

KABC010132072024



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU

DATED: THIS THE 18th DAY OF AUGUST, 2025.

PRESENT : Smt. NISHARANI A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru.

O.S.No.3583/2024

PLAINTIFFS: 1. **Mr.Rita Rani**
D/o Late.Irudayaraj,
Aged about 56 years,

2. **Mr.Arockia Dass**
S/o Late.Irudayaraj,
Aged about 50 years,

3. **Mrs.Gloria**
D/o Late.Irudayaraj,
Aged about 56 years,

All are resident of No.121,
Austin Town,
Bengaluru – 560 047.

(By Sri.Ravishankar S., Advocate)

V/s

DEFENDANTS: 1. **The Bruhat Bengaluru
Mahanagara Palike**

N.R.Road, Bengaluru.
Rep. By its Commissioner.

2. **Zonal Joint Commissioner**
The Bruhat Bengaluru
Mahanagara Palike,
Mayo Hall Building,
Residency Road, Bengaluru.
3. **Mrs.Mary Wilson**
W/o Kenneth Wilson,
Aged about 63 years,
R/at No.10, Janjappa Road,
Muniswamy Garden,
Ejipura, Bengaluru – 560 047.

(D.1 & 2 by Sri.E.M., Advocate
D.3 by Sri.M.D., Advocate)

**ORDER ON INTERLOCUTORY APPLICATION No.I FILED BY
THE PLAINTIFF UNDER ORDER XXXIX RULE 1 AND 2 R/W
SEC.151 OF CODE OF CIVIL PROCEDURE .**

The learned counsel for the plaintiffs have filed I.A.No.I under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, for the relief of temporary injunction restraining the defendants from interfering with peaceful possession and enjoyment of suit schedule property of the plaintiffs, pending disposal of the suit.

2. In support of the application, the 1st plaintiff has sworn to an accompanying affidavit stating that the plaintiffs are the children of Irudayaraj. They are in possession and enjoyment of the suit schedule property. The area where the schedule property situated belongs to the 1st defendant which was erstwhile Bengaluru City Corporation. The 1st defendant allotted the suit schedule property on lease to one Isrel who is the grandfather of the plaintiffs. He was in possession and enjoyment of the schedule property from the time immemorial. The said Isrel died during the year 1975 leaving behind his wife Miss.Jaya Mary and five sons. The father of the plaintiffs are one amongst the five sons. The 1st defendant had issued a notification calling upon the lessees to pay the sale consideration of respective occupant of the property of the corporation. The sale consideration was fixed at Rs.16,175/- with regard to the schedule property. The sale consideration fixed by the 1st defendant with regard to the schedule property was paid and a receipt was issued in

the name of the grandmother of the plaintiffs namely Miss.Jaya Mary. The 1st defendant on receipt of the sale consideration is duty bound to issue Sale Deed in respect of the schedule property. In the mean time the 1st defendant prepared a list of persons in occupation of respective portions and the amount paid by them. The name of the grandmother of the plaintiffs finds a place at serial number 1212 wherein there is an acknowledgment for having received entire sale consideration. In the mean Miss.Jayamary also died and the plaintiffs continued in possession of the schedule property. The other children or grandchildren of Isrel were at no point of time resided in the suit schedule property. However, a suit for partition was filed by son and grandchildren of Isrel in O.S.No.5273/1990 for partition and separate possession wherein the 1st defendant arrayed as 5th defendant. The said suit after contest was decreed by Judgment and decree dated 01.03.2019 and the plaintiffs have challenged the same before the Hon'ble High Court of

Karnataka, Bengaluru in RFA No.944/2019 and the same is pending for consideration. The plaintiffs were aghast to receive a notice from the 3rd defendant wherein she has sought the plaintiffs to vacate and hand over the vacant possession of the schedule property. The defendant under the notice has claimed that the 1st defendant has executed a Sale Deed in her favour in respect of the schedule property on 23.11.2021. The 3rd defendant is no way connected to plaintiffs family. The Sale Deed refers to payment of Rs.16,175/- being paid on 02.12.2002. However, the entire sale consideration in respect of the schedule property was paid on 16.05.1987 itself and the 1st defendant has issued a receipt to that effect. The 3rd defendant in collusion with the 1st and 2nd defendant has managed to create the receipt for the payment of sale consideration of Rs.16,175/- dated 02.12.2002 and got the sale deed executed in her favour which is perse illegal.

