

KABC010000872021



IN THE COURT OF THE I ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-2)

PRESENT

SRI. SREENIVASA, B.A., LL.B.
I Addl. City Civil & Sessions Judge,
Bengaluru.

Dated this the 29th day of January, 2024.

O.S.129 / 2021

PLAINTIFF: Smt.Doli Bai Choudhary and another.

-VS -

DEFENDANT: Smt.Manjushree and others.

ORDER ON I.A. Nos.1 & 2

I.A.No.1 is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC praying for an order of ad interim temporary injunction restraining the defendant, their agents, men, henchmen or anybody under or through them from interfering in any manner with the plaintiffs' lawful possession of the suit schedule property, pending disposal of this suit.

2. I.A.No.2 is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC praying for an order of ad interim temporary injunction restraining the defendants or anybody claiming through or under them from alienating the suit schedule property, pending disposal of this suit.

3. a) Along with IAs, plaintiff Ashok Kumar Chowdary has filed affidavit stating that, he is acquainted with the facts and circumstances of this case, hence, he is swearing to this affidavit on behalf of himself and also on behalf of the other plaintiffs. The contents of the plaint may be read as part and parcel of this affidavit for the purpose of avoiding repetition of facts. Late Sri.Hemaram Choudhary was the absolute owner of the schedule property having purchased the same under the registered sale deed dated 30.06.1997. Ever since the said purchase, said Late Sri.Hemaram Choudhary was in peaceful possession and enjoyment of the same without any external hindrance. Exercising the rights arising out of the absolute ownership, he procured the katha, electricity connection and other statutory utilities and amenities. Said Late Sri.Hemaram Choudhary was also paying regular taxes to the BBMP. Subsequent to the demise of Late Sri.Hemaram Choudhar, the plaintiffs being his legal representatives have succeeded to his estate and have been in settled possession and ownership of the schedule property.

3b) Recently, the defendants have made multiple attempts to interfere with their possession with respect to the schedule property unlawfully. Having regard to the help of relatives, well wishers and walkers by, the illegal dispossession attempts made by the defendants were successfully evaded. The defendants have given threat that, they will dispossess them and take possession of the schedule property unlawfully. The plaintiffs have unimpeachable and absolute right, title and interest over the suit schedule property. The defendants despite having no connection to the schedule property are making hectic attempts to dispossess the plaintiff. They reliably learnt that, the defendants with bogus documents are attempting to alienate the suit schedule property and create third party interest

with an intention to make unlawful gains from them. Their possession with respect to the schedule property is lawful. The defendants are having abundant man power, money power and muscle power. The defendants have affinity to high profile political party. The defendants were accompanied by their henchmen, who categorically threatened them with dire consequences in the event they failed to hand over the possession of the suit schedule property. They fear for their life and the acts of the defendants are extremely apprehensive. The defendants cannot take law into their own hands and dispossess them other than in accordance with law. The defendants are making hectic attempts of alienating the schedule property with bogus documents to third parties, They reliably learnt that, the defendants have approached various brokers and are about to alienate the schedule property to create third party interests and defraud them. In the event, the schedule property is alienated, the same will leads to multiplicity of proceedings and will be cumbersome on the general public as the defendants are misrepresenting regarding their non-existing title with respect to the schedule property. The plaintiffs having no other option, but to seek intervention of this Court by way of an injunction.

4. To IA Nos.1 and 2, the defendants have not filed objections.

5. Heard the arguments from the side of the plaintiff. Inspite of sufficient opportunities, the defendants have not addressed their arguments. Hence, liberty is given to the defendants to file their written arguments.

6. Now the point that arise for my consideration are:

1. Whether the plaintiffs have made out a prima facie case for grant of temporary injunction as prayed in IA Nos.1 and 2 ?
2. Whether the plaintiffs will be put to irreparable loss and injury if TI is not granted and balance of convenience lies in their favour ?
3. What order ?

7. My answer to the above points are as as hereunder:

Point No.1& 2 : In the affirmative,

Point No.3 : As per final order
for the following:

REASONS

8. **POINT Nos.1 & 2:-** The plaintiffs have filed this suit against the defendants for permanent injunction in respect of the suit schedule properties.

