

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

DATED THIS THE 15th DAY OF SEPTEMBER, 2020.

PRESENT

SRI. R.Y. SHASHIDHARA, B.Com., LL.B.
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.I

APPLICANT/
PLAINTIFF

Sri. T.S. Nagaraja

Versus

OPPENANT/
DEFENDANTS

Smt. Radhamma and
Others

ORDER ON I.A. No.I

This application filed by the plaintiff under Order 39 Rules 1 and 2 of C.P.C., for granting an order of temporary injunction, restraining defendants 1 to 3, their agents, servants, attorney holders, legal representatives, successor in interest, heirs and anybody acting themselves from putting up further construction in the suit schedule property till disposal of the suit.

.2. In support of the said application, the plaintiff has filed the affidavit and stated that, the averments of the plaint may be treated as part and parcel of this affidavit. He further stated that he is the absolute owner of the suit schedule property i.e., House list No.10, Khatha No.124, carved out of Sy.No. 124, measuring 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 (5376 Sq. feet) situated at Kathriguppe village, Uttarahalli Hobli, Bengaluru South Taluk, Bengaluru, now coming under the purview of BBMP, Padmanabhanagara 22nd Main, Bengaluru. He further stated that he was in possession and enjoyment of the said property.

.3. He further stated that one Krishna and Smt. Kalavathi have tried to interfere in his peaceful possession and enjoyment of the suit schedule property and digging trenches for illegal construction. Therefore, he has filed suit against them in O.S. No.5741/2015 pending on the file of Addl. City Civil

and Sessions Judge, Bengaluru (CCH-66). The Court has passed interim order and directing both parties to maintain status quo in-respect of suit schedule property. He further stated that in the year 2010 one Krishna had filed frivolous suit in O.S. NO.7293/2010 in-respect of Sy.No. 123 of Katriguppe village. The said suit was dismissed for non-prosecution on 22.02.2012. He further stated that again one Bajaji @ Balaji Kalal had tried to interfere in his peaceful possession and enjoyment of the suit schedule property. Hence, he has filed suit against him in O.S. No.7317/2015 and it is pending on the file of Addl. City civil and Sessions Judge at Bengaluru (CCH-66). Initially the Court has passed interim order in the said case and directing both parties to maintain status quo in-respect of suit schedule property. In O.S.No.5741/2015 the Court commissioner was appointed, he has filed report that suit schedule property is coming in Sy.No. 124 of Katriguppe village.

.4. He further stated that on the basis of concocted, forged, fabricated documents, on 06.12.2019 the defendants have tried to put up illegal construction in the suit schedule property. Hence, he approached the jurisdictional police about illegal act of the defendants. The police advised him to approach the competent Civil Court. By that time, he resisted the illegal act of the defendants with the help of his family members. He further stated that later-on taking advantage of Covid-19 situation, the defendants have tried to tress pass into the suit schedule property, put up construction illegally and laid down the pillars. He came to know about the same on 06.07.2020 and visited the spot. During that time the defendants have threatened him with dire consequences and not allowed him to enter into the suit schedule property. Hence, he constrained to file this suit. He further stated that he has got prima facie case and balance of convenience in his favour. If his application is not

allowed, he will be put to irreparable loss. Hence, he prayed for allowing IA. No.1.

.5. After service of suit summons and notice on I.A. No.1, the defendants 1 to 3 have appeared through their counsel, filed written statement and objections to IA. No.1.

.6. In the written statement and objections the defendants stated as follows:

It is denied that the plaintiff is the absolute owner of the suit schedule property and he acquired the same by virtue of alleged sale deed dated 09.09.1991 and he put into possession of the said property. It is denied that recently the plaintiff came to know that exact measurement of the suit schedule property as it is not in exact shape. It is denied that the original sale deed of the plaintiff was misplaced. It is stated that in O.S.No. 5741/2015 the plaintiff mentioned description of the suit schedule property as per his sale deed. Alleged commissioner report and sketch does not discloses the boundaries and match

the measurement and boundaries as mentioned in the sale deed. Therefore, it is clear that the suit schedule property is not at all existing. The plaintiff has created false and frivolous documents only in order to knock of the valuable properties of these defendants.