2(a). Under the notification issued by the defendant No.1, it is for the occupant of the respective portion of the property belongs to it are entitle to get the Sale Deed registered on payment of the sale consideration fixed by it. The possession over the schedule property is being continued from the ancestors of the plaintiffs and even today the plaintiffs are in possession and enjoyment of the suit schedule property. The defendant No.3 at no point of time is in possession and enjoyment of the schedule property. she is not related to the family of the plaintiffs. The grandfather of the plaintiffs namely Isrel was allotted the schedule property on lease basis. In terms of the notification issued by the 1st defendant, the plaintiffs were called upon to pay the sale consideration of Rs.16,175/- and the same was paid on 16.05.1987 and a receipt was also issued by the defendant No.1 in the name of the grandmother of the plaintiffs Smt.Jaya Mary. The sale consideration referred to in the Sale Deed is false and illegal and the same is created in order to make illegal

gain. The Sale Deed dated 23.11.2021 has no force in law and the same is contrary to the notification or the guide lines issued by the 1st defendant. The defendant No.2 being the delegate of the 1st defendant has no right to execute the Sale Deed in favour of the 3rd defendant. The plaintiffs have issued notice to the 1st and 2nd defendant on 23.04.2024 calling upon them to cancel the Sale Deed dated 23.11.2021 executed in favour of the 3rd defendant and also execute and register the Sale Deed in favour of the plaintiffs. The 1st defendant having received the entire sale consideration is duty bound to execute the Sale Deed in favour of the plaintiffs as they are in possession and enjoyment of the schedule property and paid the entire sale consideration as long back as 1987 itself. Hence, the plaintiffs are seeking the cancellation of the Sale Deed dated 23.11.2021 and also seeking mandatory injunction to execute the Sale Deed in favour of the plaintiffs in respect of suit schedule property. The plaintiff's uncle and children of uncles had filed a suit for partition against them

in O.S.No.5273/1990 which was decreed on 01.03.2019. The plaintiffs have challenged the said Judgment and decree in RFA No.944/2019 before Hon'ble High Court of Karnataka, Bengaluru and the same is pending for consideration. The cause of action to file the suit arose on 08.04.2024 when the 3rd defendant issued a notice to plaintiffs seeking possession of the suit schedule property on the basis of the Sale Deed dated 23.11.2021 and subsequently on 23.04.2024 when the plaintiffs got issued a notice to the defendants No.1 and 2 seeking cancellation of the Sale Deed dated 23.11.2021 and also execute the Sale Deed in favour of the plaintiffs and subsequently when the defendants No.1 and 2 failed to comply the notice within the jurisdiction of this Court. The plaintiffs have made out prima facie case and balance of convenience lies in favour of the plaintiffs. Hence, prays to allow the application.

3. On the other hand, the defendant No.3 filed her written statement and also filed memo to adopt the same as objection to I.A.No.1 stating that the suit filed by the plaintiffs is not maintainable either in law or on facts of the case. The averments made in the plaint are denied by the defendant No.3 as false and the plaintiffs are put to strict proof of the same. The defendant No.3 is the absolute owner in possession of the suit schedule property through the Government of Karnataka vide its order No.UDD/118/MNG/2001, Bengaluru dated 03.12.2001 sanctioned to sell the corporation quarters to the present occupant (i.e. defendant No.3) as per the rates mentioned in said order. The defendant No.3 has paid the sale consideration of the schedule property vide receipt No.0319399 dated 02.12.2002. The Khatha and other revenue documents are all standing in the name of the defendant No.3 alone. The legal heirs of the plaintiff's grandmother have received the amount and have executed the NOC in favour of the defendant No.3. The

