7. The points which arise for my consideration is:

- 1) whether the applicant/plaintiff makes out a prima-facie case for the grant of temporary injunction against the opponents/defendants?
- 2) Whether the applicant/plaintiff proves that the balance of convenience lies in his favour?
- 3) Whether the applicant/plaintiff proves that he will be put to great loss and hardship if T.I. is not granted?
- 4) Whether the plaintiff made out grounds to allow I.A.No.XV?
- 5) What order?

8. By considering the materials on record, my answers to the above points are as follows:

Point No.1 : In the negative

Point No. 2 to 4: not survived for my consideration

Point No.5 : As per final order, for the following:

REASONS

9. **Points No.1 to 4** : These points are taken together as they are inter linked with each other.

10. The suit of the plaintiff is for seeking the relief of permanent injunction against the defendants. The plaintiff has filed I.A. No.II under Order 39 Rules 1 and 2 and Section 151 of CPC for seeking the relief of temporary injunction against the defendants. Further the plaintiff also filed I.A.No. XV under section 151 CPC seeking for security by the police.

11. The plaintiff in order to prove his contentions has produced the RTC pertaining to land bearing Sy.No. 139 situated at Amasebailu village, RTC pertaining to land bearing Sy.No. 45/P2 situated at Kamalashile village, MR entry pertaining to land bearing Sy.No. 139 situated at Amasebailu village, letter of surveyor, survey sketch, mahazar, notice, report prepared by surveyor, copy of clarification prepared by surveyor. The defendant has contended several aspects, but not produced any documents to prove those aspects.

12. In this case, the plaintiff has not produced sufficient documents with regard to the suit schedule property. The suit on hand is for the relief of permanent injunction and in such suit, the plaintiff must prove that he is in the actual possession and enjoyment of the suit schedule property as on the date of the suit and the plaintiff further needs to prove the alleged interference by the defendants.

These two aspects must be proved by the plaintiff to get the relief of permanent injunction.

13. 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 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 o the inconvenience which is likely to arise from withholding the injunction will be grater than that which is likely to arise from granting it”.

So, in order to get the relief of temporary injunction, firstly the applicant must prove that he has prima facie case. But in this case, the plaintiff has not produced a single sufficient document to show that he has prima facie title or possession over the suit property. Even the plaintiff has failed to produce the application filed before the concerned department as he alleged in his plaint. But he has filed letters of the surveyor, etc. Even he has not produced RTC pertaining to the suit property. In absence of such prima facie documents, this court can not declare that the plaintiff has prima facie title or possession over the suit property.

14. As from the above observations, it is clear that the plaintiff has failed to prove his prima facie case in this suit. As the plaintiff failed to prove prima facie title or possession over the suit property, it is not necessary to discuss about who will suffer if temporary injunction is granted and it is also not necessary to discuss about on whose favour the balance of convenience lies. Hence, for the above said reasons, I answered point No. 1 in negative and point Nos. 2 to 4 are not survived for my consideration.

15. Point No.5: In view of findings on point Nos. 1 to 4, I proceed to pass the following:

ORDER

The I.A. II filed by the plaintiff under Order XXXIX Rule 1 and 2 and Section 151 of CPC is dismissed.

In consequence of dismissal of I.A.No. II, the I.A.No. XV is dismissed.

Both the parties are directed to bear their own costs.

(Typed and signed by me and then pronounced in the open Court on this 18th day of June, 2018)

(Chandrashekar Banakar)
II Addl. Civil Judge & J.M.F.C.,
Kundapura

bsr/-