

**IN THE COURT OF THE 1st ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C AT NELAMANGALA**

DATED: This the 11th day of September 2023

PRESENT : SRI.ANIL PRAKASH M.P. M.BA, LL.B.,
Addl. Senior Civil Judge & J.M.F.C,
Nelamangala.

OS.No.228/2015

Plaintiff:

1. Sri. N.S. Gangadhar
S/o N.B Shivarudrappa,
Aged about 58 years,
R/at "Devi Nilaya",
Opp Gopi Venkateshwara-
Kalyana Mantapa,
Nelamangala,
Bangalore Rural District.

(Rep. by Sri.B.P.G., Adv)

-VS-

Defendant/s:

1. The Tahasildar,
Nelamangala,
Nelamangala Taluk,
Bengaluru Rural District.
2. The State of Karnataka
Represented by it's Chief Secretary,
Vidhana Soudha,
Bengaluru.

(Rep.by Sri.A.S., Adv)

ORDERS ON IA NO.I

Applicants/Plaintiff : Sri. N.S. Gangadhar
S/o N.B Shivarudrappa
V/s

Opponents/Defendants: The Tahasildar and another

ORDER ON IA No.II UNDER ORDER 39 RULE 1 AND 2 R/W.**SECTION 151 OF CPC**

The defendants have filed this IA No.II under Order 39 Rules 1 and 2 of C.P.C to restrain the plaintiff from changing nature of schedule property in interest of justice and equity.

2. Defendant No.1 has sworn to an affidavit, wherein it is submitted that the plaintiff has filed this suit for relief of permanent injunction against defendants who are Tahasildar and State of Karnataka represented by Chief Secretary with respect to land bearing Sy.No.246 situated at Nelamangala Village, which is a government land of which revenue records is forthcoming as 'Bandimarga'.

3. Further it is submitted that the plaintiffs are claiming suit schedule properties as part and parcel of Sy.No.246, but they have not produced any single piece of document which goes to show schedule properties as part and parcel of Sy.No.246 situated at Nelamangala Village.

4. Further it is submitted that on the basis of Municipal katha the plaintiff is claiming possession with respect to Sy.No. 246 and has filed this suit and on 10.08.2023 to which they have filed counter claim submitting that the plaintiff is attempting to dig foundation with respect to Sy.No. 246 and accordingly the defendants have filed this IA No.II.

5. Further it is submitted that Sy.No.246 is situated at prima location of Nelamangala and the same is worth of crores and the plaintiff is trying to knock of aforesaid survey number by using Municipal katha, but nowhere he has pleaded that documents produced reveals that suit schedule properties is in Sy.No.246. Further it is submitted that they have filed counter claim and plaintiff without disclosing the location is trespassing over Sy.No.246 and accordingly submitted to allow IA No.II.

6. On other hand plaintiff has filed objection denying the affidavit averments to IA No.II as false. Further he has submitted that he is the absolute owner of suit schedule properties purchased under registered sale deed dated 28.01.2012 and accordingly he is in peaceful possession and enjoyment over suit schedule properties. Further he has submitted that his vendor had purchased suit schedule properties under sale deed dated 11.02.1963 which clearly goes

to show that his vendor had purchased same under registered sale deed dated 11.02.1963 for valuable consideration.

7. Further he has submitted that the plaintiff has not produced any documents which goes to show that Sy.No.246 is a government land. Further he has submitted that the letter dated 20.09.2014 address by Principal Secretary to Deputy Commissioner clearly goes to show that the entry as 'Bandimarga' is wrongly forthcoming in record of rights with respect to Sy.No. 246. Further he has submitted that the letter dated 13.10.2014 addressed by Deputy Commissioner to Tahasildar at Nelamangala also clearly goes to show that the entry as 'Bandimarga' is wrongly forthcoming in record of rights and for that reason submitted to dismiss IA No.II.

