

KABK610007382023



IN THE COURT OF CIVIL JUDGE & J.M.F.C.
AT BANAHATTI

:PRESENT:

Miss. Shushma T.C.

B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti.

O.S No.79/2023

Dated this, the 23rd day of August, 2024.

1. Mahadevi W/o Basappa Dharigouda
and 3 others

.... Plaintiffs

- Vs -

1. Hanamant S/o Laxman Dharigouda
and 6 others

.... Defendants

: PARTIES IN I.A No.I :

1. Mahadevi W/o Basappa Dharigouda,
 2. Irappa S/o Basappa Dharigouda,
 3. Mahaling S/o Basappa Dharigouda,
 4. Laxmibai W/o Mallappa Sindhur,
- All are R/o: Mahalingapur,
Tq: Rabkavi-Banahatti, Dist.: Bagalkot.

.... Applicants/Plaintiffs

(Represented by Sri. A.K.O., Advocate)

- Vs -

1. Hanamant S/o Laxman Dharigouda,
R/o: Vidhyanagar, Mahalingapur,
Tq: Rabkavi-Banahatti, Dist.: Bagalkot.

.... **Opponent/Defendant No.1**

(Represented by Sri. B.M.A., Advocate)

Provision under which application is filed	:	U/o 39 Rule 1 & 2 R/w sec.151 of CPC
Relief sought for	:	Discretionary relief of temporary injunction
Date of filing the application	:	13.04.2023
Number of the application	:	I.A No.1
Date of filing objection/ memo	:	24.11.2023
Date of pronouncement of the order	:	23.08.2024

: ORDER ON I.A No. I :

The plaintiffs' have filed this application U/o 39 Rule 1 and 2 R/w sec.151 of CPC against defendant No.1 seeking to restrain him or anybody claiming through him from causing obstruction to their peaceful possession and enjoyment over suit property bearing R.S No.94/1+2+B measuring 30 guntas out of 2 acres 30 guntas situated at

Mahalingapur, Tq: Rabakavi-Banahatti. This application is filed at the initial stage of filing this suit.

2. In support of this application, plaintiff No.1 has sworn to an affidavit stating that, she is swearing to this affidavit on behalf of herself and also on behalf of other plaintiffs. It is submitted that, when there was a dispute with regard to joint family property in between her deceased husband and his brothers, her husband named Basappa Dharigouda had filed a suit for partition and separate possession before the court of Hon'ble Senior Civil Judge at Mudhol in O.S No.125/2016 and the said suit ended in compromise on 27.03.2021 and compromise decree was drawn accordingly. Thereafter, plaintiffs are in peaceful possession and enjoyment of the share allotted to the deceased husband of plaintiff No.1 to the extent of 30 guntas and the same is denoted by letters 'ABCD' in plaintiff hand sketch map. Accordingly, the middle portion to the extent of 1 acre was allotted to defendant No.1 and the same is denoted by letters 'CDEF' and defendant No.3 to 7 are allotted with a portion to the extent of 1 acre and the

same is denoted by letters 'EFGH' and the remaining defendants of O.S No.125/2016 were allotted with other properties. It is submitted that, plaintiffs being the LR's of deceased Basappa Dharigouda are in possession of suit property. Though the said case ended in compromise, the names are not entered in property extract to the extent of their allotted shares and the names of defendant No.2 to 7 has continued to appear in the said property extract. This being the fact, defendant No.1 is causing obstruction to the plaintiffs' possession and enjoyment of suit property to the extent of 30 guntas which is situated towards northern side of the portion allotted to him. In spite of several requests, defendant No.1 did not heed to any of the requests made by plaintiffs and elders and continued to cause obstruction. Hence, plaintiffs have filed this suit and application. It is submitted that, plaintiffs have got prima facie case and if the application is rejected, they would be put to irreparable loss and injury and on the other hand, no harm or loss would be caused to defendant No.1. Accordingly, prayed to allow the application.

