

IN THE COURT OF THE II ADDL. CITY CIVIL JUDGE
AT BANGALORE CITY
(CCH-17)

DATED THIS THE 30th DAY OF MARCH, 2022.

PRESENT

Smt. Sheila B.M., M.Com., LL.M.
II Addl. City Civil & Sessions Judge,
BANGALORE

O.S. No. 3232/2020

PLAINTIFF:

Sri. T.S. Nagaraja
S/o late. T.K. Sampangi,
Aged about 67 years,
Residing at No.74/2,
2nd Main, Chamarajpet,
Bengaluru – 560 018.

(By Sri. MNS, Advocate)

V/s.

DEFENDANTS:

1) Smt. Radhamma,
W/o Venkatesh C
Aged about 60 years,
R/at No.12, 2nd cross,
14th Main, Near Park,
Magadi Main road,
Bengaluru – 560 023.

2) Sri. S. Raju,
S/o late. Subramani,
Aged about 48 years,
R/at No.7, 3rd Main road,
4th Cross, T.R. Nagar,
Bengaluru – 560 028.

3) Sri. Satish K
S/o Krishnappa,
Aged about 40 years,
R/at No.12, 2nd cross,
14th Main, Near Park,
Magadi Main Road,
Bengaluru – 560 023.

(Sri. RBR, Advocate for D-1 to 3)

PARTIES IN I.A. No.II

APPLICANT/ Sri. T.S. Nagaraja
DEFENDANT

Versus

OPPENANTS/ Smt. Radhamma and
PLAINTIFFS Others

ORDERS ON I.A. No.3

This application filed by the plaintiff under Order 39 Rules 1 and 2 R/w Section 151 of C.P.C., for granting an order of temporary injunction, restraining defendants, their agents, servants, attorney holders, legal representatives, successors-in-interest, heirs or anybody acting under them from alienating the suit schedule property till disposal of the suit.

.2. In support of the said application, the plaintiff has filed the affidavit stating that he is the absolute owner of the suit schedule property having acquired the same by virtue of a registered sale deed dated 0909.1991. In the sale deed the measurement of the property has been mentioned as East to West $(95 + 66)/2$ feet and North to South $(111 + 65) / 2$ feet. He came to know about the exact measurement of the schedule property as it is not in a exact shape. Subsequently to the sale deed , he is paying taxes. It is stated that one Krishna and V. Kalavathi and one Balaji @ Balaji Kalal who are nothing to do with the suit schedule property have tried to interfere with his peaceful possession and enjoyment of the suit schedule property. Hence, he has filed a suit for permanent injunction against those persons in O.S.No. 5741/2015 and O.S.No. 7317/2015 respectively. It is stated that in O.S.No. 5741/2015 the Court commissioner is appointed for the local inspection and survey of the properties in dispute. The Court

commissioner had filed his report stating that the suit schedule property is coming under the purview of Sy.No. 124 of Katriguppe village and also given the present measurement of the suit schedule property. It is stated that on 2.11.2019 he has received caveat petitions filed by the defendants herein alleging that, they are the owners in possession and enjoyment of their properties situated in Sy.No. 123 of Katriguppe village and they have obtained permission and building plan from the competent authority to put up building and he is trying to grab their property. It is stated that on 06.12.2019 the defendants with the local influenced persons have tried to put up illegal structures in the suit schedule property based on the concocted, forged and fabricated documents, which are not at all pertaining to the land bearing Sy.No. 124 of Katriguppe village and also tried to get the revenue documents as well as building plan in their favour.

.3. It is stated that with great difficulty he has resisted the illegal acts of the defendants with the help

of his family members. Again on 11.03.2020, the defendants have filed similar caveat petitions. Later, taking advantage of the Covid-19 situation, the defendants have trespassed into the suit schedule property and put up construction illegally, without having any valid title, interest or whatsoever over the property belonging to him. It is stated that he has filed an application seeking temporary injunction against the defendants from putting up any further construction in the suit schedule property but the said application came to be rejected as per the orders of this Court dated 15.09.2020. It is stated that while passing the said order this Court made observation that after full pledged enquiry, if he won the case, he can recover the possession of the suit schedule property by removing the structures put up by the defendants. It is stated that he has preferred an appeal against the said order before the Hon'ble High Court of Karnataka in M.F.A. No.5186/2020 (CPC), but the same also came to be dismissed. While passing the

order the Hon'ble High Court of Karnataka has made observation that even if the defendants put up construction of whatsoever nature over the suit property, the same shall be subject to the out come of the suit and if the plaintiff succeeds in the suit, any or all constructions that may be put up in the suit schedule property shall be liable to be removed.

