

**IN THE COURT OF IX ADDL. CITY CIVIL AND SESSIONS JUDGE
AT BANGALORE (C.C.H.5)**

Present: Mamtaz, M.A., LL.B., P.G.D.C.A.
IX Addl. City Civil & Sessions Judge,
Bengaluru

Dated: This the 3rd day of March 2025

O.S. NO.6481/2024

Plaintiff : Sri.M.Nagaraja and another
(By Sri.Dinesh, Advocate)

- Vs -

Defendants : Smt.Vallarmathi
(By Sri.S.S. Advocate)

ORDERS ON APPLICATION

The application filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C. prays to grant order of temporary injunction restraining the defendant, her men, agents or any person or persons claiming through her or on her behalf, from in any way interfering with the peaceful possession and enjoyment of the schedule property by the plaintiffs, pending disposal of the suit, in the interest of justice and equity.

2. In the annexed affidavit, the 1st plaintiff has submitted that, they have filed the suit against the defendant for permanent injunction. They are the sole and absolute owner in

possession and enjoyment of the schedule property having purchased the same from its lawful owner Chandrakala under registered sale deed dated 29.01.2024 and the plaintiffs are in possession and enjoyment of the schedule property they have got the khatha and other revenue records mutated to their name and they have paid taxes to the schedule property. The defendant who is a stranger to the suit schedule property without any manner of right, title, interest, share, claim or possession over the schedule property or any portion thereof is making attempts to interfere with his peaceful possession and enjoyment of the schedule property and they have resisted her with great difficulty. The defendant is a very powerful person having sufficient men, money and muscle power and he is unable to resist the high handed act of the defendant and her henchmen without the aid and indulgence of this Court.

3. It is further submitted that, they do not have support and in the event of the defendant and her henchmen interfering with his peaceful possession of the schedule property and in the event, if the defendant dispossess them from the schedule property, they will be put to substantial loss, hardship and injury which cannot be compensated by any means. No prejudice would be caused to the defendant by allowing the application, they have got a prima facie case and balance of convenience lies in their favour in allowing the application. Hence, this

application.

4. The defendant filed statement of objection to the above application contending that, the application is not maintainable either in law or on facts. It is further contended that, the defendant are attempting to put up any construction or going to alter the nature of the schedule property. The plaintiffs have not produced any material to establish that the defendant are putting up any construction or going to alter nature of the schedule property. Also the plaintiffs have failed to produce the documents that they are in possession of the property from 2005.

5. It is further contended that, the defendant purchased the immovable property bearing site No.167 and 168, House list No.2484/167 and 168, bearing khatha No.2014, assessment No.22/8, 23/4, 23/8 of Mallathahalli, Gramatana Yeshwanthapura Hobli, Bangalore North Taluk, measuring East to West 70 feet and North to South 40 feet through a registered sale deed dated 03.10.1997 executed by one Krishnaiah. Since the date of purchase of the property, the defendant became the absolute owner of the property and has been in peaceful possession and enjoyment of the said property without any let or hindrance from anybody by exercising all right of ownership. That on the basis of the ownership, the defendant's name is mutated in the

revenue records as owner right and is paying tax of the written statement schedule property to the BBMP, which clearly shows that the title and possession of the suit property in the name of the defendant from 1997 and she is the absolute owner in title and possession of the written statement schedule property.

6. It is further contended that, it is owned by the defendant and not by the plaintiffs and their vendors as claimed in the plaint. The plaintiffs have miserably failed to produce any relevant document to support their claim that the plaintiff's and their vendors are owned the said property. In fact, the plaintiffs and their vendors have mutated the documents with the support of forged documents. Hence, the application may be dismissed.

7. Heard the arguments on both the side.

8. Now, the points that arise for my consideration are as under :

1. Whether the plaintiffs prove the prima-facie case lies in their favour?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that, in case temporary injunction is not granted, they will be put to irreparable loss and injury?

4. What order?

9. My answer to the above points are as follows :

Point No.1 : Partly in the Affirmative

Point No.2 : Partly in the Affirmative

Point No.3 : Partly in the Affirmative

Point No.4 : As per final order for the following :

REASONS

10. **POINT NO.1 TO 3** : Since all these points are interconnected to each other they have been taken up together for discussion in order to avoid the repetition of facts.

11. The application filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. prays to grant order of temporary injunction restraining the defendant, her men, agents or any person or persons claiming through her or on her behalf, from in any way interfering with the peaceful possession and enjoyment of the schedule property by the plaintiffs.

12. The plaintiffs counsel vehemently argued that, the plaintiffs are absolute owners of plaint schedule property by virtue of sale deed dated 29.01.2024. The plaintiffs vendor Smt.Chandrakala purchased the plaint schedule property through sale deed on 28.01.2005 and defendant being the stranger interfering with the peaceful possession of the plaintiffs

plaint schedule property.

13. The plaintiffs counsel produced sale deed dated 29.01.2024 which is executed in favour of the plaintiff and 'B' schedule property extract which stands in the name of plaintiffs and sale deed dated 26.08.2004 executed to Hanumanthegowda and sale deed executed by Hanumanthe Gowda on 28.01.2005 in favour of G.Ramakrishna and release deed dated 01.03.2017 executed by Gowramma wife of Ramakrishna and others in favour of R.Chandrakala.

