

IN THE COURT OF CIVIL JUDGE & JMFC, HARAPANAHALLI

Present: SMT. SHOBHA B.G., M.A., LL.B.,
Civil Judge & JMFC,
Harapanahalli.

Dated : This the day of 19th December 2019

O.S. NO.70/2019

Plaintiff/s : Poojar Chandrappa

(Rept. by Sri. V.G.P., Advocate)

-V/s-

Defendant/s : 1. Idenara Harijana Santhosh and others

(Rept. by Sri. M.S.B., Advocate)

I.A. No.I

Applicant/s : Poojar Chandrappa

V/s.

Respondent/s: 1. Idenara Harijana Santhosh and others

ORDERS ON I.A.NO.I U/O.39 RULE 1 & 2 OF CPC

This is an application filed by the plaintiff under order 39 rule 1 and 2 of CPC with a prayer to grant an ad-interim order restraining the defendants their agents, anybody acting under them from interfering with the peaceful possession and

enjoyment of the plaintiff over the suit schedule property till disposal of this suit.

2. The said application is accompanied with an affidavit sworn by the plaintiff wherein he stated that the suit schedule property bearing door No.544/1 measuring 18 X 30 site. On 01-02-2018 the panchayath authorities have included the vacant site situated behind the house of plaintiff and received fees with respect to the said property. The katha of said property has been issued in the name of plaintiff. Since that date the plaintiff is in possession and enjoyment of said property by putting up hut and constructing toilet room. Recently said hut has been collapsed due to heavy wind blew. The defendants by taking advantage of the same trespassed into the suit schedule property. When the plaintiff asked them they have stated that said property is belonging to them. On 20-04-2019 when the plaintiff went to the suit schedule property and cleaning said property for construction of house, the defendants abused him in filthy language. The plaintiffs resisted them peacefully and approached this Court. The plaintiffs have got prima facie case and balance of convenience also lies in their favour. If the application is not allowed he will be

put to irreparable loss and injury. Hence prayed to allow the application.

3. The said application has been resisted by the defendant by filing memo adopting the written statement as objection to said application, wherein they have denied all the allegations made by the plaintiff. Further they have contended that the original propositus of the defendants is Lasi Hulukappara @ Idiyannara Kenchamma. She had 2 children i.e., defendant Nos.1 and 2. The original propositus and ancestors of defendants are all died long ago. Said Idiyannara Kenchamma owned land bearing katha No.547 measuring east-west 31 feet, north-south 29 feet situated at Halavagalu village. She has constructed one house and residing therein from 60-70 years. After the death of Kenchamma her legal heirs who are ancestors of defendants became owner in possession of said property. In said house there was a old house which was collapsed about 2 years ago. The katha of said property stands in the name of great grand mother of defendants till today. The defendants have filed application to panchayath on several time for changing of katha. But the panchayath authorities have not changed the katha in

their name. In spite of that they have paid tax with respect to the said property. The plaintiff well aware of said fact. In spite of that by taking position of his brother's son who is working at police department without issuing notice to the defendants obtained katha in his name. He has obtained concocted document with an intention to cheat the defendants. The suit of plaintiff is barred by law of limitation. He has not made necessary parties to the suit. Hence prays to dismiss the application.

4. Heard argument and perused the records.

5. On perusal of the pleadings, documents and application, the points that arise for my determination are:

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction?
2. Whether the plaintiff proves balance of convenience lies more in his favour ?
3. Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted ?
4. What order?

6. My answer on above points is as follows:

Point Nos.1 to 3 : In the affirmative;

Point No.4 : As per the final order,

for the following;

REASONS

7. Point Nos.1 to 3:- All these points are taken up together for discussion as they require same set of pleadings and documents.