9. In the plaint, it is stated that, plaintiff No.1 is the wife of one Late Sri.Hemaram Choudhar and the plaintiff No.2 is his son. Late Sri.Hemaram Choudhary expired on 18.10.2009. During the lifetime of Hemaram Choudhary, he purchased all that piece and parcel of property bearing HL No.2, V.P.Katha No.724, situated at Mallasandra Village, Dasarahalli CMC, Yeshwanthpura Hobli, Bengaluru North Taluk, measuring east to west north side 80 feet, south side 78 feet and north to south 40 feet along with two square AC sheet roofed house and all that piece and parcel of southern portion of property bearing HL No.20 , Katha No.724 situated at Mallasandra Village, Dasarahalli CMC, Yeshwanthpura Hobli, Bengaluru North Taluk, measuring east to west 40 feet and north to south 30 feet along with one square AC sheet roofed house, which are morefully described as suit schedule properties. The suit schedule property was purchased by Hemaram Choudhary from its erstwhile owners Sri.B.Shantilala Kankaria and Smt.Vimala Devi vide

absolute sale deed dated 30.06.1997 for a valuable sum of Rs.2,85,000/-. The suit schedule property was purchased by the aforesaid duo from one Sri.Chandrappa on 25.05.1992. In pursuance of obtaining lawful title with respect to the schedule property vide sale deed dated 30.06.1997, the statutory has enlarged a katha in favour of Late Hemaram Choudhary and in pursuance of the same, Late Hemaram Choudhary had been paying the concerned statutory and municipal taxes without demur. However, since the said katha was misplaced, the plaintiffs have applied for a copy of the said katha with the concerned statutory body vide application dated 30.09.2019. It is further case of the plaintiffs that, said sale transaction in favour of Late Hemaram Choudhary has been reflected in the encumbrance certificate issued by the statutory authority for the relevant period. Late Sri.Hemaram Choudhary sought for power connection from the concerned statutory authority. In pursuance of the said application, the Karnataka Power Transmission Corporation Ltd., sanctioned power connection to Late Sri.Hemaram Choudhary. Late Sri.Hemaram Choudhary was paying regular monthly bills. After his demise, his legal heirs have been paying the monthly bills.

10. It is further case of the plaintiffs that, the BBMP proposed to widen the road, which is abutting to western portion of the suit schedule property. Hence, the BBMP has issued a letter to the plaintiff No.2 herein seeking documents pertaining to the suit schedule property as it may be acquired for the said acquisition. The said notice further depicts that ownership and possession of the plaintiffs with respect to the suit schedule property. After the demise of Hemaram Choudhary, the plaintiffs being the legal heirs have been exercising their right in relation to the suit schedule property as absolute owners without any impediment from anyone till date.

11. The plaintiff No.1 and one Sri.Bhawar Lal, who had purchased one other abutting property from Sri.B.Shantilal Kankaria and Smt.Vimal Devi vide absolute sale deed dated 01.07.1997, decided to merger their properties together and jointly rented out the same to one Smt.Sangeetha Devi Sethiya. Things as stood thus, the defendants without any right, have sought to interfere with the plaintiff's peaceful possession. The plaintiffs along with others, who are privy to distinct properties in the same survey number were constrained to approach the Assistant Commissioner, Bengaluru North Sub-Division by filing petition seeking for setting aside IHC NO.18/1986-87 in RTC in respect of land bearing Sy.No.75/1 measuring 3 acres 12 guntas. Land bearing Sy.No.75/1, situated at Mallasandra Village, Yeshwanthpur village, Bengaluru North Taluk, originally measured to an extent of 3 acres 12 guntas and originally belonged to one Sri.B.Appanna Shastry. That after the commencement of Karnataka Land Reforms Act, one Smt.Lakshmamma, who is the grandmother of the defendants herein filed an application for occupancy rights in the said land. The said matter was registered as Case No.LRF/1425/1974-75. All the parties to the said LIS filed a compromise petition in Case NO.RRC/133/1977-78 before the Tahsildar, Bengaluru North Taluk, wherein out of 3 acres 12 guntas of land in Sy.No.75/1, it was compromised between the parties that, Sri.B.Appanna Shastry would be privy to cultivating 2 acres 11 guntas. On the other hand, Smt.Lakshmamma would be privy to 1 acre 1 gunta. However, the Land Tribunal did not accept the said compromise. Aggrieved by the same, a writ petition bearing No.21912/1982 was filed before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka was pleased to accept the said compromise and passed an order on 20.08.1985. Accordingly, Sri.B.Appanna Shastry became the absolute owner of 2 acres 11 guntas and