.7. It is denied that One N.S. Rajagopal was owner of the land bearing Sy.No. 124 (old No.71) of Katriguppe village and he sold the property in favour of N. Narasimhaiah through sale deed dated 26.11.1980. It is denied that the N. Narasimhaiah formed revenue layout in the said land and the plaintiff purchased the site from the said N. Narasimhaiah. It is stated that appointment of court commissioner in O.S.No.5741/2015 and the court commissioner filed report with sketch is not within the knowledge of these defendants. These defendants are not parties to the said suit, hence, alleged court commissioner report and sketch are not binding on them. It is admitted that the defendants have filed caveat petitions and stated that they are the owners in possession and enjoyment

of the property situated in Sy.No.123 of Katriguppe village, they obtained permission and building plan to put up building. It is stated that the plaintiff is nothing to do with the above said properties of the defendants. It is denied that the defendants have tried to put up illegal structure in the suit schedule property. It is denied that taking advantage of Covid-19 situation the defendants have trespassed into the suit schedule property and illegally putting up construction. It is stated that there is no cause of action to file this suit.

.8. It is stated that the defendants 1 to 3 are the owners and in possession of the sites bearing No.9E, 9D and 9C respectively in Sy.No. 123 of Katriguppe village. The Khatha of the said properties are standing in their names and they paid tax. It is stated that for the purpose of knock of valuable property belongs to the defendants the plaintiff has created false and frivolous documents. It is stated that the plaintiff has failed to prove the prima facie case and balance of convenience lies in his favour. It is stated that the

defendants have invested huge amount for construction by borrowing funds from different sources. They put up construction in the suit schedule property as per sanctioned plan. The plaintiff has illegally claimed the property belongs to these defendants. The affidavit sworn by the plaintiff in support of the application is false. The plaintiff is in the habit of filing the case against innocent persons by creating fabricated and concocted documents. Therefore, from the above said grounds, the defendants prayed for dismissal of IA No.1 with cost.

.9. Heard the arguments and perused the records.

.10. 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?

.11. 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

.12. **POINTS 1 to 3:** The plaintiff contended that he is the owner of the suit schedule property. He purchased the suit schedule property through registered sale deed dated 09.09.1991 from his vendor N. Narasimhaiah. As per sale deed, he took the possession and enjoyment of the said property. He further contended that in his sale deed the measurement of the property mentioned as East to West 95.66/2 feet and North to South 111 + 65/2 feet.

Recently he came to know about the exact measurement of the suit schedule property and it is not in exact shape. To prove the same, he has produced certified copy of the sale deed dated 09.09.1991. He has stated that the original sale deed has mis-placed and he is under-taking to produce in due course if it is claimed. The recitals of the sale deed reveals that the plaintiff purchased the site property measuring East to West 95.66/2 feet and North to South 111 +65/2 feet (Total 7084 Sq. feet feet). He has produced the Khatha certificate in-respect of the property Municipal New No.124/10, old No.124, PID No.55-90-124/10. He has produced copy of Khatha extract. It is mentioned that the sital area is measuring 5685 Sq. feet feet. He has also produced the certified copies of 2 tax paid receipts and 10 original tax paid receipts in-respect of property No.124/10.

.13. He has produced certified copies of plaint, written statement and order sheet of O.S.No.7293/2010 on the file of Addl. City Civil Judge

at Bengaluru (CCH-45). It reveals that one Krishna S/o late. Seetharamaiah had filed said suit for permanent injunction against defendants 1 to 3. The defendant No.2 in the said case is plaintiff of the present case. This suit was filed in-respect of land bearing Sy.No. 123 measuring 32 guntas out of 1 acre 10 guntas of Katriguppe village. The defendant No.2 (plaintiff of the present case) has appeared in the said case and filed written statement that he is the owner of the property as per his sale deed dated 09.09.1991. As per the order sheet the said suit was dismissed for non prosecution on 22.02.2012.