3. On the other hand, defendant No.1 has appeared before this court through his counsel and has filed written statement denying entire case of plaintiffs and filed a memo to consider the contents of written statement as statement of objection to this application. In the written statement, defendant No.1 has not disputed with regard to the allotment of shares to his deceased brother named Basappa Dharigouda and to himself and also to defendant No.3 to 7. It is contended that, portion allotted to deceased Basappa Dharigouda i.e., husband of plaintiff No.1, is encroached by the family of one Latur. There is no dispute regarding filing of O.S No.125/2016 and entering of compromise in the said suit. However, it is specifically contended that, land owners towards northern side have encroached 30 guntas of land in the whole land bearing R.S No.94/1+2B i.e., the portion allotted to plaintiffs and hence, defendant No.1 along with plaintiff No.1 have jointly filed suit bearing O.S No.247/2022 before the court of Senior Civil Judge at Banahatti for the relief of declaration and permanent injunction against Latur family and others

and also had filed interim application U/o 39 Rule 1 & 2 of CPC and the same is allowed and is in force. It is also contended that, when suit property is not in his possession and enjoyment, the question of causing obstruction or disturbance on his part does not arise. In spite of knowing all these aspects, plaintiffs have falsely filed this suit and application. On these grounds, prayed to reject the application.

4. Heard both sides and perused the materials placed on record.
5. On the basis of rival contentions urged by parties, the points that would arise for my consideration are as follows:
 1. Whether plaintiffs have made out prima facie case?
 2. In whose favour balance of convenience lies?
 3. Who will be put to irreparable loss or injury, if an order of temporary injunction is rejected?
 4. What order?
6. My answers to the above said points are as under:

Point No.1 : In the **Negative**

Point No.2 : Does not arise for consideration.

Point No.3 : Does not arise for consideration.

Point No.4 : As per final order,
for the following:

: R E A S O N S :

7. **Point No.1:** Plaintiffs have filed this suit for permanent injunction against defendant No.1 to 7 seeking to restrain them or anybody claiming through them from causing obstruction to their peaceful possession and enjoyment of suit property measuring 30 guntas out of 2 acre 30 guntas situated at Mahalingapur. The brief contents of the application and the written statement of defendant No.1 are discussed in detail in the above paragraphs and hence, in order to avoid repetition, I am directly discussing the merits of this application. It is the specific case of plaintiffs that, suit property is fallen to the share of deceased husband of plaintiff No.1 and after his death, plaintiffs are in joint possession and enjoyment of suit property. Though, they are in possession of their respective shares, demarcation of land is not yet affected as per compromise decree. However, plaintiffs and defendants are in their respective portions as per compromise decree. Now defendant No.1 is causing

obstruction to their possession and enjoyment over suit property. Hence, plaintiffs have filed this suit and application. On the other hand, defendant No.1 has specifically contended that, land owners at the northern side of suit property have encroached the portion of property allotted to plaintiffs and hence, he along with plaintiff No.1 have jointly filed a suit for declaration and injunction and temporary injunction order is also in force in their favour. In spite of the same, without being in possession of suit property, plaintiffs have filed this suit against defendants. Accordingly, prayed to reject the application.

8. In support of this application, plaintiffs have filed notarized copy of compromise decree passed in O.S No.125/2016 along with the RTC extract of land bearing R.S No.94/1+2+B measuring 30 guntas out of 2 acre 30 guntas situated at Mahalingapur, Tq: Rabakavi-Banahatti. On the other hand, defendant No.1 has produced the xerox copy of order passed on I.A No.1 filed U/o 39 Rule 1 and 2 of CPC in O.S No.247/2022 before the court of Senior Civil Judge,

Banahatti filed by defendant No.1 and plaintiff No.1 against 15 defendants. Further, has produced the photographs along with survey sketch issued by Land Surveyor.

9. It is a settled law that, while considering an application under Order 39 Rule 1 & 2 of CPC, court has to look into prima facie case and not to examine the case on merits that, whether plaintiff is likely to succeed in the case or not. Plaintiff has to make out prima facie case for the grant of discretionary relief of temporary injunction. It is a settled position of law that, one who seeks equity, must show equity to others and should come with clean hands to have a discretionary relief of the Court, such as an order of temporary injunction. It is also a settled law that, a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the court that, unless defendant is restrained by an order of injunction, irreparable loss or damage will be caused to plaintiff during pendency of the suit. The court further has to satisfy that,

non-interference by the court would result in irreparable injury to the party seeking relief.

