

COMMON ORDERS ON I.A.Nos.1 and 2

The Plaintiffs No.1 and 2 have filed I.A.No.1 u/O.39 R.1 and 2 R/W. S.151 of C.P.C. for Temporary Injunction restraining Defendant No.1 and his men from interfering with their peaceful possession and enjoyment of Suit Schedule Property and I.A.No.2 u/O.39 R.1 and 2 R/W. S.151 of C.P.C. for Temporary Injunction against Defendants No.1 and his men from putting up construction in the Suit Schedule Property.

2. The Plaintiffs state that they are the absolute owners of Suit Schedule Property totally measuring 1500 square feet by Registered Partition Deed dated 31-12-2018. They state that the husband of Plaintiff No.1, who is also the father of Plaintiff No.2 had acquired the property by Will dated 15-10-1998 and after his demise the Plaintiffs are entitled to the Suit Property. The Plaintiff No.1's husband Sri.Munirama had constructed a house in the Suit Property and the Defendant No.1, who is not having any right, title or possession over the Suit Property is interfering with peaceful possession and enjoyment of the Plaintiffs' property and trying to put up construction and hence the Applications.

3. The Defendant No.1 has filed objections to both the Applications that the contents of the Plaint are false and Applications are all false, and that he is putting up construction in his own property after obtaining licence from BBMP, and hence the Applications be rejected.

4. The Following Points stand for consideration:
 1. Whether the Plaintiffs show that they have a prima facie case?
 2. Whether the Plaintiffs show balance of convenience in their favour?
 3. Whether the Plaintiffs show irreparable loss would be caused to them if the Temporary Injunction is not granted?
5. Perused all documents and heard Advocate for Plaintiffs.
6. The answers to the above Points are:
 - Point No.1 – In the Negative,
 - Point No.2 – In the Negative,
 - Point No.3 – In the Negative, for the following:

Reasons

7. **Point No.1:** The Plaintiffs No.1 and 2 have not produced any Katha Extract that stands in their names. The Katha Extract produced of the year 2017-2018 shows the name of owner as Munirama. The Death Certificate of Munirama shows the date of death as 3-10-2018. No explanation has come-forth as to why the Katha has not been entered into names of the Plaintiffs No.1 and 2, though about 1½ year has passed from the date of death of said Munirama. As such, the Court finds that the Plaintiffs No.1 and 2 have failed to make out the prima facie case and hence Point No.1 is answered in the **Negative**.
8. **Point Nos.2 and 3:** As the Points No.2 and 3 are interconnected, they are taken together for consideration.
9. The balance of convenience is in favour of Defendant No.1, as the Plaintiffs have produced Defendant No.1's Registered Sale Deed dated 23-3-2018, which is of Katha No.911/27 in

Singasandra Village. This property is different from the Suit Property. The Court finds that if the construction by Defendant No.1 is stopped, the rights of Defendant No.1 would be unnecessarily infringed and he will be put to great loss, inconvenience and hardship. The Plaintiffs having failed to show prima facie case, it can be made out that Defendant No.1 would be put to irreparable loss if Temporary Injunction is granted in favour of the Plaintiffs. Hence, Point Nos.2 and 3 are answered in the **Negative**.

10. Accordingly, I.A.Nos.1 and 2 are rejected.

For Issues by **7-8-2019**.

(Sachin Kaushik.R.N.)
III A.C.C. & S.J., Bengaluru.