.14. The plaintiff has produced certified copies of plaint and order sheet in O.S. No.5741/2015 on the file of Addl. City Civil Judge, at Bengaluru (CCH-66). He has filed the said suit against one Krishna and V. Kalavathi for bare injunction in-respect of property bearing House list No.10, Khatha No.124 of Katriguppe village. As per the I.A. No.1 filed by the plaintiff, the court has passed an order to maintain status quo in-

respect of the suit schedule property, it was extended from time to time and ultimately extended until further orders on 18.06.2019. He has produced certified copies of court commissioner report and sketch filed in O.S. No.5741/2015.

.15. The plaintiff has produced certified copy of plaint in O.S. No.7317/2015 on the file of Addl. City Civil Judge at Bengaluru. He has filed the said suit against one Balaji @ Balaji Kalal for permanent injunction in-respect of property bearing House List No.10, Khatha No.124, of Katriguppe village. He has produced acknowledgement and endorsement issued Banashankari police station in-respect of filing complaint filed by him. He has produced copies of Caveat Petitions filed by S. Raju, Smt. Radhamma and Satish (defendants 1 to 3 of this case) against him in-respect of properties carved out of Sy.No. 123 of Katriguppe village. He has produced copy of letter dated 06.12.2019 filed by him to the Executive Engineer, Town Planning, BBMP and requested for not

to issue sanctioned plan in favour of defendants 1 to 3. He has also produced copies of Caveat petitions filed by the defendants 1 to 3 in second time. He has produced 4 photographs with CD and stated that these photos are belonged to the suit schedule property.

.16. In the objections to IA. No.1 the defendants contended that the plaintiff has created false and frivolous documents only in order to knock of the valuable properties belong to them. In the written statement they contended that the defendant No.1 is the absolute owner, in possession of the site No.9E, Khatha No.123, old Khatha No.71, measuring 2178 sq.feet (2 guntass), PID No.896/123/9E, formed out of Sy.No. 123 of Kathriguppe village. The defendant No.2 is the absolute owner, in possession of the site No.9D, Khatha No.123, old Khatha No.71, measuring 1089 Sq. feet feet (1 gunta), PID No.896/123/9D, formed out of Sy.No. 123 of Katriguppe village. The defendant No.3 is the absolute owner, in possession of the site No.9C, Khatha No.123, old Khatha No.71, measuring 2178 Sq.

feet feet (2 guntass), PID No.896/123/9C, formed out of Sy.No. 123 of Katriguppe village. They stated that the defendant No.1 acquired the property through gift deed dated 16.01.1980 from her father Seetharamaiah. On the same day the said Seetharamaiah executed another gift deed in-favour of his other 2 daughters namely Saraswathi and Susheela. After the death of said Saraswathi, the Khatha of the property changed in the name of her son Sathish K. (defendant No.3). Similarly after the death of Susheela, her children executed registered release deed dated 10.05.2019 in-favour of defendant No.2. Therefore, the defendants 1 to 3 are the owners, in possession and enjoyment of the above said properties, the Khatha of the said properties are standing in their names and they are paying tax.

.17. To prove the same, the defendants have produced xerox copy of the gift deed dated 16.01.1980 executed by Seetharamaiah in-favour of Susheela W/o Subramanya and gifted 1 gunta of land out of Sy.No.

123 of Katriguppe village. Xerox copy of another gift deed dated 16.01.1980 discloses that the said Seetharamaiah gifted 2 guntas of land in-favour of defendant No.1 in Sy.No. 123 of Katriguppe village. On the same date, he has executed another gift deed in-favour of Saraswathi W/o Krishna and gifted 2 guntas of land in Sy.No. 123 of Katriguppe village. The defendants are produced xerox copy of deed of release executed by Vasantha and Kokila, who are daughters of Susheela. These documents disclose that they executed the release deed in-respect of site No.9D, PID No.895/123/9D, Khatha No.123, old Khatha No.71, situated at Kkatriguppe village, in-favour of defendant No.2. They have produced one electricity bill issued by BESCOM. I have perused the above said contention of the defendants with documents produced by them. They have stated that as per the gift deeds and release deed, their names entered in the Khatha and they are paying tax. But to prove the same, they have not produced any iota of documentary evidence before this

Court. In the Caveat petitions, objections to IA No.1 and written statement the defendants contended that they obtained sanctioned plan from the concerned authorities for construction, they have invested huge amount towards construction by borrowing fund from different sources and putting up construction in the suit schedule property. To prove the same also, they have not produced any single piece of documentary evidence before this Court.

