

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 28th November, 2018

O.S. NO.114/2018

- Plaintiff / s : 1) Smt. Ningamma
W/o Late Vedamurtheppa,
Aged about 65 years,
Occu:Agriculturist,
R/at Niluvanji Village,
Harapanahalli Taluk,
Davanagere District.
- 2) Kotrappa
S/o Late Vedamurtheppa,
Aged about 42 years,
Occu:Agriculturist,
R/at Niluvanji Village,
Harapanahalli Taluk,
Davanagere District.
(Rept by Sri S.G.T. Advocate)
V/s
- Defendant /s 1) Executive Officer,
Taluk Panchayath,
Harapanahalli.
- 2) Panchayath
Development Officer,
Bennihalli Village Panchayath,
Harapanahalli Taluk.
- 3) The Sectretary ,
O/o Village Panchayath,
Bennihalli,
Harapanahalli Taluk.
- (Rept. by D1- Sri. T.H.M.M. Adv.
D2 - Sri. T.H.M.V. Adv.
D3 - Exparte)**

I.A. No. II

Applicant/s : Smt. Ningamma and others.

V/s

Respondent/s : Executive Officer, and others.
Village Panchayath,
Harapanahalli.

ORDERS ON I.A.NO. II U/O. 39 RULE 1 & 2 R/W SECTION**151 OF CPC**

The plaintiff filed this application U/o 39 Rule 1 and 2 R/w Sec.151 of CPC with a prayer to grant an ad-interim order of temporary injunction restraining the defendants from forming road and maintaining states-co with respect to the suit schedule properties till disposal of the suit.

2. The said application is accompanied with an affidavit sworn by the plaintiff No.2 wherein he stated that suit schedule property is ancestral property of Vedamurtheppa who is husband of plaintiff No.1. After his death the plaintiff No.1 and his children continued in possession and enjoyment of said property. The suit schedule property is originally belongs to

Mulagunda Mukappa aliyas Basappa S/o Mulagunda Kenchappa. He has purchased total 23.82 cents of land from Pakkirappa S/o Loleshwarada Dodda Goneppara Kenchappa in the year 1928. The children of Basappa namely Vedamurtheppa, Kenchappa, Kallappa and Goneppa have partitioned their property. The brother of Vedamurtheppa by name Goneppa was also died. Said Vedamurtheppa has purchased suit schedule property from his brothers namely Kenchappa and Kallappa. Since the date of purchase he becomes owner in possession and enjoyment of said property. In suit schedule property and the village panchayath has issued door number 10 and 11. Adjacent to the said houses there is rickyard. On 16-11-2017 the Government has sanctioned house under Rajiv Gandhi Vasathi Yojana in the name of wife of plaintiff No.2. In said sanction order there was a condition that within 3 months the construction work has to be completed. Due to election during the year 2018-19 the Government has not released amount. Such being the state of affairs the defendant No.2 and 3 are colluding with some panchayath members trying to form road in

suit schedule property. The plaintiffs have resisted the same, but on 11-06-2015 the P.D.O. has issued notice to the plaintiffs to vacate the suit schedule property. The plaintiffs are illiterate. By taking advantage of illiteracy of plaintiffs the defendants are trying to form road with an intention to restrain the release of amount and construction of house which was sanctioned to them. In the suit schedule property there was no road is existing, towards northern side of suit schedule property there was a public road. In spite of that the defendants are trying to form road in the middle of suit schedule property. If the application is not allowed the plaintiffs will be put to irreparable loss and injury. On the otherhand no prejudice would be caused to the defendants. Hence prayed to allow the application.

3. The said application is resisted by the defendant No.2 by filing memo adopting written statement as objection. He denied all the allegation made by the plaintiffs in plaint. Further he contended that there was no registered document in the name of Vedamurtheppa. Plaintiffs have not produced any title deeds to show that one Mulagunda Mukappa S/o Kenchappa

has purchased property from Pakkirappa during the year 1928. The P.D.O. is intending to form road as per order of the Government. The plaintiffs have filed this suit with an intention to grab the suit schedule properties. Towards northern side of suit schedule property there was no public road is existed. In this regard there was no government map. The plaintiffs have not come up with clean hands. They have not made necessary parties in this suit. They have not produced any document to show that they are absolute owners of the suit schedule property without seeking possession they cannot claim right of ownership of suit schedule property. They are not in possession of said property. Hence prayed 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 plaintiffs have made out prima facie case for grant of temporary injunction?
 2. Whether the plaintiffs prove balance of convenience lies more in their favour ?

