

KATK030140222022



IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C AT TUMAKURU

PRESENT: Smt. Namrata Rao.K.S
B.A.L, L.L.B., M.B.L
Prl., Civil Judge and J.M.F.C.
Tumakuru.

Dated:This 14th day of July 2023

O.S.No.1126/2022

PLAINTIFF: Smt.Sowbhagya
D/o late Nanjappa
W/o.Siddalingaiah,
aged about 58 years.
R/o. Kora village & Hobli,
Tumakuru Taluk.

Presently R/at No.136, 4th main,
1st phase, Manjunathanagar,
Rajajinagar, Benbgaluru-10.
R/by her SPA Holder
Harsha Siddalingaiah
S/o.Siddalingaiah

(By Sri HS,, Advocate)

V/s

DEFENDANT: B.Siddaramaiah
S/o Bettanna,

aged about 70 years,
R/o.Omakar Nilaya,
Kyathasandra Post,
Kyathasandra, Tumakuru.

(By Sri MSS., Advocate)

PARTIES TO I.A.No.I

APPLICANT/S: Smt.Sowbhagya
R/by her SPA Holder
Harsha Siddalingaiah

-V/s-

RESPONDENT/S : B.Siddaramaiah

**ORDERS ON I.A. NO.I UNDER ORDER XXXIX RULE 1
AND 2 OF CPC**

The application due for the consideration is filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC, to restrain the defendant from interfering with her peaceful possession and enjoyment over the suit schedule property. The defendant has resisted the application.

2. The facts as urged by the plaintiff that are necessary for the disposal of this application are as under;

It is the urge of the plaintiff that the property belonged to her father and her father acquired the said

property through a decree in OS 18/95 before the I addl. Civil Judge, Tumkur. Since then the plaintiff's father was in possession of the suit property. Subsequently, the defendant created some documents and thus the plaintiff and her father were constrained to file a suit in OS 803/2012 for the relief of declaration. The suit was dismissed. The Appeal was also dismissed RSA 1487/19 is pending before the Honble High Court of Karnataka. The plaintiff is in possession of the suit property. The defendant having no right title or interest is interfering with the plaintiff's possession over the suit property. Hence this application for temporary injunction.

3. Per contra, the defendant has contended that the plaintiff's father is none other than the brother of the defendant. The property to the extent of 8 Acres 26 Guntas belonged to the family of Bettaiah. In the suit OS 18/1995, vide compromise, the father of the plaintiff acquired 2 A 20 Guntas of land and this defendant acquired 3 Acres of Land. Another brother Rajanna was

also allotted with a share. Subsequently, the father of the plaintiff sold 1 Acre of the property allotted to his share in favour of this defendant vide sale deed dated 24.8.2010. Since then the defendant is in possession to the extent of 1 Acre and also 3 Acres of land acquired through the decree in OS 18/1995. The plaintiff has filed the suit with an illegal motive. Hence, the application is to be rejected.

4. In the premise of the rival contentions, the points that arise for my consideration are as under:-

1. *Whether the plaintiff has made out a prima-facie case in his favour?*
2. *Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?*
3. *Whether the balance of convenience lies in favour of the plaintiff?*
4. *What order?*

5. The arguments addressed by both counsel have derived my careful consideration. I have carefully perused the documents furnished by the parties. My answer to the above points are as under:

Point No.1 : In the Negative

Point No.2 : Does not survive for cinsideration

Point No.3 : Does not survive for cinsideration

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

REASONS

6. **Point No.1:-** Before adverting to the discussion on the merits of the application let me set out the description of the property in dispute.

All the piece and parcel of agricultural land bearing Sy.No.10/2, measuring 02 acres 20 guntas, situated at Kora village, Kora Hobli, Tumakuru Taluk, bounded by:

East : B. Siddaramaiah's property

West: B. Siddaramaiah's property

North: Halla

South: Chikkanna's property

7. It is the assertion of the plaintiff that the property belonged to her father and her father acquired

the said property through a decree in OS 18/95 before the I addl. Civil Judge, Tumkur. The plaintiff has produced the copy of the decree. This decree is not disputed by the defendant.

8. The plaintiff further asserts that since the date of decree, the plaintiff's father was in possession of the suit property. Subsequently, the defendant created some documents and thus the plaintiff and her father were constrained to file a suit in OS 803/2012 for the relief of declartion. The suit was dismissed. The Appeal was also dismissed RSA 1487/19 is pending before the Honble High Court of Karnataka. Per contra, the father of the plaintiff sold 1 Acre of the property allotted to his share in favour of this defendant vide sale deed dated 24.8.2010. The copy of the sale deed is also produced. This sale deed is questioned by the plaintiff and her father in OS 803/2012. I haver perused the documents tabled before me carefully. Till now, the sale deed dated 24.8.2010 is in vogue. It is not declared as a sham

document. Even the RTC extracts produced by the defendant reflects that the entry is made separately with respect to 1 Acre and 3 Acres. On a broad preponderance of probabilities, the entry in the RTC extract does match with version of the defendant and the sale deed dated 24.8.10. That apart, the plaintiff has not explained as to how the alleged fraud was committed. Moreover a comprehensive suit is pending before the Honble High Court of Karnataka. Hence I donot find that the plaintiff has made out a prima facie possession over the suit property which needs to be protected. Accordingly, I answer the **point No.1 in the Negative.**

9. **Point No.2 and 3:** In view of the discussion made above with regard to point No.1, Point No.2 and 3 are taken together.

10.The Hon'ble Apex court in **Kashi Math Samsthan And another V/s Shrimad Sudhindra Thitha**

Swamy and another reported in AIR 2010 SC 296 has held as follows:

“If a party fails to prove prima facie case to go for trial , it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted”

When the plaintiff has failed to show prima facie case in her favour, the question of considering the balance of convenience and irreparable loss and injury does not arise. Hence I answer **the points No.2 and 3 as Do not survive for consideration.**

11 .Point No.4:- In view of the above discussions, I pass the following;

ORDER

**I.A. No.I filed under Order
XXXIX R.1 & 2 of CPC is dismissed.**

(Typed by me, print out taken by the stenographer, the transcript corrected by me and then pronounced in the open court on this the 14th day of July 2023)

(Namrata Rao.K.S)
Prl Civil Judge and J.M.F.C,
Tumakuru

(Order pronounced in the open court
Vide Separate order)

ORDER

I.A. No.I filed under Order
XXXIX R.1 & 2 of CPC is allowed.

Prl Civil Judge and J.M.F.C,
Tumakuru