

KABC010253672023



**IN THE COURT OF I ADDITIONAL CITY CIVIL &
SESSIONS JUDGE AT BENGALURU (CCH.No.2)**

PRESENT :- Sri. B.P.Devamane, LL.M.
I Addl. City Civil & Sessions Judge,
Bengaluru.

Dated this the 15th day of November 2024.

O.S. No.6067 / 2023

PLAINTIFF:- Sri.B.L.Veerabadhre Gowda,
Aged 87 years,
S/o. Late Lakkanna Gowda,
R/at No.492C, 7th Block West,
Jayanagar, Bengaluru-560 082.

(By Sri.B.N.Ananthanarayana, Adv.)

- VS -

DEFENDANTS:-

- 1. Sri.C.M.Ramanujan,**
S/o. Late Sri.C.M.Shyam Iyengar,
Aged about 90 years,
R/at No.2, Mills Quarters,
Malleshwaram, Bengaluru-560 003.
- 2. Sri.Lokesh K,**
S/o. Sri.G.Kenchiah,
Aged about 39 years,
R/at No.26/A, Papaya Garden,
4th Cross, BSK 3rd Stage,
Bengaluru-560 085.

3. Sri.N.Venkatesh,
S/o. Late Nagalingaiah
Aged about 58 years,
R/at 3rd Main Road, 2nd Cross,
Kattriguppa East, BSK 3rd Stage,
Bengaluru-560 085.

(By Sri.Venkatesh Prasad R, Adv.)

COMMON ORDER ON I.A.Nos.1 & 2

Advocate for the plaintiff has filed IA No.1 under Order 39 Rule 1 & 2 r/w Sec.151 of CPC with prayer to restrain the defendants or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property i.e., Municipal No.6, Formed in Sy.No.6/1 of Kathriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk, situated at 4th and 5th A Main Road, Kathriguppe, Bengaluru, in Ward No.54, Srinivas Nagar, Bengaluru, measuring east to west 30 feet and north to south 80 feet bounded east – property of Puttannachar and Boraiah, west – 3 feet passage and property of Nagaraj, north - 30 feet road and south – 30 feet road.

2. Advocate for the defendants have filed IA No.2 under Order 39 Rule 4 r/w Sec.151 of CPC with prayer to vacate the exparte ad interim order dated 19.09.2023.

3. In the affidavit supporting I.A.No.1, it is stated that, plaintiff is the absolute owner of the suit schedule property. Khatha of the suit schedule property is standing in his name and he is paying the tax to the concerned authority. There was old construction on the said property and in order to put up construction

of a residential building, the plaintiff obtained sanctioned plan and licence from the BBMP and demolished the existing old structure with a view to take up fresh construction on the suit schedule property. The plaintiff has availed loan of Rs.10,00,000/- from Canara Bank, Yediyur Branch, Bengaluru for construction purpose. The defendant No.1 claims to be the owner of the property bearing No.5, Carved out of Sy.No.6/1 of Kathriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk measuring east to west 90 feet and north to south 45 feet. The defendant Nos.2 and 3 claiming to be the power of attorney holders of 1st defendant. The defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The defendants have filed O.S.No.2816/2023 against this plaintiff and his son in respect of their property alleging that, they are trying to interfere with the possession and enjoyment of their property bearing Site No.5. The property bearing site No.5 is situated in 4th Main Road and it is owned by one Smt.Chamundamma and there is already a residential house constructed thereon. The defendants by concocted documents, are trying to pose themselves as owner of site No.5, but there is no such property owned by the defendants. The defendants based on the false and concocted documents are trying to interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. Hence, the plaintiff prayed to allow IA No.1.

4. Exparte temporary injunction is granted in favour of the plaintiff against the defendants. After appearance, the defendants have filed written statement and filed memo adopting the written statement as objections to this IA No.1 and filed IA No.2 under Order 39 Rule 4 r/w Sec.151 of CPC with prayer to vacate the

exparte interim order granted in favour of the plaintiff. In the affidavit supporting the IA , it is contended that, there is no cause of action to file this suit. Plaintiff is allegedly claiming to be in possession and enjoyment of the suit property and 17 other sites purchased under the registered sale deed dated 22.09.1971. The plaintiff admits the possession of this defendant over the suit schedule property. Hence, suit of the plaintiff is not maintainable. Plaintiff has obtained the interim order by misrepresenting the facts. Plaintiff has violated the order passed by this Court, hence, the interim order is liable to be vacated. The plaintiff has not made out prima facie case and balance of convenience do not lie in favour of the plaintiff. If the IA No1 is allowed, these defendants will be put to irreparable loss, hence, prayed to reject the IA No.1 and to allow IA No.2.

