

**IN THE COURT OF IV ADDL. CIVIL JUDGE & JMFC,
HUBBALLI**

Present

Smt.Sweta Patil,
BBA. LL.B.,
IV Addl. Civil Judge and J.M.F.C.
Hubballi

Dated on this the 19th day of December, 2023

O.S.No.757/2022

Plaintiff/s : 1. Smt. Subhadra @ Sunita W/o Appanna Shettar,
Age: 50 years, Occ: Household work,
R/o : Aravind Nagar, Karwar Road, Old Hubballi, Hubballi.

Vs.

Defendant/s : Shri. Dadapeer S/o Abdulrawoof Mulla,
Age: 46 years, Occ: Business,
R/o Kalmeshwar Nagar, Old Hubballi, Hubballi.

PARTIES TO I.A.NO.1

Applicant : Smt. Subhadra @ Sunita W/o Appanna
(Plaintiff) Shettar,

V/s.

Opponent : Shri. Dadapeer S/o Abdulrawoof Mulla
(Defendant) and others.

ORDER ON I.A.NO.I

The plaintiff has filed the present application U/o.XXXIX Rule 1 and 2 of CPC., seeking temporary injunction to restrain the defendant or his power of attorney holder or his representatives, from selling, mortgaging, leasing, encumbering parting-with or in any manner alienating the suit properties till final disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of the application, wherein he has stated that defendant was joint owner of the land bearing Sy.No. 136A and 136B of Adargunchi village, since the said land was surrounded by residential layout, defendant with a view to make beneficial use of the said land and also as said land became unfit for agricultural purpose, he has formed a layout i.e., (Akram-Sakram) plots in the suit properties. It is further submitted that defendant had offered to sell suit properties to the plaintiff and plaintiff had paid full and final sale consideration of Rs. 4,48,000/- and Rs. 2,28,000/- to the defendant and upon receipt of the same, defendant had

executed sale deed dated 04/11/2016 and 02/12/2026 had handed over the suit properties to the plaintiff. It is

further submitted that ever since the execution of said sale deed plaintiff is in possession of the suit properties and as plaintiff opted to make construction in the suit properties that is when, defendant rushed to the suit properties and started to obstruct over the peaceful possession of plaintiff and also even tried to dispossess plaintiff from the suit properties. It is further stated that on 25/09/2022 defendant came to the suit properties along with large number of henchmen and tried to dispossess the plaintiff physically from the suit properties. Further it is submitted that plaintiff has made out prima-facie case and balance of convenience lies in his favour and if equitable relief of temporary injunction is not granted in his favour then plaintiff will be put to irreparable loss and injury. Hence, prayed to allow the application.

3. In pursuance of suit summons, the Defendant has appeared and filed his written statement, and also filed a memo and submitted that, same may be considered as objection to present application.

4. Advocate for defendant has filed his written statement wherein it is stated that, defendant had purchased agricultural land bearing R.S.No. 136/1A and R.S.No. 136/1B from its previous owner by way of registered sale deed, which is registered before Office of the Sub-Registrar Hubballi, accordingly name of defendant was mutated in the record of rights as holder and possessor of the said properties. The defendant is cultivating in the said suit properties from the date of purchase, till today. It is further submitted that the alleged suit properties and the properties described by the defendant till this day is an agricultural land and he has been cultivating the said land, as such the question of farming plots in the said land does not arise at all and it is also further submitted that as defendant is in ownership and possession of the suit properties, the plaintiff

has not approached this Court with clean hands. As such the prima-facie case and balance of convenience does not lie in favour of plaintiff and if the instant application is allowed then it will cause irreparable loss to defendant. Hence, prayed to reject the application.

5. Heard the arguments of Plaintiff and defendant side. Perused the materials placed on record.

6. After going through the application with the affidavit the following points would arise for my consideration:

1. Whether the Plaintiff has made out prima-facie case?
2. Whether balance of convenience lies in favour of Plaintiff ?
3. Whether irreparable loss will be caused to the plaintiff if the TI is not granted?
4. What order ?

7. My answer to the aforesaid points are as follows:

Point Nos.1 to 3 : In the Negative,

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

R E A S O N S

8. **Point Nos.1 to 3** : Since these points are interconnected, they are taken together for common discussion in order to avoid repetition of facts.

9. I have carefully gone through the entire pleadings as well as documents. Suit is filed by plaintiff against the defendant seeking relief of permanent injunction with respect to suit schedule properties i.e., plot No. 207 & 208 and 212 each measuring 30 X 40 feet out of the land bearing Sy.No. 136A and 136B of Adargunchi Vilage Hubballi.

10. At this stage, without going into the merits of the case and holding mini trial, this Court has considered the aspect of prima-facie case. At this stage, this Court makes it very clear that this Court is looking towards prima-facie case and not prima-facie title. It is well-settled principles of law

that, at the time of disposing the Temporary Injunction application, the Court cannot go into the prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.

11. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendant if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

12. The power to grant a temporary injunction is at the discretion of the Court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

13. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the Court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

14. This Court has carefully perused materials on record in order to ascertain whether plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for. This Court has perused record of rights with respect to suit properties produced by the plaintiff. The plaintiff has produced the unregistered sale deed and records of rights

with respect to Sy.No. 136/1A/2 and 136/1B/1, it is the contention of the plaintiff that the plaintiff has purchased the suit properties from defendant through a sale deed. There is no dispute that defendant was in ownership and possession of suit properties. Plaintiff now has contended that the said properties has been purchased by him through the sale deed dated 04/11/2016 and 02/12/2016 for a consideration of Rs. 4,48,000/- and Rs.2,28,000/- . Further in support of this contention the plaintiff has produced alleged sale deed, but same is unregistered one. As such the defendant has contended that the said suit of plaintiff is hit by Sec. 54 of Transfer of properties Act and Sec. 34 of Stamp Act and Sec. 17 of Registered Act., and defendant has further submitted that the alleged sale deed requires to be compulsory registered, if not the same has no evidential value for consideration. Plaintiff has also produced record of rights with respect to Sy.No. 136 Hissa 1A/2 Sy.No. 136 hissa 1B/1. Upon perusal of this documents it appears that the said properties are standing in the name of defendant as on date of filing the suit, other than these 2 documents the plaintiff

has not produced any other documents in order to show prima-facie case appearing in his favour. On the contrary the defendant has also contended that the description of properties are itself wrong and the properties as described by the plaintiff is not in existence. Further, submitted that the plaintiff has failed to prove identity of the properties then the question of granting of Temporary Injunction in favour of plaintiff do not arise at all. Upon perusal of records and submission made by the parties, the defendant has clearly denied the contention of plaintiff regarding the ownership and possession and also regarding existence of alleged plot in the said locality. The only point for consideration herein is whether the plaintiff has made out prima-facie case over the suit properties and the only document, plaintiff herein alleges to rely on is his sale deed which is clearly unregistered one and also upon perusal of record of rights produced by plaintiff himself, it is very evident that the said properties are standing in the name of defendant as a joint owner. It is to be noted that when the defendant does not admit the right of plaintiff to be in possession, a Temporary

Injunction will not be allowed unless there is clear finding that plaintiff has made out the prima-facie case being entitled to be in possession and upon perusal of records and also submission made by the parties there is no clarity regarding existence of possession of plaintiff over the suit properties and moreover, as contended by the defendant the existence of alleged plot in the said locality is itself is dispute. As such when the identity and the existence of the suit properties are in doubtful then in such circumstances this Court is of the opinion that the plaintiff has failed to prove the prima-facie case for grant of Temporary Injunction.

15. The important aspect to be noted here is that main suit itself deals with the Permanent Injunction and main prayer of the plaintiff in the instant suit is to restrain the defendant and his henchmen from obstructing in the peaceful possession and enjoyment of the suit properties by the plaintiff and in deciding the said main relief claimed in the plaint, this Court needs to ascertain by keeping entire records and same can be done by conducting fully pledged

trial. Both the parties have contended to be in possession of the said properties as such it is to be ascertained- Whether plaintiff is in possession or not ? Whether there exists alleged plot or not ?. In such circumstances this Court is of the opinion that plaintiff has failed to prove the prima-facie case for grant of Temporary Injunction. Temporary Injunction has to be granted only when the immediate relief available for the plaintiff in order to preserve the main relief is only the Temporary Injunction. In the instant case this Court is of the opinion that plaintiff does not need instant Temporary Injunction as immediate relief and same may be decided after conducting the fully pledged Trial. Further to this Court also did not find any question regarding any prima-facie interference alleged to be caused by defendant without their being any relevant documentary and oral evidence in that regard.

16. As plaintiff has failed in his first step to prove prima-facie ground for grant of Temporary Injunction. Hence, this Court is of the opinion that balance of convenience also donot lie in favour of plaintiff and if the temporary injunction

is granted in favour of plaintiff then it will definitely cause hardship to other side and moreover, the plaintiff has failed to prove irreparable loss or injury that would be caused to him, if the said application is rejected with these observation this Court has answered **point No.1 to 3 in Negative.**

17. **Point No.4**: In view of my findings on point No.1 to 3, I proceed to pass the following:

O R D E R

I.A.No.I filed by the Plaintiff U/o.XXXIX Rule 1 and 2 of CPC is hereby rejected.

Exparte Temporary Injunction granted in favour plaintiff hereby stands vacated.

(Directly dictated to the stenographer, typed by her, corrected and then pronounced by me in the open court on this the 19^h day of December 2023)

(Sweta Patil)
IV Addl. Civil Judge & JMFC,
Hubballi.

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19.12.2023

For orders

(Order pronounced in the open
court, vide separate order)

ORDER

I.A.No.I filed by the Plaintiff U/o.XXXIX Rule
1 and 2 of CPC is hereby rejected.

Exparte Temporary Injunction granted in
favour plaintiff hereby stands vacated.

**IV Addl. Civil Judge & JMFC,
Hubballi.**