8. Perused available materials on record, the points that arise for my consideration are;

- 1. Whether Defendants have got prima-facie case in their favour ?***
- 2. Whether Defendants have got balance of convenience in their favour?***
- 3. Whether refusal of injunction will result in irreparable injury to the Defendants?***
- 4. What order?***

9. Heard learned counsel for plaintiff, I have answered the above points accordingly:

Point No.1: In the Negative

Point No.2: Does not survive for consideration

Point No.3: Does not survive for consideration

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

REASONS

10. **Point No.1:** The plaintiff has filed this suit for relief of permanent injunction. Further it is the case of plaintiff that he is the absolute owner of properties bearing Old Khaneshmari No.1263/1188, Khatha No.1721/1457, measuring to an extent of 3000 Sq. Feet, property bearing old Khaneshmari No.1263/1188, Khatha No.1721/1457, measuring to an extent of 4000/- Sq. Feet, property bearing old Khaneshmari No.1263/1188, Khatha No.1721/1457, measuring to an extent of 10236 Sq.Feet. All the above properties situated at Jayanagara, Nelamangala Town, Bangalore Rural District and the same were purchased by plaintiff from one Sri.K.L.Narahari Keshavamurthy @ K.L.N.L Murthy and Dr.K.L.Narayana Murthy, through registered sale deed dated 28.01.2012 and from the date of purchase the plaintiff is the absolute owner in peaceful possession and enjoyment of the suit schedule property even today.

11. Further he has submitted that the defendant is a stranger to suit schedule properties and on 23.03.2015 the defendant attempted to trespass over suit schedule properties and attempted to dispossess the plaintiff out of suit schedule properties and for that reason he has filed this suit.

12. On other hand the defendant has filed written statement and later by way of amendment same was amended and relief by of counter claim was inserted wherein it is contended that the land in question is a public property which is described as 'Bandimarga' from immemorial time and the same is government property.

13. Further it is submitted that the plaintiff is claiming suit schedule properties to be katha properties and has shown boundaries of agricultural property. Further it is submitted that the plaintiff without paying tax is claiming suit schedule properties as Khaneshumari property.

14. Further it is submitted that they have fenced around survey number in order to protect from illegal encroachment. Further as per order in L.N.C.D.R 78/2013-14 dated 20.02.2015 the property is described as 'Bandimarga' which is in possession of defendant and now the plaintiff by creating stories has filed this suit which is not maintainable. Further it is submitted that the plaintiff by misusing order of this court

has removed the fence and board attached to the property and the property in question is a government property and the plaintiff by misusing the same as filed this suit.

15. In this case it is not in dispute that earlier the defendant has filed written statement and later by way of amendment counter claim was incorporated in written statement and for that reason the rules applicable to the plaintiff is also applicable to the case of defendants.

16. Further the defendants are claiming temporary injunction with respect to property bearing Sy.No.246 measuring 1 acre 2 guntas situated at Nelamangala Village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District and with following boundaries;

East : Road,

West: Sy.No.247,

North: Road,

South : Sy.No.245.

17. Further it is not in dispute that earlier plaintiff had filed IA No.II under order 39 Rule 1 and 2 of CPC because objected by the defendant and after hearing both sides my predecessor in office has granted temporary injunction. Further in said order this court has appreciated the sale deeds, katha extract and other documents produced by the plaintiff and has

held that the plaintiff has establish his prima facie possession over suit schedule properties. Further this court had also observed that though there is a entry in record of rights as 'Bandimarga', but the letter dated 20.09.2014 addressed by Principal Secretary to Deputy Commissioner of Bangalore Rural and the letter dated 13.10.2014 address by Deputy Commissioner to Tahasildar clarifies that the same is wrong entry and it is directed by Deputy Commissioner to Tahasildar to remove said entry.

18. Further as per the above observation in order dated 29.08.2015 on IA No.I this court has held that the plaintiff has establish his prima facie possession over suit schedule properties and the said order has not been challenged by the defendant and for that reason the above observation remained unchallenged.

19. Further the defendant has taken specific contention that Sy.No.246 measuring 1 acre 2 guntas is a 'Bandimarga' and regarding the same the defendants have produced photographs, but the same will not helpful to decide whether it is a public property or private property, but however they have produced record of rights which goes to show Sy.No. 246 as 'Bandimarga', but however the defendants have produced letter dated 26.09.2014 addressed to Assistant Commissioner of Doddaballapura Taluk by Tahasildar, wherein it is clearly held

that though as per the revenue records Sy.No.246 measuring 1 acre 2 guntas shown as 'Bandimarga', but the same is not reserved for any public purpose. Further the spot mahazar dated 26.09.2014 also goes to show that there is no 'Bandimarga'.

