

KAUP400017442023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS AT BAINDURU.**

PRESENT

Smt. Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.

Dated: This the 12th day of April, 2023.

New Original Suit No.332/23

Old Original Suit No.263/2022

Plaintiff:	Virendra R., Aged about 45 years, S/o. Raghuram, R/at: Kakthota, No.11 Ulloor Village, Bainduru Taluk.
Defendant:	Kishor Kumar, Aged about 52 years, S/o.Jayarama, R/at: Kakthota, No.11 Ulloor Village, Bainduru Taluk.
	<u>Rank of the Parties On I.A.II</u>
Applicant/Plaintiff:	Virendra
	(Rep.by Sri. P.S.R.-Advocate)
Opponent/Defendant	Kishor Kumar,
	(Rep.by Sri. B.S.H.-Advocate)

ORDERS ON I.A. NO.II

The plaintiff along with suit has filed IA No.II under Order XXXIX Rules 1 and 2 R/w. Sec. 151 of CPC., seeking the relief of temporary injunction in favour of the plaintiff and thereby temporarily restraining the defendant, his people, agents, employees, heirs, administrators or any persons claiming under them from trespassing and encroaching over any portion of 'A' schedule property or interfering with the peaceful possession and enjoyment by the plaintiff in any manner till the final disposal of the suit.

2. In the accompanying affidavit, applicant has stated that, the defendant is even now trying to encroach over 'A' schedule property and cause damage over the same. If application is not allowed, he will be put to irreparable loss and injury, which cannot be compensated by money at a later date. On the other hand, if the application is allowed, no prejudice will be caused to anyone, much less the defendant. With these averments the plaintiff has sought for allowing the application.

3. Heard both sides and perused the materials on record.

4. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the applicant has made out prima facie case?

Point No.2: Whether the plaintiff establishes that balance of convenience lies in his favour ?

Point No.3: Whether the plaintiff establishes that if temporary injunction is not granted, he will be put to great loss or hardship?

Point No.4: What order?

5. The findings of this Court on the above said points are 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

6. **Point No.1** This Court has already narrated the facts stated in the affidavit annexed to the application. On perusal of case file, it is seen that the plaintiff has sued the defendant for seeking the relief of permanent injunction.

7. It is the specific case of the plaintiff that, the plaintiff is the absolute owner and in actual possession and enjoyment of

the suit schedule property by virtue of registered sale deed dt:04-04-2016. The plaintiff has been in actual possession and enjoyment of the suit schedule properties. The defendant is in occupation of property situated on the western side of suit 'A' schedule property. In the 1st week of September 2020 the defendant has tried to encroach on the suit 'A' schedule property. The defendant has no manner of right, title and interest over the suit 'A' schedule property.

8. It is the specific case of the defendant that, the property bearing S.No.115/1B1 (Old S.No.115/1) measuring 0.32 cents of Bainduru Taluk originally was in possession of defendant's mother Smt. Ambujakshi, as per registered partition deed dt:23-07-1966. After demises of his mother the defendant is in possession over the same. On 20-09-2020 at about 3.15 p.m to 3.30 p.m plaintiff alongwith his brother and S.C. communities peoples were trespassed into the eastern portion of property bearing S.No.115/1B1 and forcibly encroached the said property and destroyed the dhare. In this regard defendant had lodged the complaint before Bainduru police station. Further stated that, again on 27-09-2020 at about 5.00 p.m plaintiff trespassed

and encroached the above said property. The plaintiff has no manner of right, title and interest over the above said property.

9. This Court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. In this case, the applicant is seeking temporary injunction restraining the opponent from trespassing and encroaching over any portion of 'A' schedule property or interfering with the peaceful possession and enjoyment by the plaintiff.

10. The suit is filed by the plaintiff claiming himself to be the owner of suit schedule property as per sale deed dt:04-04-2016. The primary requirement in an injunction suit is possession. In a suit for permanent injunction the plaintiff has to prove his possession over suit schedule property. The burden of proving the same lies on the plaintiff. On cursory perusal of sale deed dt:04-04-2016, executed by Manjayya Shetty and others. It is evident that, plaintiff is the absolute owner of suit schedule property. RTC in respect of suit schedule property stands in the name of plaintiff. On perusal of both documents prima-facie it appears that, the plaintiff has been in possession of the suit 'A' schedule property. The contentions raised by the plaintiff and

defendant are all matter of trial, hence required full pledged trial. At this stage, this Court by considering the materials on record is of the opinion that the plaintiff has made out prima facie case and he is entitled for the equitable relief of temporary injunction. With these observations, this court has answered point No.1 in the Affirmative.

11. Point No.2 and 3: On the basis of above discussion the principles of balance of convenience and irreparable loss lies in favour of plaintiff when compared to defendant. If injunction is not granted in favour of the plaintiff, the plaintiff will put great loss and hardship. This court opinion is, if I.A.No.II is allowed, by restraining the opponent from trespassing and encroaching over any portion of 'A' schedule property or interfering with the peaceful possession and enjoyment by the plaintiff till the disposal of the suit no hardship will be caused to the other side. With these observations, this court has answer point No.2 and 3 in the Affirmative.

12. Point No.4: For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

ORDER

I.A. No.II filed by the applicant under Order XXXIX Rule 1 and 2 R/w. Section 151 of CPC is hereby allowed.

The defendant is hereby restrained from trespassing and encroaching over any portion of 'A' schedule property or interfering with the peaceful possession and enjoyment by the plaintiff till the disposal of the suit by means of this temporary injunction.

For compliance of Sec. 89 of CPC.

Call on: 15-06-2023

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **12th day of April, 2023**)

**(Smt.Vidya A.S.)
Civil Judge & J.M.F.C.,
Bainduru.**