.4. It is stated that the defendants taking advantage of the above said orders are putting up construction in a hurried manner with a view to alienate and create third party interest over the suit schedule property and to deprive his legitimate right over the suit schedule property. This apart, the defendants are openly canvassing in the locality that they are going to sell away the property as soon as possible. If the defendants succeed in their attempts in alienating and creating third party interest in-respect of the suit schedule property, he will be put to irreparable loss and the same will lead to multiplicity of proceedings. He has made out a prima facie case

and balance of convenience lies in his favour in granting the interim order. He further submit that, no harm or prejudice would be caused to the other side if this application is allowed. Hence, prayd for allowing the application.

.5. After service of suit summons and notice on I.A. No.2, the defendants have appeared through their counsel and filed written statement stating that the plaintiff has filed this application seeking for temporary injunction restraining the defendants from alienating, encumbering or creating any change and party interest, in the suit schedule property. It is stated that the suit schedule property claimed by the plaintiff does not exist and hence, the question of plaintiff having right, title and interest over the alleged suit schedule property does not arise. It is stated that he has not approached this Court with clean hands. The plaintiff is wrongly claiming these defendant's properties. The measurement on the eastern side 94.2 feet on the western side 0 feet, on the northern side

136.6 feet and on the southern side 106.6 feet, totally measuring 5376 sq. feet. But once they calculate the plaintiff's measurement 5727.36 sq. feet but the plaintiff has mentioned as 5376 sq. feet in order to avoid the Court fees. The plaintiff is contending that as per the alleged Court commissioner report in O.S.No. 5741/2015 he had mentioned the measurement of the suit schedule property. The measurement of the suit schedule property is 5808.020996 sq. feet which is contrary to the measurement given in the alleged Court commissioner report /sketch in O.S.No. 5741/2015. Therefore, seeking for such restrictive order on grounds to non-alienation with such contrary display of measurement not proportionate to the existing schedule property is illegal and on this ground itself the application is liable to be dismissed.

.6. The case of the plaintiff is that he had acquired the suit schedule property by virtue of a registered sale deed dated 09.09.1991. In the said sale

deed the measurement of the property has been mentioned as East to West (95 + 66) 2 and North to South (111 + 62) 2 feet and he has alleged to have come to know about the exact measurement of the suit schedule property as it is not in an exact shape and BBMP has effected khatha in the name of plaintiff, the khatha shows measurement of the property is 5685 sq. feet. It is important to submit that now the plaintiff has claimed the property as on the basis of the alleged Court commissioner report and sketch in O.S.No. 5741/2015. The measurement of the suit schedule property is totally contrary to the measurement given in the alleged Court commissioner report in O.S.No. 5741/2015 and khatha produced by the plaintiff and further the boundaries are also not matching. So, it is stated that the suit schedule property is not existing at all. On this ground itself, the application is liable to be dismissed.

.7. It is stated that the defendants are not parties in O.S.No. 5741/2015 and hence the alleged Court

commissioner report and sketch is not binding on these defendants. The plaintiff is yet to establish his case in full pledged trial and presently he has not established his case and he is not entitled for temporary injunction. The plaintiff has failed to prove a prima facie case and the balance of convenience lies in his favour. The documents produced by the plaintiff itself is contrary to each other. The plaintiff is illegally claiming these defendants property. This Court has rejected the IA No.1 finding that these defendants are in possession of their property vide order dated 15.09.2020. Considering the another IA filed by the plaintiff on the same grounds does not arise and hence, this application is liable to be dismissed. Hence, the defendants prayed to reject the said IA filed by the plaintiff with exemplary cost.