Smt.Lakshmamma became the absolute owner of 1 acre 1 guntas of land in Sy.No.75/1 of Mallasandra Village. Thereafter, said Sri.B.Appanna Shastry executed a power of attorney in favour of Malleswaram Tailoring Co-operative Society and subsequently in favour of L.Manjunathaiah and H.S.Vijay Kumar. Pursuant to the said GPA, a layout was formed and number of sites were sold to various individuals from whom persons like Late Sri.Hemaram Choudhary and others purchased sites and also from the clan privy to Smt.Lakshmamma. The Assistant Commissioner of the Bengaluru North Sub-Division in the aforesaid RA was pleased to stay the entry of the defendants in IHC/18/1986-87 to an extent of 3 acres 12 guntas. Despite such a stay being granted, the defendants have been trying to alienate sites in Sy.No.75/1, Mallasandra Village falsely staking claim to 3 acres 12 guntas therein, in violation of the compromise in W.P.No.21912/1982 and are also trying not only to interfere with the possession of the plaintiffs, but also are hectically trying to dispossess them, despite being fully aware of the fact that, the plaintiffs are in settled possession of the suit schedule property. The defendants and their henchmen have visited the suit schedule property on 02.12.2020 and 03.12.2020 alleging that, they have right and title over the same, which is in conflict of a valid and subsisting sale deed and other consequential documents / deeds supplementing their ownership as well as settled possession. At the behest of neighbours and also by applications in the aforesaid LIS before the Assistant Commissioner, Bengaluru North, the same was thwarted. The defendants have a vendetta to interfere with the plaintiffs' peaceful possession as well as are hectically attempting to dispossess the plaintiffs and the defendants are up to mischief by selling / alienating sites in Sy.No.75/1 by taking undue advantage of IHC No.18/86/87 by claiming to be privy to the entire 3 acres 12 guntas of land therein.

12. In order to prove the prima facie case, the plaintiffs have relied upon the following documents:

- Document No.1 : GPA dated 30.10.2020 executed by 1st plaintiff Doli Bai Choudhary in favour of 2nd plaintiff Ashok Kumar Choudhary. This document come to the aid of the plaintiffs to show that, the plaintiff No.1 given GPA to the 2nd plaintiff to prosecute the suit on her behalf on the ground that, she is suffering from asthma, heart related issues and other associated health problems.
- Document No.2 : Death certificate of Hemaram Choudhary, wherein, it discloses that, he died on 18.10.2009.
- Document No.3 : CC of the sale deed dated 30.06.1997 executed by Sri.B.Shantilala Kankaria and Smt.Vimala Devi in favour of Hemaram Choudhary in respect of HL No.20, Katha No.724 of Mallasandra Village measuring east to west 40 feet and north to south 30 feet along with one sq. AC sheet roofed house without an amenities. This document is helpful to the case of the plaintiffs to show that, Hemaram Chowdary, who is the husband of the 1st plaintiff and father of the 2nd plaintiff had purchased this property.
- Document No.4 : Requisition given by the 1st plaintiff to BBMP seeking to issue B katha as per the sale deed.
- Document No.5 : EC, wherein, it shows that, Hemaram Choudhary had purchased property bearing HL No.02, K.No.724 80+78 x 40/2 on 30.06.1997.
- Document No.6 : ECs from 24.05.2004 to 12.07.2018, 01.04.2008 to 09.11.2020, 24.05.2004 to 12.07.2018, 01.04.2008 to 09.11.2020, from 01.04.1980 to 31.03.2004.
- Document No.7. : Copy of the report towards sanction of power connection.
- Document No.8 : CC of the sale deed dated 30.06.1997 executed by B.Shantilala Kankaria and Vimala Devi in favour of

Hemaram Choudhary in respect of property bearing No.HL No.2, V.P.Katha No.724, situated at Mallasandra Village, Dasarahalli CMC, Yeshwanthpura Hobli, Bengaluru North Taluk, measuring east to west north side 80 feet, south side 78 feet, north to south 40 feet along with 2 sq. AC sheet roofed house without any amenities bounded east by property No.19 and 20 sold to the purchaser, west by road, north by remaining property No.1 and south by property No.3 i.e., suit schedule property.