.18. During the course of arguments the learned counsel for the plaintiff submits that actually the suit schedule property is formed in Sy.No. 124 of Katriguppe village. Originally one N.S. Rajagopal was the absolute owner of the land bearing Sy.No. 124 (old No.71 of Katriguppe village) measuring 4 acres including kharab land. He had sold the said land in-favour of N. Narasimhaiah through registered sale deed dated 26.11.1980. Subsequently N. Narasimhaiah had formed the revenue layout in the said land, formed sites and sold same to the several persons. He further

stated that the plaintiff purchased the suit schedule property from the said N. Narasimhaiah through sale deed dated 09.09.1991. He further stated that the defendants are claiming the property in Sy.No.123. they are not concerned to Sy.No. 124 in which the suit schedule property is existing.

.19. Per contra, the learned counsel for the defendants submits that the plaintiff has not furnished correct measurement and boundaries of the suit schedule property as per his sale deed. There is no existence of suit schedule property as claimed by the plaintiff. He has furnished the measurement of the suit schedule property as per alleged Court Commissioner report and sketch filed in O.S. No.5741/2015. He further submitted that the defendants of the present case are not parties to the said case. Hence, alleged Commissioner report and sketch filed in O.S. No.5741/2015 is not binding on the defendants. He further submits that the plaintiff has claiming the property which is belongs to these

defendants. The suit schedule property is not formed in Sy.No. 124 as claimed by the plaintiff. As per Court Commissioner sketch and report the property described as in triangle shape. But no boundaries furnished to the said property. The plaintiff not furnished correct description and boundaries to the suit schedule property, he is not entitle for the relief of temporary injunction.

.20. I have carefully perused the arguments canvassed both side with case on hand. From going through the same it is noticed that there is a real dispute between the parties for identification of property. According to the plaintiff, his property i.e., suit schedule property is carved out of Sy.No. 124 of Katriguppe village. On the other hand, the defendants contended that their properties are coming in Sy.No. 123 of Katriguppe village. It is further noticed that both parties are claiming their title and possession in-respect of same property i.e., suit schedule property.

.21. As stated above, it is clear from the sale deed dated 09.09.1991 that the plaintiff purchased the property measuring East to West $95 + 66/2$ X North to South $111 + 65/2$ feet (7084 Sq. feet). But in the Khatha, name of the plaintiff entered only in-respect of property measuring 5685 Sq. feet feet. At this stage, I am of the opinion that the plaintiff has not explained about variation of measurement in the sale deed and Khatha. But in the present case, the plaintiff has not relying upon the measurement of property as per his sale deed dated 09.09.1991 and entries in the khatha. He has contended that recently he came to know about exact measurement of his property and it is not in a exact shape. At this stage I am of the opinion that, it is not the case of the plaintiff that he obtained rectification deed from his vendor in-respect of exact measurement and shape of his property. On the basis of Court Commissioner report and sketch filed in O.S. No.5741/2015 he is claiming that now his property is measuring towards 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, in totally 5376 sq. feet. As per Court commissioner report and sketch the property of the plaintiff measured 499.50 sq. meters (5376 sq. feet).

.22. It is noticed that the plaintiff has filed the suits in O.S.No. 5741/2015 and O.S.No.7317/2015 which are pending before Addl. City Civil and Sessions Judge (CCH-66). Subject matter of the suit schedule properties in both suits are one and the same. He has furnished description and boundaries of the suit schedule property in both suits as per his sale deed dated 09.09.1991. As per the Court commissioner report and sketch submitted in O.S.No. 5741/2015 dated 24.03.2018, the plaintiff has filed the present suit and mentioned the measurement of the suit schedule property as per the Court commissioner report and sketch. It is noticed that the defendants in the present case are not parties to O.S.No. 5741/2015. The said suit is yet to be decided after trial. Until final