5. The plaintiff has filed objections to IA No.2 reiterating the case of the plaintiff i.e., plaint averments.

6. Heard the arguments from both the sides. Perused the materials on record.

7. Now the points that arise for my consideration are as follows :-

1. Whether the plaintiff has made out a prima facie case for grant of temporary injunction as prayed in I.A.No.1 ?
2. Whether the plaintiff will be put to great hardship in the event of temporary injunction is not granted and the balance of convenience lies in his favour ?
- 3 . Whether I.A.No.2 filed by the defendants under Order 39 Rule 4 r/w Sec.151 of CPC, deserves to be allowed ?
4. What Order ?

8. My answer to the above points are as under:

Point No.1 & 2 :- In the Affirmative.

Point No.3 :- In the Negative,

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

REASONS

9. **POINT Nos.1 to 3:-** It is the case of the plaintiff that, he is the owner of the suit schedule property bearing Municipal No.6, Formed in Sy.No.6/1 of Kathriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk, situated at 4th and 5th A Main Road, Kathriguppe, Bengaluru, in Ward No.54, Srinivas Nagar, Bengaluru, measuring east to west 30 feet and north to south 80 feet bounded on east - property of Puttannachar and Boraiah, west - 3 feet passage and property of Nagaraj, north and south -30 feet road, purchased under the registered sale deed dated 22.09.1971. Thereafter, Khatha of the suit property changed in the name of the plaintiff and he is paying tax in respect of the same to the concerned authority. There was old construction on the suit property and the plaintiff in order to construct the residential building obtained sanctioned plan and licence from the BBMP and demolished the existing old structure.

10. The defendant No.1 claims to be the owner of site property bearing No.5, Carved out of Sy.No.6/1, situated at Kattriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk and the defendant Nos.2 and 3 claiming to be the power of attorney holders of defendant No.1 are trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. These defendants have filed O.S.No.2816/2023 in respect of their property seeking permanent injunction against this plaintiff and his son.

11. On perusal of the pleadings and materials available before the Court, the plaintiff in this suit i.e., O.S.No.6067/2023, is claiming to be the owner of Municipal No.6, Formed in Sy.No.6/1 of Kathriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk, situated at 4th and 5th A Main Road, Kathriguppe, Bengaluru, in Ward No.54, Srinivas Nagar, Bengaluru, measuring east to west 30 feet and north to south 80 feet. It is stated that, the defendant No.1 has purchased site No.5 under the registered sale deed dated 09.09.1971 from his vendor by name Smt.Kamamma and her children, who acquired the said property under the registered partition deed dated 14.08.1965.

12. In this case, the plaintiff has produced the copy of the judgment in O.S.No.5587/2015 passed by XLIII Addl. City Civil & Session Judge, Bengaluru. In the said suit, this plaintiff B.L.Veerabhadre Gowda has filed suit against the Executive Engineer, BBMP and Assistant Executive Engineer, BBMP, for injunction in respect of this suit schedule property. The plaintiff has produced some documents regarding the suit schedule property, which were produced in O.S.No.5587/2015. In O.S.No.5587/2015, the plaintiff has contended that, he has purchased the suit schedule property from one Smt.Kamamma. It is the case of the defendant No.1 that, he has purchased his property from Smt.Kamamma. On perusal of the certified copy of the sale deed, khatha extract and other documents regarding the suit schedule property, are standing in the name of the plaintiff, it shows that, the plaintiff has made out prima facie case regarding the suit schedule property.

13. In this case, on perusal of the documents produced by both the parties, they have not filed any sketch or showing the exact location of their properties, but they have simply produced the encumbrance certificate and copies of sale deeds, under which they have purchased the property. Both the properties have not stated as to, towards which side of the property of one party the property of other party is situated. It appears that, both the parties are claiming regarding the same property. To decide the exact location and situation of the property of the plaintiff and property of the defendants, it requires full fledged trial. Under these circumstances, in the considered opinion of this Court, directing both the parties to maintain status-quo pending disposal of this suit, would meet the ends of justice. Under these circumstances, I answer **point Nos.1 and 2 are in the Affirmative and point No.3 is in the Negative.**

14. **POINT No.4** :- In view of the aforesaid discussions, I proceed to pass the following :-

ORDER

I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 r/w Sec.151 of CPC, is allowed.

I.A.No.2 filed by the defendants under Order 39 Rule 4 r/w Sec.151 of CPC, is rejected.

Both the parties are directed to maintain status-quo in respect of the suit schedule property, pending disposal of this suit.

(Dictated to the Stenographer-III, transcribed and typed by her, corrected and then pronounced by me in the open court on this the **15th day of November, 2024**)

(B.P.Devamane)
I Addl. City Civil & Sessions Judge,
Bengaluru.