- Document No.9 : Electricity Bills.
- Document No.10 : Tax paid receipts.
- Document No.11 : Circular dated 25.10.2010 issued by BBMP giving direction to the 2nd plaintiff to produce the sketch and sale deed etc.
- Document No.12 : Telephone bill.
- Document No.13 : Sales Tax registration certificate.
- Document No.14 : Copy of the lease deed dated 14.04.2015 executed by the plaintiffs in favour of Sangeetha Devi Sethiya for the purpose of carrying business in Marble, granite and stone business in property bearing Nos.HL.1, HL.2, HL.20,, V.P.Katha No.724, Mallasandra Village.
- Document No.15 : Copy of the rent agreement dated 01.03.2015.
- Document No.16 : Copy of the value added tax registration certificate.
- Document No.17 : Copy of the front page of bank passbook.
- Document No.18 : Copy of electricity bills and gas refilling receipt.
- Document No.19 : Copy of voter ID of Sangeeta.
- Document No.20 : Copy of PAN card of Santeetha.
- Document No.21 : Copy of aadhaar card of Sangeetha
- Document No.22 : Certificate of enrollment / revision of certificate of enrollment under the Karnataka tax on profession.
- Document no.23 : Details of the goods supplied by the business.

- Document No.24 : Copy of the order dated 20.08.1985 passed by the Hon'ble High Court in W.P.No.21912/1982, which was preferred by B.Appanna Sastry against Land Tribunal, Land Tribunal and Smt.Lakshmamma, wherein, the Hon'ble High Court has disposed the said writ petition without interference in respect of the Order passed by the Tahsildar, Bengaluru North Taluk in case No.RRC.133/77-78, because it was not challenged before the Tahsildar itself.
- Document No.25 : Proceedings of the Deputy Commissioner, Bengaluru North Sub-Division, Bengaluru in case No.RA (BN) 162/2018 dated 27.08.2018.
- Document No.26 : Photographs.
Document No.27 : CC of the sale deed dated 12.08.2020 executed by Naveen Kumar and others in favour of Ganesh Rao P. in respect of Site No.6, Assessment No.75/1, Plan-2, Mallasandra Village.
- Document No.28 : Complaint dated 02.12.2020 lodged by 2nd plaintiff against the defendants for acts of trespass, criminal intimidation, threat etc.

13. From the documents produced by the plaintiffs, it disclose that, the suit schedule property was purchased by Late Sri.Hemram Choudhary from his erstwhile owner Sri.B.Shantilala Kankaria and Smt.Vimala Devi vide absolute sale deed dated 30.06.1997 and they purchased the suit property from one Sri.Chandrappa on 25.05.1992. Further, the documents disclose that, in pursuance of obtaining lawful title with respect to the suit schedule property, the name of Hemram Chodhary is entered in the Katha and also got sanctioned electricity supply in his name. Further, the documents disclose that, Hemram Choudhary died leaving behind the plaintiffs as his legal heirs.

14. The defendant No.4 has filed written statement. The defendant Nos.1 to 4, 6 and 7 have filed memo adopting the written statement filed by the defendant No.4. In the written statement, it is contended that, the land bearing Sy.No.75/1 measuring 1 acre 1 gunta situated at Mallasandra Village was owned by Smt.Lakshmmamma w/o. Doddananjappa. After her death, the revenue entries were mutated in the names of her sons Ramakrishnappa, Narayanaswamy, Chandrappa and Shivashankar. This defendant is the son of Late B.N.Narayanswamy. He along with other defendants being the legal heirs of said Lakshmmamma succeeded to the said property and has been in peaceful possession and enjoyment of the same. Only a small extent in the said area has been sold by this defendant. However, none of the legal heirs of Lakshmmamma or Lakshmmamma have sold the suit property in favour of the plaintiff or his predecessors. Thus, the claim of the plaintiffs against the defendants with regard to the suit schedule property is totally untenable. One Appanna Sastry held an extent of 2 acres 11 guntas in Sy.No.75/1 is not relevant in view of the facts that, the plaintiff is claiming the title against the property which is owned by the defendants. The plaintiffs are not clear about the identity of the property and as to the authority and competence of his predecessors-in-title to convey the suit schedule property, if it is carved out of 1 acre 1 guntas in Sy.No.75/1, which belongs to the defendant. The allegation that, the defendants are taking claim to 3 acres 12 guntas in Sy.No.75/1 of Mallasandra Village has to be contested by Appanna Shastry or his legal heirs. The plaintiffs who have no manner of right, title, interest with regard to the suit property claimed to have been carved out of Sy.No.75/1 cannot raise those contentions. Further, the plaintiffs are not claiming any right through said B.Appanna Shastry also. The genesis of title has not been