.8. Heard the arguments and perused the records.

.9. The following points that would arise for consideration of this Court are:

1. Whether the plaintiff has made out a prima-facie case for granting an order of temporary injunction ?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff will be put to irreparable loss and injury if an order of temporary injunction not granted in his favour?
4. What order?

.10. My findings to the above points are as under:

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

.11. **POINTS 1 to 3:** The plaintiff has filed the suit for declaration to declare that the plaintiff is the absolute owner of the suit schedule property and to direct the defendants to hand over the vacant possession of the suit schedule property to the plaintiff

by removing the structures put up in the suit schedule property.

.12. The plaintiff has filed IA No.3 under Order 39 rules 1 and 2 of CPC, and sought for grant of order of temporary injunction to restrain the defendants 1 to 3 from putting up further construction in the suit schedule property. This Court by order dated 15.09.2020 has opined that the plaintiff has not made out a prima facie case for grant of an order of temporary injunction, balance of convenience does not lie in-favour of plaintiff and hence, the plaintiff is not entitled for the relief of temporary injunction against the defendants. It was noticed that the plaintiff has filed comprehensive suit for declaration of ownership and possession of the suit schedule property from the the defendants by removing the structure put up by them. The Court is of the opinion that, irreparable loss and injury will be caused to the plaintiff. After full pledged enquiry, if the plaintiff win the case, he can recover the possession of the suit schedule property

from the defendants by removing the structure put up by them. So, the application was rejected.

.13. The order passed in IA No.1 has confirmed by the Hon'ble High Court in M.F.A. No.5186/2020 and has observed that even if the defendants put up construction of whatsoever nature over the suit schedule property, the same shall be subject to the outcome of the suit and if the plaintiff succeeds in the suit, any or all constructions that may be put up in the suit schedule property shall be liable to be removed.

.14. In the present case, the plaintiff has contended that the defendants taking advantage of the orders are putting up construction in a hurried manner with a view to alienate and create third party interest over the suit schedule property and to deprive his legitimate right over the suit schedule property.

.15. It is stated that the defendants are openly canvassing in the locality that they are going to sell away the property as soon as possible and if the defendants succeed in their attempts in alienating and

creating third party interest in-respect of suit schedule property, he will be put to irreparable loss and the same will lead to multiplicity of proceedings.

.16. The main contention of the defendants is that the plaintiff has not come to the Court with clean hands. It is stated that the plaintiff is wrongly claiming the defendants' property and wrongly mentioned the measurement of the suit schedule property.

.17. The plaintiff has given suit schedule property measurement as 5376 sq. feet. As per the alleged Court commissioner report in O.S.No. 5741/2015 the plaintiff has mentioned the measurement of the suit schedule property as 5808 sq. feet. The khatha in-respect of suit schedule property shows measurement as 5685 sq. feet. The measurement of the suit schedule property is totally contrary to the measurement given in the alleged Court commissioner report in O.S.No. 5741/015. This Court dealt with discrepancy in the case of the plaintiff

has categorically held that the plaintiff has not furnished correct measurement and boundaries to the suit schedule property. Therefore, it was held that the plaintiff has not made out a prima facie case and this Court rejected IA No.1 and in MFA No.5186/2020, the Hon'ble High Court has confirmed the orders passed on IA.No.1 in O.S.No.3232.2020. When the plaintiff has not made out a prima facie case, the question of granting temporary injunction, restraining the defendants from alienating the suit schedule property does not arise at all. However, it is settled law that Doctrine of Lis Pendens will apply if the defendant alienate the suit schedule property. Accordingly, I answer point No.1 in the negative.

.18. **POINT No.2:** In view of my finding on the point No.1, I proceed to pass the following:

ORDER

I.A. No. 3 filed by the plaintiff under
Order 39 Rules 1 and 2 R/w Section 151 of
C.P.C. is rejected.

No cost.

(Dictated to the Judgment writer, transcribed by her,
corrected and then pronounced by me in open
court this 30th the day of March 2022.)

(SHEILA B.M.)
II Addl. City Civil & Sessions Judge,
BANGALORE.

