

KADG420011922023



**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI.**

Present

Smt. Fakirawwa Kelageri, *B.A., LL.B.*,
Civil Judge & JMFC, Harapanahalli.

Dated this the 24th day of April 2024.

O.S.NO.146/2023

Plaintiff/s: H.B.Manjunatha

(By Sri.K.B.R., Adv.,)

-VS-

Defendant/s: Edurumani Chandrappa and others

(D-2 by Sri.T.V.S Adv.,)
(D-1, 3 and 4 exparte)

INTERLOCUTORY APPLICATION NO.I

Applicant/s: H.B.Manjunatha
(Original Plaintiff)

-VS-

Opponents: Edurumani Chandrappa and others
(Original Defendants)

ORDERS ON IA. No.I

This is an application filed by the plaintiff U/Order 39 Rule 1 and 2 of CPC., seeking the relief of temporary injunction against the

defendants restraining the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

2. In the affidavit, in support of the application, it is stated by this plaintiff that, originally the suit schedule property bearing Sy.No.237/B3 measuring 0.90 cents situated at Hiremegalgeri village, Harapanahalli taluk belongs to defendant No.1. The respondent No.1, his wife and daughter have jointly sold the above said land in his favour by executing the registered sale deed dated 25.07.2022 for a valuable consideration of Rs.3,70,000/-. On the basis of registered sale deed his name was got mutated in the ROR as per mutation proceedings No.H-21/2022-2023 and his name is mentioned in the ROR as pattadar and cultivator for the year 2022-2023. Since from the date of purchase, he is in peaceful possession and enjoyment of the suit schedule property without any interruption more particularly by the defendants. The defendant No.2 to 4 have no way concerned to the respondent No.1 and they have no any rights and interest of the petition schedule property and they are trying to interfere with his peaceful possession and enjoyment of petition schedule property on the instigation of respondent No.1. The respondent No.2 to 4 having no any right and interest over the petition schedule property are unnecessarily trying

to interfere with his peaceful possession and enjoyment, which was peacefully resisted by him. On 15.06.2023 the respondent No.2 to 4 all of sudden appeared on the suit schedule property and trying to obstruct his cultivation of the suit schedule property. Under these circumstances the respondent at any time may repeat their unlawful acts which are nothing but invading on the rights and interest of the plaintiff over the petition schedule property. The respondents have ventured to take law into their hands, he has not in position to withstand the onslaught and high handed activities of the respondents. At any time the respondents may interfere with his possession and enjoyment over the petition schedule property. If injunction is granted no loss or injury will be caused to the other side. If injunction is not granted he will be put to great hardship and injury. Both prima-facie case and balance of convenience are in his favour. Hence, prayed to allow the application.

3. In spite of sufficient opportunity, the defendant No.2 has have not filed objection to I.A.No.I. The defendant No.1 and 3 have not appeared before the court and they were placed exparte.

4. Heard the Learned Counsel for the plaintiff and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

- 1) Whether the plaintiff has made out prima-facie case?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether the plaintiff proves will be caused irreparable loss and more to her, if temporary is not granted ?
- 4) What order?

6. My findings on 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;

REASONS

7. Point No.1 to 3 : As these points are inter related to each other, finding on one point bearing on other points, as such in order to avoid repetition of facts and for convenience sake, these points taken together for common discussion.

8. At the out set it is material to note that of person seeking permanent injunction as to prove that he has made out prima-facie case to go for trail. There are also required to show that balance of convenience is in her favour and she will suffer irreparable loss and

injury if injunction is not granted. It is equally well-settled that when the party fails to prove prima facie case to go for trial, the question of considering balance of convenience or irreparable loss and injury to the party concerned would not be material at all. If that party fails to prove prima-facie case to go for trial it is not open to the court to grant injunction in her favour if she has made out case of balance of convenience being in her favour and she would suffer irreparable loss and injury if no injunction order was granted. This proposition of law has been laid down by the Hon'ble Supreme Court of India in **2010 AIR (Civil) 1 (Kashimath Samstan and another V/s Srimad Sudhindra Thirthaswamy and another)** in the light of above proposition of law now I have to see as to whether plaintiff has made out prima-facie case or not?.

9. In order to prove prima-faice case, the plaintiff has produced xerox copy of sale deed dated 25.07.2022, ROR bearing Sy.No.237/B2 for the year 2018-2019, 2019-2020, 2020-2021, 2022-2023, certified copy of mutation order No.H21/2022-2023 and certified copy of encumbrance certificate in respect of Sy.No.237/B3 from 01.04.2009 to 06.01.2023.

10. On proper appreciation of pleadings and documents of couple parties, it appears that the plaintiff has filed this suit for seeking declaration to declare that the he is owner is suit property and also sought for consequential relief of permanent injunction. According to plaintiff, the defendant No.1, his wife and daughter have jointly sold the suit land bearing Sy.No.237/B3 measuring 97 cents situated at Hiramangalagiri village in favour of plaintiff by executing registered sale in dated 25.07.2022. As per registered sale deed, the name of plaintiff got mutated in ROR of suit schedule property as per Mutation proceedings No.H21/2022-23. The defendant No 2 to 4 have no way concerned to the defendant No.1 and they have no any rights and interest in the suit schedule property and without having right, title and interest they are trying to interfere with plaintiff's peaceful possession and enjoyment of suit schedule property. On 15/6/2013 the defendant No 2 to 4 all of sudden appeared on the suit schedule and trying to obstruct the cultivation of the suit schedule property by the plaintiff. But the defendants have not filed their written statement.

11. The documents produced by the plaintiff disclose that, the defendant No.1, his wife and daughter have jointly sold the suit land bearing Sy.No.237/B3 measuring 97 cents in favour of plaintiff on

25.07.2022. On the basis of registered sale name of plaintiff mutated to suit property and his name has been entered in record of right. As per recital of sale deed, it is very much clear that possession of suit property handed over to plaintiff as on date of execution of sale deed. Hence the plaintiff has made out from a prima-facie case. Taking into consideration of facts of present case if temporary injunction at the stage not granted the plaintiff will be put to hardship and injury on the other hand, no hardship and injury would be caused to the defendants in case ad-interim temporary injunction as prayed for by the plaintiff/applicant is granted. **Hence, I answer the point No.1 to 3 in the Affirmative.**

12. Point No.4 : As already discussed above on points No.1 to 3, I proceed to pass th following:

ORDER

I.A. No.I filed under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C., by the plaintiff is hereby allowed.

The defendants, their agents or anybody claiming through them are hereby restrained from interfering with the plaintiff's peaceful possession and

*enjoyment of the suit schedule property
till disposal of the suit.*

No order as to costs.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the **24th day of April 2024**).

(Fakirawwa Kelageri)

Civil Judge & JMFC,
Harapanahalli.