adjudication of O.S. No.5741/2015 the Court commissioner report is not a conclusive proof. Therefore, at this stage, this Court cannot rely upon the measurement of the Court commissioner report filed in O.S.No. 5741/2015 and held that the plaintiff is the owner of the said property. Therefore, from the above discussion, at this stage I am of the opinion that that the plaintiff has not furnished the correct description and boundaries to the suit schedule property as per his sale deed. He has not firm about measurement and boundaries to the suit schedule property. The plaintiff purchased his property in the year 1991. The alleged Court commissioner report filed in O.S. No.5741/2015 on 24.03.2018. Since 1991 up to the date of filing Court commissioner report the plaintiff has claiming that the description and boundaries as mentioned in his sale deed. After lapse of about 28 years from the date of sale deed and after filing of Court Commissioner report in O.S.No.5741/2015 he changed his claim in-respect of

measurement and shape of his property. I am of the opinion that, conduct of the plaintiff will be looked into.

.23. The plaintiff contended that his property is carved out of Sy.No. 124 of Katriguppe village. On the other hand, the defendants specifically denied the same. I have perused the above said contention of the plaintiff with case on hand. From careful perusal of the sale deed of the plaintiff, it is no-where mentioned that the site purchased by the plaintiff is formed in Sy.No.124 of Katriguppe village. In the sale deed it is mentioned the Khatha number as 124 but not Sy.No. 124. In the Khatha extract and certificate not mentioned that the suit schedule property is existing in Sy.No. 124 of Katriguppe village. To prove that the suit schedule property is formed in Sy.No. 124, the plaintiff has not produced any documentary evidence like layout plan and other documents. Only on the basis of Court commissioner report and sketch produced in O.S.No. 5741/2015, the plaintiff claiming

that his property is in Sy.No. 124. Therefore, at this stage I am of the opinion that without supported documents, I am not accepted the case of the plaintiff that as per the Court commissioner report and sketch submitted in O.S.No. 5741/2015, his property is carved out of Sy.No. 124 of Katriguppe village. At this stage, I am of the opinion that, in the commissioner report and sketch not mentioned boundaries to the property.

.24. The plaintiff has produced sale deed dated 26.11.1980 executed by one N.S. Rajagopal in-favour of N. Narasimhaiah in-respect of 4 acres of land in Sy.No. 124 of Katriguppe village. He also produced record of rights for change of Khatha in-favour of N. Narasimhaiah vide sale deed dated 26.11.1980. He has produced 4 RTC extracts in-respect of Sy.No. 124 of Katriguppe village measuring 4 acres of land including 1 acre of Kharab land are in the name of N.S. Rajagopal and subsequently it was sold to one N. Narasimhaiah. The plaintiff claiming that his vendor

N. Narasimhaiah had formed the revenue layout in the said property and formed the sites. He purchased the site in the said layout. To prove the same, the plaintiff has not produced the layout plan belongs to his vendor. From the above discussion at this stage I am of the opinion that, the plaintiff has not established his case with documentary evidence that the suit schedule property is in Sy.No. 124 of Katriguppe village. As discussed above, at this stage, I am of the opinion that, the plaintiff has not furnished correct measurement and boundaries to the suit schedule property. Hence, he is not entitled for the relief of temporary injunction as prayed for. In this context, I relied upon the decision of Hon'ble High Court of Karnataka reported in **ILR 2005 Karnataka 884 (T.L. Nagendra Babu Vs. Manohar Rao Pawar)**. Further I am of the opinion that, the plaintiff has not made out a prima facie case for granting an order of temporary injunction as prayed for. From looking into the facts and circumstances of the case, at this stage the

balance of convenience does not lie in-favour of plaintiff. Therefore, I come to the conclusion that the plaintiff is not entitle for the relief of temporary injunction against the defendants. It is noticed that the plaintiff has filed this comprehensive suit for declaration of ownership and possession of the suit schedule property from the defendants by removing the structure put up by them. I am of the opinion that, if temporary injunction order is not granted, no 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. From the above discussion, I come to the conclusion that, the present application filed by the plaintiff is liable to be rejected. From looking into the facts and circumstances, there is no order as to cost. Therefore, I answer points 1 to 3 in the negative.

.25. **POINT No.4:** In view of my findings on the above points 1 to 3, I proceed to pass the following:

ORDER

I.A. No. 1 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 by me and then pronounced in open court this 15th of September 2020.)

(R.Y. SHASHIDHARA)
II Addl. City Civil & Sessions Judge,
BANGALORE.