properly narrated and the pleading to that effect is very vague. The plaintiffs are surreptitiously mixing up the facts and also has simply pleaded with regard to the alleged litigation pertaining to Sy.No.75/1, which is the subject matter in LRF No.1475/74-75. However, it is relevant to note that, all revenue entries pertaining to entire extent of 3 acres 12 guntas out of Sy.No.75/1 is standing in the name of the defendants. The RTC extract for the years 1988-89 till date show the names of the defendants (their respective fathers in the occupant column). The defendant No.4 in his written statement has further contended that, the allegation that, the defendants and their henchmen visited the suit schedule property on 02.12.2020 and 03.12.2020 alleging that, they have right and title over the same is untenable in view of the fact that, the defendants are the absolute owners of Sy.No.75/1, Mallasandra Village, measuring 3 acres 12 guntas. The alleged documents produced are got up documents and balance of convenience lies in their favour.

15. The defendants in order to establish their case have not produced the documents.

16. When the defendants have disputed the entire case pleaded by the plaintiffs, it is their duty to produce the documents to show that, the plaintiffs are not in possession of the property in dispute and the documents obtained by the plaintiffs are created. Further, the sale deed taken by Hemram Choudhary and katha accepted in his name, have not been challenged by the defendants before the competent Court. Till, the sale deed and katha are set aside by the competent authority, at this stage, the suit documents are having presumptive value and moreover, the plaintiffs have also produced the katha extract for the year 2021-22 and also katha certificate, wherein, at this stage prima facie show that, the plaintiffs

are in possession of the suit schedule property. Even for the shake of argument, if the court feels that, the defendants are owner of the suit schedule property, then also the defendants are not entitled to evict the plaintiffs from the suit schedule property till the plaintiffs are evicted under due process of law.

17. The learned counsel for the plaintiffs has relied upon the rulings of the Hon'ble Supreme Court reported in **AIR 1997 SC 2674, (2006) 5 SCC 263, (2012) 6 SCC 792, 1995 (5) SCC 545, MFA No.9386/2017 (CPC) in the case of B.M.Devarajappa Vs Gayathri and 2002 (4) Civil L.J.71 (PH)**. I have gone through the rulings. The principle is not in dispute. The rulings are applicable to the present case in hand as discussed above the defendants are not entitled to evict the plaintiffs from the suit schedule property till the plaintiffs are evicted under due process of law and also not entitled to alienate the suit schedule property.

18. In view of the above discussions, if temporary injunction is not granted, the defendants will take the order of this Court as a weapon and they will dispossess the plaintiffs from the property in question and also alternate the suit property. Hence, I am of the opinion that, till the parties to the suit establish their ownership, it is necessary to keep the property intact and to restrain the defendants from dispossessing the plaintiffs from the suit schedule property, till disposal of this suit. Accordingly, I answer **point Nos.1 and 2 are in the affirmative.**

19. **POINT NO.3:** For the aforementioned discussions, I proceed to pass the following:

ORDER

I.A.No.1 is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby allowed.

I.A.No.2 is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby allowed

Temporary injunction is granted.

The defendants or anybody claiming through or under them are hereby restrained from interfering in any manner with the plaintiffs' possession over the suit schedule property, pending disposal of the suit.

Further, the defendants or anybody claiming through or under them are hereby restrained from alienating the suit schedule property, till disposal of the suit .

Call on for cross-examination of PW.1
by 16.02.2024.

(Dictated to the Stenographer, transcription computerised by her, corrected and then pronounced by me in the Open Court on this the 29th day of January, 2024)

(SREENIVASA)

I Addl. City Civil & Sessions Judge,
Bengaluru.