



ORDER BELOW EXH. 5

1. Present application is filed by the plaintiff seeking the relief of temporary injunction against the defendants that they shall not alienate the suit properties and shall not obstruct the possession of the plaintiff over the suit properties.

Case of plaintiff

2. Suit properties are ancestral properties of plaintiff and defendant no. 1. Suit properties are owned and possessed by plaintiff and defendant no. 1. Suit properties are partitioned and accordingly boundaries are fixed by plaintiff and defendants. However, defendant no. 1 is obstructing the possession of the plaintiff over the suit properties. Defendant no. 1 is also trying to sell some of the properties and trying to destroy the boundaries of the suit properties. Therefore, plaintiff has filed present application seeking the relief of temporary injunction in order to restrain the defendant no. 1 from obstructing the possession of the plaintiff over the suit properties and accordingly he has prayed to allow the present application.

3. Defendant no. 1 has failed to file his say on said application. Therefore, the application is proceeded without say of defendant no. 1.

4. Perused the application. Perused the documents filed. I have heard the Ld. Advocate for plaintiff at length. From the rival pleadings of the plaintiff, following points arise for my determination alongwith their findings for the reasons recorded thereof.

POINTS

Sr. No.	Points	Findings
1	Whether the plaintiff proves that, he has prima facie case?	Affirmative
2	Whether the balance of convenience lies in the favour of plaintiff ?	Affirmative
3	Whether irreparable loss will be caused to the plaintiff if relief of temporary injunction is granted ?	Affirmative
4	What order ?	As per final order

5. To prove its case, Ld. Advocate for the plaintiff has relied on documents filed along with the list at Exh. 3. He has filed the Copy of 7/12 extracts of suit properties, Copy 8A extract of Grampanchayat Milkat No. 185, 190A, 323, 175A, Copy of account extract no. 470, Xerox copy of partition deed dated 24.06.1989. Plaintiff has also file public notice dated 26.01.2022 along with Exh. 48.

Point no. 1

6. To prove his case, plaintiff has relied upon the copies of 7/12 extracts and 8A extracts of the suit properties filed by him. Upon perusal of those extracts it reflects that name of the plaintiff and defendant no. 1 are also mutated. No-doubt that plaintiff and defendant no. 1 are co-sharers. However, the 7/12 extract of the properties reflects that all the plaintiff and defendant no. 1 are holding equal area of the suit properties. From the perusal of partition deed which is filed by plaintiff, it reflects that there is

partition between the parties. The account extracts filed on record also reflects that, each one is holding share in the suit properties as per their convenience. The application is not challenged by the defendant no. 1. In order to bring the prima-facie case on record, it is the duty of the plaintiff to show in what way defendant no. 1 has obstructed or ousted him. To that extent plaintiff has placed his reliance on 7/12 extracts of the properties and the partition deed. The application of the plaintiff is supported by an affidavit. The facts put up by the plaintiff went unchallenged. Therefore there is no reason to disbelieve the plaintiff that, defendant no. 1 has obstructed his possession over the suit properties. It is to be taken note that prima-facie case do not only mean the averments made by the plaintiff on record but a prima-facie case needs to be seen on record as well as it be supported by a prima-facie evidence. In present case at hands plaintiff has brought prima-facie evidence on record showing that defendant no. 1 has obstructed him. Hence, it can be said that, plaintiff has prima facie case. Therefore, i answer point no. 1 in the affirmative.

Point no. 2

7. Balance of convenience means the comparative mischief or inconvenience caused to the parties. In arriving at prima facie conclusion, the court has to weigh the mischief likely to be caused to the plaintiff, if interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. As far as balance of convenience is concerned, it is necessary that, balance of convenience must be in the favour of granting injunction. While looking into the factor of

balance of convenience, it is important to look into the inconvenience caused to both the parties. From the documents submitted by the plaintiff on record, it prima facie appears that, plaintiff has prima facie case. Prima facie evidence submitted by the plaintiff is not challenged by the defendant no. 1. In view of that, it has already come on record that, plaintiff has prima facie case. Hence, if injunction is granted in favour of the plaintiff, then it will not cause any inconvenience to the defendant no. 1. Therefore, balance of convenience lies in the favour of the plaintiff. Accordingly I answer point no. 2 in the affirmative.

Point no. 3

8. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before, injunction was refused. Plaintiff has prayed that, if partition of suit properties do not take place, defendants will continue to obstruct the suit properties. And therefore, irreparable loss will be caused to him. It is admitted fact that, plaintiff as well as defendant no. 1 are in possession of the suit properties. Even if plaintiff is saying that, irreparable loss will be caused to him, it is pertinent to note that, plaintiff has prima facie case and balance of convenience lies in his favour. In order to avail the relief of temporary injunction, it is mandatory to satisfy all the necessary conditions. In present case at hands, plaintiff has proved that, he has prima facie case and balance of convenience lies in his favour. Therefore, I answer point no. 3 in the affirmative.

Point no. 4

9. Now it is crystal clear that, plaintiff has prima facie case, balance of convenience lies in his favour and irreparable loss will be caused to him, therefore, present application deserves to be allowed.

10. It is important to note that, before granting injunction court always keep in mind whether the injunction issued by the court is executable. Hence, on these ground present application deserves to be allowed. Hence, I pass following order.

ORDER

1. Application below Exh. 5 is hereby allowed.
2. Defendant no. 1 or anyone on his behalf is hereby temporarily restrained from obstructing the possession of the plaintiffs over the suit property by any way or in any manner till the final decision of the suit.
3. Both parties to take note of the same.

Date – 20/12/2022

(Priti A. Shriram)
**Jt. Civil Judge Junior Division,
 Shirala.**

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	:	V. S. Patil
Court	:	Jt. C.J.J.D. & J.M.F.C., Shirala
Date	:	20/12/2022
Order signed by the		
Presiding Officer on	:	20/12/2022
Order uploaded on	:	21/12/2022