20. Further apart from that the plaintiff has produced documents along with memo dated 23.06.2023 wherein letter dated 20.09.2014 address by Principal Secretary, revenue department of government of Karnataka to Deputy Commissioner and the relevant portion is extracted below:

“ ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸಿರುವ ದಾಖಲಾತಿಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ನೆಲಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 246 ರಲ್ಲಿನ 1 ಎಕರೆ 2 ಗುಂಟೆ ಜಮೀನಿನ ಪೈಕಿ 18 ಗುಂಟೆ ಜಮೀನಿಗೆ ನೆಲಮಂಗಲ ಪುರಸಭೆಯ ಖಾನೇಷಮಾರಿ ನಂಬರ್ 1721/1457 ರಂತೆ ವಿವಿಧ ಅಳತೆ ನಿವೇಶನವನ್ನು ಕೆ. ಎಲ್. ಎನ್ . ಕೇಶವಮೂರ್ತಿ ಮತ್ತು ಕೆ. ಎಲ್. ಎನ್ ನಾರಾಯಣಮೂರ್ತಿ ರವರುಗಳಿಗೆ ಜಂಟಿಯಾಗಿ ಖಾತೆದಾರರಿಂದ ನೋಂದಣಿ ಸಂಖ್ಯೆ 5120/2013-14 ದಿ: 28.01.2012 ರಂದು ಎನ್ ಎಸ್ ಗಂಗಾಧರ್ ಬಿನ್ ಶಿವರುದ್ರಪ್ಪ ಎಂಬುವವರು ಕ್ರಯಕ್ಕೆ ಪರೆದಿರುವ 15 ಗುಂಟೆ ಸ್ವತ್ತನ್ನು ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಿ ನೆಲಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 246 ರಲ್ಲಿನ ಆರ್ ಟಿ ಸಿ ಯಲ್ಲಿ ನಮೂದು ಆಗಿರುವ ಬಂಡಿಮಾರ್ಗ ಎಂದು ನಮೂದಿಸಿರುವ ನಮೂದನ್ನು ತೆಗೆದು ಹಾಕುವ ಬಗ್ಗೆ (15 ಗುಂಟೆಗೆ ಸೀಮಿತ) ಕಾನೂನು ರೀತ್ಯಾ ತಕ್ಷಣದ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ

ನೆಲಮಂಗಲ ತಹಶೀಲ್ದಾರ್ ರವರಿಗೆ ನಿರ್ದೇಶನ ನೀಡುವಂತೆ ತಮ್ಮನ್ನು
ಕೋರಲು ನಾನು ನಿರ್ದೇಶಿತನಾಗಿರುತ್ತೇನೆ.”

and from the above letter it is clear that principal secretary of revenue department has directed to remove the entry as 'Bandimarga' from revenue records with respect to 15 guntas. Further the said letter is followed by letter dated 13.10.2014 by Deputy Commissioner of Bangalore Rural District to Tahasildar.

21. Further the plaintiff there is a sale deeds of year 1963 prima facie goes to show that suit schedule properties are private properties. Further the documents produced by defendants themselves goes to show that though there is a entry as 'Bandimarga' the same is not reserved for any public purpose and in view of the above discussion the defendants have failed to establish prima faice case in their favour and accordingly I have answered **Point No. 1 in the Negative.**

22. Point No.2 and 3: On the above discussion Point No. 1 it is clear that the plaintiff has no prima facie case in his favour and at this stage I am relying on judgment of Hon'ble Supreme Court reported **2010(1) SCC 689 between Kashi Math Samsthan And Another V/S. Shrimad Sudhindra Thirtha Swamy And Another**, wherein it is held:

“16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that 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 being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court”.

and in view of above ratio if plaintiff fails to establish prima facie case then balance of convenience and irreparable injury **Does not survive for consideration and Point No.2 and 3 answered accordingly.**

23. **Point No.4:** In view of above discussion on points No.1 to 3, I proceed to pass the following;

ORDER

The IA No.II filed under order 39 Rule 1 and 2 R/W. Sec.151 of C.P.C by the defendant is hereby dismissed.

No order as to costs.

(Dictated to Stenographer, transcript computerized by her, revised, corrected, signed and then pronounced by me in the open court on this the 11th day of September, 2023)

(Sri.ANIL PRAKASH M.P.)

Addl. Senior Civil Judge
Nelamangala.