

**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C.,
AT TIPTUR.**

Dated: This the 2nd day of March 2018.

Present:

Smt. Reshma H.K., B.A.,LL.B.,
C/C Addl. Civil Judge & JMFC,
Tiptur.

O.S.No.233/2017

Plaintiff : M.H. Nataraju

(By Sri. H.S. Krishnegowda, Adv.)

V/s

Defendants : Halegowda and Others

(By Sri A.M. Vidyashankar, Adv. for D1 to
D5)

(By Sri T.K. Raghu, Adv. for D6)

ORDERS ON I.A.No.VII FILED UNDER ORDER 39
RULE 1 & 2 R/W SEC.151 OF C.P.C.

The plaintiff filed an I.A.No.VII under Order 39
Rule 1 and 2 R/w Sec.151 of C.P.C., along with
affidavit and prays to grant ad-interim order of
temporary injunction restraining the defendant No.6

from installing solar plant in the application schedule (suit schedule item No.9 & 10) in any manner, pending disposal of the suit. In the affidavit plaintiff stated that the defendant No.1 is his father and defendant No.2 to 5 are his brothers and sisters. Further stated that the suit schedule property is the ancestral and joint family property and his father acquired the same through family partition dated 13.05.1990. Further the plaintiff stated that after filing the present suit, two days back, the defendant No.6 illegally entered upon to suit item No.9 and 10 and tried to install solar plant in the said land. That from this illegal act of the defendant No.6 is to be restrained till the disposal of the suit.

2. Upon service of suit summons and I.A. Notice, though the defendants appeared through their counsels the defendant No.6 filed his written statement and objections to the present Interim

Application. In the objection the defendant No.6 contended that the claim made by the plaintiff in this application is frivolous and vexatious and further contended that the Application schedule property was fallen to the share of defendant No.2 and 5 in a oral partition held between the family of plaintiff and defendant No.1 to 5. Further the defendant No.2 and 5 agreed to convey the application schedule property i.e., suit item No.9 & 10 to this 6th defendant and after completion of the formalities they intended to make sale deed with this defendant. Further this defendant denied all the allegation made by the plaintiff in his affidavit and stated that they have already installed their project in the schedule property and also alleged that the plaintiff is constantly harassed him for money and on other grounds prays for the dismissal of the application.

3. Heard arguments of both the parties and perused the materials placed on record. Based on the materials placed before the court, the points that arise for consideration are as follows:

1. *Whether the plaintiff has made out prima facie case to grant temporary injunction in their favour?*
2. *Whether the balance of convenience lies in favour of plaintiff?*
3. *Whether irreparable loss and injury would be caused to the plaintiff, in the event his application is not allowed?*
4. *If so, What Order?*

4. My findings on the above points are hereunder:

Point No.1: In the Negative
Point No.2: In the Negative
Point No.3: In the Negative
Point No.4: As per final order for the following:

REASONS

5. **Point No.1 to 3:** All these Points are interconnected to each other and hence taken up together

for common discussion in order to avoid repetition of facts and for convenience.

This is the suit filed by the plaintiff for the relief of Partition and for separate possession of the suit schedule property on the ground that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 5. On perusal of the plaint averments it is evident that the specific case of the plaintiff is that the suit schedule property is the ancestral and joint family property and the defendant No.1 to 5 have executed registered agreement to sell in favour of the Defendant No.6 without any legal necessity and the same will not binds the share of plaintiff.

6. However as per the contention of the defendant No.6 is that with an intention to set up solar power plants in the Tiptur Talluk, Tumkur district had identified certain land, with the suit item No.9 and 10

and thereafter approached the revenue entry holder of the said properties i.e., defendant No.1 and who agreed to sell the same in his favour. Further there was an oral partition in the family of the plaintiff and defendant and the defendant No.1 to 5 have executed an agreement dated 10.07.2017 in its favour and promised to executed registered sale deed after obtaining all the formalities.

7. In this backdrop of facts on perusal of the records placed before the court it reveals that the defendant No.1 to 5 have entered into an agreement with the defendant No.6 with respect to some of the suit properties and the same is admitted by the plaintiff also. Moreover in the plaint also the plaintiff stated that the sale agreement entered between the defendant No.1 to 5 and defendant No.6 does not binds his share. If such being the case if the plaintiff is having any right over the property it can be

adjudicated at the final disposal of the case and the plaintiff can be compensated suitably.

8. Furthermore it is the grievance of the plaintiff is that the defendant No.6 illegally entered into the application schedule property and destroying the standing crops. However on perusal of the photographs filed by the defendant No.6 discloses that the power plant already installed in the property and the defendant No.6 entered to the property after obtaining due permission from the katha holder of the property and the same is disclosed in the certified copy of the agreement. On the other hand the plaintiff did not produced any peace of documents to show that there is a standing crops in the schedule properties. Under the circumstances the contention of the plaintiff cannot be acceptable one.

9. Further the contention of the plaintiff regarding his share over the schedule properties will

be decided after completion of the trial only. Furthermore, at this juncture it is premature to go in detail and it is to be adjudicated only after full dressed trial. However all these above matters discloses that plaintiff fails to prove the prima facie case in his favour. Under these circumstances if injunction is granted certainly the Defendant No.6 will put to great hardship and might leads to multiplicity of proceedings. Hence the balance of convenience lies in favour of defendant No.6 and irreparable loss and injury would be caused to Defendant No.6 in the event of allowing the present application. In the light of the above discussion, I answered Point No.1 to 3 in the Negative.

10. Point No.4: On foregoing reasons assigned while answering Points No.1 to 3 and findings thereon, I proceed to pass the following:

ORDER

I.A.No.VII filed under Order 39 Rule 1
and 2 R/w 151 of C.P.C. is hereby rejected.

(Directly dictated to the Stenographer on Laptop, print out taken by him, corrected, signed and then pronounced by me in the open court on this 2nd day of March, 2018.)

(Reshma H.K.)

C/c Addl. Civil Judge & JMFC,
Tiptur.