plaintiffs having no right, title and interest over the suit schedule property as per the order of this Court. As per admission of the plaintiffs in the plaint are clear that the partition suit was decreed and the FDP was dismissed stating that the plaintiffs don't have title over the suit schedule property and the suit itself is not maintainable in the eyes of law. The defendant No.3 is in the possession of the property in question for more than four decades/ years and he is regularly paying taxes to the concern authority.

3(a). The suit is bad for non-joinder of necessary parties and for non-production of real genealogical tree of the family. The schedule property was purchased by the defendant No.3 from the defendants No.1 and 2 under the registered Sale Deed or shown by the revenue authorities. The said facts are not known to the plaintiffs, since they are not at all the real parties to the suit. The suit against defendant No.3 is not maintainable with due knowledge

and establishing the oblique motive in the alleged possession, since the defendant No.3 is in possession. The plaintiffs having with men and money power making hectic efforts to get something if possible in the suit schedule property by using third degree methods which made hardship to defendant No.3 and which would result in multiplicity of proceedings. There is no cause of action to seek the relief sought for in the suit. The Court fee paid by the plaintiffs is insufficient. Hence, prays to reject the application.

4. From the contents of the IA and counter parts filed by the parties the following points that arise for my consideration.

1. Whether the plaintiffs have made out a prima-facie for grant of temporary injunction as prayed in the I.A.No.1 ?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the irreparable loss or injury caused to plaintiffs?
4. What order?

5. Heard arguments. After hearing the arguments and after considering the available material on record my answer to the above points are,-

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

6. **POINT NO.1 PRIMA-FACIE CASE:-** The plaintiffs documents clarifies that one portion of the suit schedule property is in the possession of the plaintiffs. The suit is against BBMP. The plaintiffs claim is that they were filed the partition suit which is decreed in their favour. Therefore, they are in the possession of the property of their share. There is a Registered Sale Deed by virtue of which they have acquired the suit schedule property. Therefore, as they are in possession of the property they are filed this application seeking interim orders from the

hands of this Court restraining the defendant's authority from interfering with peaceful possession of the suit schedule property.

7. The defendants filed their objection stating that the suit itself is not maintainable before the Civil Court as the suit is for injunction wherein the individual right of the plaintiffs is not affected and they are in the illegal possession of the suit schedule property. Therefore, when the suit itself is not maintainable the Court cannot grant any interim order in favour of the plaintiffs.

8. On perusal of the records, there is a order of FDP No.93/2001 dated 08.11.2010. In the said FDP, this Court set aside final decree proceedings of O.S.No.5273/90. The property which the plaintiffs are claiming that by virtue of the partition deed suit schedule property fallen to the share of the plaintiffs. The Court has observed in the orders stating that if the final decree

proceedings are continued and the shares are allotted to the share holders, then it will leads to grabbing of public property because the suit schedule property is one which belongs to the BBMP authority. Therefore, it clarifies that at the time of final decree proceedings, the order of the partition decree decreed is set aside by this Court only. Therefore, prima facie case is not made out by the plaintiffs. Hence, I answer point No.1 in the **Negative**.

9. POINT Nos.2 & 3 – BALANCE OF CONVENIENCE & IRREPARABLE LOSS:- When the prima facie case itself is not made out by the plaintiffs balance of convenience and irreparable loss does not lies in favour of the plaintiffs as there is a clear observations by this Court stating that suit schedule property is property of BBMP authority. Hence, I answer **Point Nos.2 & 3** in the **Negative**.

10. **POINT No.4:-** For the foregoing reasons, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer-III on computer, typed by her, corrected and pronounced by me in open Court on this 18th day of August, 2025).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**