10. On perusal of the materials on record, it is clear that, plaintiffs have not at all disclosed with regard the filing of O.S No.247/2022 against the families of Latur, Dharigouda, Lakkappagol. On perusal of the said document, it is seen that, said suit is filed by plaintiff No.1 and defendant No.1 seeking for the relief of declaration and it is alleged that, defendants have encroached a portion in suit property. The order on I.A No.1 is passed on 23.09.2023. This suit is filed by plaintiffs on 13.04.2023. The application at I.A No.1 is filed on the same day. The plaintiffs are well aware about the alleged encroachment of their portion by the family members of Latur and hence, they have jointly filed the said suit along with defendant No.1. In spite of the same, this application against defendant No.1 seeking discretionary relief of temporary injunction does not arise. The question of encroachment if any if a matter to be adjudicated on trial. The same cannot be decided at this juncture.

11. Moreover, as per the very version of plaintiffs, in the entire land bearing R.S No.94/1+2+B plaintiffs and defendants are in joint possession and enjoyment and the names of defendant No.2 to 7 is continued to appear in property extract. At this stage, without going into merits of the case, it is settled law that, no injunction can be granted against a co-owner. Hence, I am of the opinion that, plaintiffs have not made out any grounds to show that, they are entitled for discretionary relief of temporary injunction in their favour and have not made out any prima facie case in their favour. Hence, I proceed to answer point No.1 in the **Negative.**

12. **Point No.2:** It is a settled position of law that, plaintiff must satisfy to the court the existence of prima facie case and balance of convenience and irreparable loss in his favour for the grant of temporary injunction. All the three ingredients have to be fulfilled by the plaintiff. If any one of the ingredients is not shown to the satisfaction of the court, the court cannot grant discretionary relief of temporary injunction in favour of plaintiff. Here, in the present case,

plaintiffs have not made out prima facie case for the grant of temporary injunction in their favour and hence, it is just and proper to hold that, consideration of this point does not arise at all. Hence, point No.2 is answered accordingly.

13. **Point No.3:** By considering facts and circumstances of the case and based on my discussion on above points, since plaintiffs have not made out prima facie case and have not convinced this court that, balance of convenience lies in their favour and moreover, have not shown that, judicial intervention is necessary to protect their alleged right over suit property against defendant No.1 failing which, they would be put to great hardship which cannot be compensated in any terms. Hence, point No.3 is answered accordingly.

14. **Point No.4:** In view of my discussion and reasons given while answering the above points, I proceed to pass the following:

: O R D E R :

I.A No.1 filed by plaintiffs' U/o 39 Rule 1
and 2 R/w sec.151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by him, corrected by me and then, signed and pronounced by me in the open court on this, the 23rd day of August, 2024)

(Shushma T.C.)
Civil Judge & J.M.F.C., Banahatti.

: ORDER ON I.A No.2:

This application is filed by plaintiffs U/sec.151 of CPC against opponent i.e.. PSI, Mahalingapura PS seeking to provide police aid to implement the order passed on I.A No.1 filed U/o 39 rule 1 and 2 of CPC dated 27.10.2023. The said application is opposed by defendant No.1 on the ground that, he is not made as a party to this application and plaintiffs have falsely filed this application knowing well that, defendant No.1 is not in possession of suit property as on the date of suit and hence, the question of breach of ad-interim ex-parte temporary injunction order against him.

On perusal of the contents of the application and affidavit and in view of the facts and circumstances of the case and the order passed on I.A No.1 on merits, I am of the opinion that, plaintiffs have not made out any grounds to allow I.A No.2. Moreover, the I.A No.1 is disposed off on merits on this day. Hence, in view of materials on record, I have no hesitation to hold that, consideration of this application does not arise. Accordingly, I.A No.2 is dismissed as devoid of merits.

For compliance of sec.89 of CPC.

Call on 05.11.2024.

Civil Judge & JMFC, Banahatti.