3. Whether the plaintiffs prove irreparable loss will be caused more to them, 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** :- These points are taken up together for discussion as they require same set of pleadings and documents.

In order to prove the allegation of the plaintiffs they have produced documents such as registered sale deed in the year 1928, copy of unregistered agreement of sale, copy of grant certificate, notice, photographs, D.C.B. registers, tax paid receipts. The unregistered agreement of sale dated 01-12-1993 reveals that one Kenchappa S/o Mulagunda Mukappa @ Basappa has executed an agreement of sale in favour of Vedamurtheppa S/o Mulagunda Mukappa @ Basappa with

respect to the land measuring east-west 10 cubit and north-south 24 cubit which is bounded on east by land of Davanagere Lekkappa, west by house property of Vedamurtheppa, north and south by way. The house grant certificate reveals that the P.D.O., Bennihallai village panchayath has issued house grant certificate infavour of Manjamma W/o Kotrappa i.e., wife of plaintiff No.2 under Rajiv Gandhi Vasathi Yojana. Notice dated 11-06-2018 reveals that the P.D.O, of Bennihalli village panchayath has issued notice for vacating the of suit schedule property for forming road. The D.C.B. register extract reveals that property No.11 is standing in the name of Mulagunda Vedamurtheppa S/o Mukappa in the year 2018-19. Tax paid receipts reveals that said Mulagunda Vedamurtheppa has paid tax with respect to door No.11. The photographs reveal the existence of suit schedule property.

8. In order to substantiate contention of defendant No.2 he has produced documents, such as photographs, requisition of Niluvanji villagers, Order of Executive officer of Taluk Panchayath office, Harapanahalli for forming of road and sketch

of Niluvanji village with respect to Sy.No.8. The representation of Niluvanji villagers reveals that they have given representation to grama panchayath, Bennihalli regarding permission to form road. In said document it is mentioned that M.Kotresh S/o Vedamurtheppa has obstructed to form road. The villagers has no objection to form road, they required said road for their convenience. The Executive officer of Taluk panchayath, Harapanahalli has issued order for forming of road during the year 2018-19 under the scheme of Gramina Udyog Kathri Yojana. The sketch with respect to Sy.No.8 does not disclose the existence of road. The photographs disclose the existence of suit schedule property.

9. On perusal of contention urged by both parties it appears that there is dispute regarding existence of road in suit schedule property. According to the plaintiffs said property is their ancestral property. The government has sanctioned house infavour of wife of plaintiff No.2. She has intending to construct house in said property but the defendants are trying to form road in the suit schedule property. According to the defendant

No.2 as per order of Government the P.D.O. of Bennihalli village panchayath has started forming of road in the suit schedule property. The villagers have given representation to form road in said property stating that they have required said road for their convenience. However whether there is existence of road or not has to be decided. At this stage it cannot be decided it requires full fledged trial. Whether said property is belongs to the village panchayath, or whether the forming of road is necessary for villagers has to be considered. The said fact also requires full fledged trial. The photographs disclose that the plaintiffs are in possession of suit schedule property at this stage. The document produced by the plaintiffs makes clear that plaintiffs are in possession of suit schedule property. The plaintiffs have established prima facie case. 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 at-least 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 plaintiffs have established prima facie case. If the temporary injunction is not granted certainly the plaintiffs will be put to irreparable loss and injury. On the otherhand no hardship will be caused to the defendants. The balance of convenience also lies infavour of plaintiffs. Moreover the protection of subject matter of the suit is required for adjudicate the matter effectively. If the defendants have formed road in the suit schedule property certainly the purpose of filing of this suit will be defeated. In view of above discussion this court is of the opinion that the application filed by the

plaintiffs deserves to be allowed. Accordingly point Nos.1 to 3 are answered in the **Affirmative**.

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

ORDER

IA No. II filed by the plaintiffs U/O. 39 Rule 1 and 2 R/w sec. 151 of CPC is hereby allowed.

The defendants are temporarily restrained from forming road in the suit schedule property till disposal of the suit.

(Dictated to stenographer, after her transcription, revised, corrected and then pronounced by me in the open Court on 28th day of November, 2018)

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

**(order pronounced in the open court vide
separate)**

***IA No. II filed by the plaintiffs U/O. 39 Rule
1 and 2 R/w sec. 151 of CPC is hereby allowed.***

***The defendants are temporarily
restrained from forming road in the suit
schedule property till disposal of the suit.***

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