14. The defendant counsel submitted that, plaintiff has suppressed material facts before the Court. He vehemently stated that, site No.167 is part of 7 acres of land.

15. The defendants counsel submitted that, late Chikka Muniyappa, late Puttarudraiah and late Hombaiah were the original owners of the property bearing in Sy.No.22/8, 23/4 and 23/8 of Malathahalli village which is totally measuring 7 acres of land. The said original owners also executed an agreement to sell in the year 1986 to the said 7 acres of land in favour of one Madan and Somshekar. The said Sri.Madan and Sri.Somshekar executed an assignment deed in favour of attorney cum agreement of security in favour of Sri.K.C.Krishnaiah in the year 1989. the original owners also executed a power of attorney

cum agreement of security in favour of Sri.Krishnaiah along with receipt for the payment received for the full sale consideration price, in the year 1989, authorising him to form a layout and sell the sites. Thereafter, he formed the layout as per approval of the concerned authority and named it as "K.K.Layout" and sold all the sites to the purchasers.

16. The defendant counsel further submitted that, the defendant is the purchaser of site No.167 and 168, House list No.2484/167 and 168, bearing khatha No.2014, assessment No.22/8, 23/4 and 23/8 of Mallathahalli, Gramatana Yeshwanthapura Hobli, Bangalore North Taluk, measuring East to West 70 feet and North to South 40 feet from Sri.K.C.Krishnaiah as the written statement schedule property for a valuable sale consideration of Rs.2,00,000/- through a registered sale deed dated 03.10.1997.

17. The defendant counsel further submitted that, since the date of purchase of the property, the defendant became the absolute owner of the property and she has been in peaceful possession and enjoyment of the said property without any let or hindrance from anybody by exercising all right of ownership. That on the basis of the ownership, the defendant's name is mutated in the revenue records as owner right and is paying tax of the written statement schedule property to the BBMP.

18. The defendant counsel further submitted that, all revenue documents are in defendant's name and defendant is staying with her husband and her son. The defendant's counsel further submitted that, G.Ramakrishna died on 08.06.2005 but he executed General Power of Attorney on 26.10.2005 and it is a forged General Power of Attorney. The defendant further submitted that, Chandrakala is not wife of G.Ramakrishna but she is the daughter of G.Ramakrishna and release deed dated 01.03.2017 is a created document.

19. The defendant's counsel further submitted that, plaintiffs produced the photos which was taken when the defendant's were locked the doors and they have not produced any single document from inside the house because defendant is in possession of the property.

20. The defendant counsel further submitted that, the defendant already filed O.S.No.2988/2024 before this Court and he withdrawn the suit. The defendant counsel further submitted that, Ramakrishna wife Gowramma i.e., mother of the plaintiff's vendor obtained BWSSB and BESCO connection through forged General Power of Attorney. Ramakrishna who died on 08.06.2005 how can he execute General Power of Attorney on 20.10.2005.

21. It is pertinent to note that, dead person cannot execute General Power of Attorney and in this case it should be adjudicated to give specific opinion upon it. But the defendant produced agreement of sale dated 19.02.1986 executed by Puttarudrappa in favour of Madan and G.M.Somashekar in which possession was handed over to them by the vendor. On 19.02.1986 executed sale agreement by Hombaiah, Jayarama, Krishna Chikkamuniyappa and Puttarudrappa in favour of Madan and G.M.Somashekar and possession was handed over and also produced Assignment Agreement dated 11.11.1989 executed by Madan and G.M.Somashekar in favour of K.C.Krishnaiah and thus documents were produced by the defendant.

22. On 25.01.1989 Hombaiah and Jayaramkrishna, Chikkamuniyappa and Puttarudraiah in favour of K.C.Krishnaiah which security agreement pertaining to plaint schedule property and on 03.10.1997 K.C.Krishnaiah sold to Valarmathi and defendant also produced affidavit executed by Puttarudraiah, Hombaiah stating that they have given assignment and General Power of Attorney and affidavit to Madan and G.M.Somashekar who sold to K.C.Krishnaiah.

23. While perusing the documents produced by the defendant and plaintiffs it is clear that, both have produced their own

documents. It is pertinent to note that, the defendant already raised objection pertaining to General Power of Attorney executed by Ramakrishna which has date after his death. This fact cannot be decided while deciding the present application. Both defended their case upon their own title deeds and sale deeds. This Court cannot decide whose title deed prevails over the other. This requires adjudication.

24. The parties are defending their legal positions, both depend their cases upon two different original deed and claim title over the plaint schedule property. There is no prima facie case to appreciate the application filed by the parties. Hence, I feel it is necessary to safeguard the interests of both the parties and property. It is better to issue status quo as against both the parties until disposal of the case. Hence, I answer the above points partly in the AFFIRMATIVE.

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

O R D E R

The application filed by the plaintiff under Order 39 Rule 1 and 2 read with section 151 of C.P.C. is hereby partly allowed by saying that, both the parties should maintain the status quo until disposal of the suit.

No orders as to costs.

(Dictated to the Stenographer Grade-I directly on the Computer, corrected and then pronounced by me in the open court, on this the 3rd day of March 2025)

(MAMTAZ)
IX Addl. City Civil & Sessions Judge,
Bangalore.