On perusal of contention urged by both parties it appears that the plaintiff has filed this suit for the relief of declaration of title and consequential relief of permanent injunction with respect to the suit schedule property. According to him the panchayath authorities have issued katha with respect to the suit schedule property to his name. They have received necessary fees for the same. He is in possession of said property by constructing hut and toilet room. In order to prove the allegation of the plaintiff, he has produced documents such as DCB register, House list register extract, copy of Resolution and tax paid receipts. The DCB register extract reveals that during the year 2018-19 the katha bearing No.544/1 is standing in the name of plaintiff. The house list register extract reveals that said property is vacant site measuring 18 X 30 feet is standing in the

name of plaintiff. Said property is bounded on east by vacant space of Hariyappara Hanumanthappa, west by house of Karemylappara Manjappa, north by house of Chaluvadi Chayappa and south by house of Chandrappa. The Resolution dated 01-02-2018 reveals that the Halavagalu panchayath authorities have conducted resolution on 01-02-2018 in the presence of president, wherein they have agreed that the vacant site situated behind the site of Poojar Chandrappa has to be included in demand register pertaining to the name of Poojar Chandrappa. The tax paid receipts reveal that the plaintiff has paid tax with respect to the door No.544/1. On the other hand in order to substantiate the contention of the defendants they have produced DCB register extracts 5 in numbers and tax paid receipts. The DCB register extracts reveal that the katha bearing No.547 is standing in the name of Hurukappara Kenchamma from the year 2014 to 2018-19. She has paid tax with respect to the said door No.547 on 24-01-2019.

8. On considering over all material placed before the Court at this stage prima facie disclose that the katha of suit schedule property is standing in the name of plaintiff. The door

number mentioned in plaint schedule as well as documents produced by the plaintiff and the door number stated by the defendants are different. The contention urged by both parties discloses that there is dispute regarding ownership and possession over the suit schedule property. When the plaintiff approaches the Court seeking relief, the protection of the subject matter is necessary. If the defendants interfered with the possession of the plaintiff he will be put to irreparable loss and legal injury. Whether the plaintiff is having valid title or possession over the suit schedule property and whether the plaintiff obtained katha in his name in order to cheat the defendants as alleged by the defendants have to be decided after full fledged trial. At this juncture the documents produced by the plaintiff makes clear that he is in possession of suit schedule property.

9. However it is principle of law that the party who approaches the court seeking temporary injunction he has to establish prima facie case. In the instant suit the plaintiff has to establish prima facie case. The documents produced by the plaintiff do not disclose prima facie case. Further it is settled

principle of law that a party who approaches the Court has to establish prima facie case. Grant of interlocutory injunction is discretionary remedy and in exercise of judicial discretion granting or refusing to grant injunction, the Court will have to take following principles.

- 1) Whether a person seeking temporary injunction has made out prima facie case?
- 2) Whether balance of convenience lies in his favour i.e. whether it could cause greater inconvenience to him if injunction was not granted?
- 3) Whether a person seeking temporary injunction would suffer irreparable injury if injunction was not granted.

Among aforesaid conditions atleast two conditions should be satisfied by the party. Mere proof of one of the three conditions does not entitle for the party to obtain temporary injunction. In the instant suit the plaintiff has established prima facie case. When the plaintiff is in possession of suit schedule property if the temporary injunction is not granted certainly irreparable loss will be caused to him. Balance of convenience also lies more in his favour. Moreover when the plaintiff approaches the Court seeking relief, protection of subject matter is required for

adjudicate the matter effectively and to avoid multiplicity of proceedings. In view of above discussion this Court is of the opinion that the application filed by the plaintiff is deserves to be allowed. Accordingly, point Nos.1 to 3 are answered in ***affirmative***.

10. Point No.4:- In view of above discussion I proceed to pass the following;

ORDER

**IA.No.I filed by the plaintiff U/O.39 Rule 1
and 2 r/w. 151 of CPC is hereby allowed.**

**The defendants or their agents, anybody
acting on their behalf are temporarily
restraining from interfering with the
possession of the plaintiff over the suit
schedule property till disposal of the suit.**

*(Dictated to stenographer, computerized by her, revised, corrected and then
pronounced by me in the open Court on 19th day of December, 2019)*

(B.G.SHOBHA)
Civil Judge & JMFC,
Harapanahalli.

(Order pronounced in the open court
vide separate order)

ORDER

**IA.No.I filed by the plaintiff U/O.39
Rule 1 and 2 r/w. 151 of CPC is
hereby allowed.**

**The defendants or their agents,
anybody acting on their behalf are
temporarily restraining from
interfering with the possession of the
plaintiff over the suit schedule
property till disposal of the suit.**

For framing of Issues 27-02-2020.

Civil Judge & JMFC,
Harapanahalli