

In the Court of the XXXIV Additional City Civil and Sessions Judge,
Bengaluru

Dated this the 25th day of November, 2022

Present :-

Sri. G.Raghavendra, B.Sc., LL.B.,
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.

O.S. No.6921/2021

Between:

Smt. Asiya Bi,
W/o Late Noor Ahmed,
Aged about 64 years,
R/at No.24, L-No. 5Th Street,
Jumma Masjid Road Cross,
Shivajinagar,
Bengaluru – 560 081.

.. Plaintiff

(By M/s R. Kothwal and Co., Advocates)

And

Sri. Mohammed Fazal,
S/o Late Mohammed Pacha Sahib,
Aged about 61 years,
R/at No.91, Jumma Masjid Road,
OPH Road,
Bengaluru – 560 051.

.. Defendant

(By Sri. M.D.Raghunath, Advocate)

Parties to I.A. No. I/2021, II/2021 and III/2021

Between:

Smt. Asiya Bi

.. Applicant/
Plaintiff

And:

Sri. Mohammed Fazal

.. Opponent/
Defendant

ORDER ON I.A. No. I/2021, II/2021 and III2021

1. This I.A. No. I/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC), 1908 is filed by the applicant/plaintiff to pass an order of temporary injunction restraining the opponent / defendant, his agents, henchmen or any other person's claiming under him from alienating in the Schedule Properties until disposal of the case.

2. This I.A. No. II/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC), 1908 is filed by the applicant/plaintiff to pass an order of temporary injunction restraining the opponent / defendant, his agents, henchmen or any other person's claiming under him from interfering in the Schedule Properties until disposal of the case.

3. This I.A. No. III/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC), 1908 is filed by the applicant/plaintiff to pass an order of temporary injunction restraining the opponent / defendant, his agents, henchmen or any other person's claiming under him from dispossessing the plaintiff from the Schedule Properties until disposal of the case.

4. Opponent / Defendant has filed common objection to these three I.As.

5. Heard both parties' counsels on these I.As.

6. On the basis of contents of I.A. No. I/2021, II/2021 and III/2021 and objection to these I.As., and on the basis of submission of both parties counsels the following points arise for my consideration:

1. Point No.1: Whether the plaintiff has made out a prima facie case in her favour ?

2. Point No.2: Whether the balance of convenience lies in favour of the plaintiff ?

3. Point No.3: Whether irreparable loss or injury will be caused to the plaintiff if temporary injunction order as prayed in I.A. No. I/2021, II/2021 and III/2021 is not granted ?

4. Point No.4: What order?

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

Point No.1: In the partly Affirmative

Point No.2: In the partly Affirmative

Point No.3: In the partly Affirmative

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

Reasons

8. Point No.1:- The case of the plaintiff is that Smt. Isha Bi @ Ayesha Bi had 7 (Seven) children and all the children were residing jointly in the schedule properties. The plaintiff is the wife of one late Sri. Noor Ahmed, who is one of the sons of Smt. Isha Bi @ Ayesha Bi. Smt. Isha Bi died on 25.11.1984 leaving behind her children to succeed her estate. After her demise, all her children were in joint peaceful possession and enjoyment of the suit schedule properties. The plaintiff's husband late Sri.

Noor Ahmed died on 20.10.2011 leaving behind the plaintiff and her children. After the demise of said Isha Bi @ Ayesha Bi, the plaintiff and his family members are in peaceful possession of the portion of schedule properties.

The plaintiff in the plaint at para No.11 has asserted that her husband has 1/7th share in the suit schedule properties and she succeeded to his share after his death.

The written statement contentions of the defendant are that Mrs. Isha Bi had executed Gift Deeds dated 03.12.1982 in favour of the defendant and the same was acted upon. The plaintiff is licensee in occupation of first floor room in Property No.91 (Old No.355) and terrace area and also passage situated in No.89 (Old Nos.357 & 358) backside and the defendant reserves his right to seek possession of the the plaintiff from the portion.

It is pertinent to mention that plaintiff herself has stated in her plaint at para No.6 that she and her family members are in possession and enjoyment of portion of suit schedule premises. The plaintiff has described suit Schedule - A property as a building more than 100 years old, which measures East 10 feet, West 10 feet, 10 feet, North 27 feet, 10 feet, 10 feet and South 37 feet, Suit Schedule 'B' Property as a building more than 100 years old measuring East 11 feet, West 11 feet, 4 feet, North 24 feet, 11 feet, 18 feet, South 24 feet, 10 feet, 3 feet and Suit Schedule 'C' property as land together with the building measuring East 22 feet or 3.7056 Mtrs, West 8 feet, 2.4384 Mtrs plus $16\frac{3}{4}$ feet or 5.1054 mtrs, North 26 feet or 7.9248 Mtrs and South 26 feet or 7.9248 Mtrs.

It is pertinent to mention that plaintiff has not specifically pleaded about portion of suit schedule properties in which she and her family members are in possession and enjoyment.

Defendant also admits that plaintiff as licensee in occupation of first floor room in Property No.91 (Old No.355) and terrace area and also passage situated in No.89 (Old Nos.357 & 358) backside.

Plaintiff herself has produced photostat copy of 3 registered Gift Deeds dated 3.12.1982, by which Isha Bi has gifted Suit Schedule A to C properties in favour of the defendant. Plaintiff herself in the plaint is claiming that she and her family members are in possession and enjoyment of the portion of suit schedule properties. But, Plaintiff in I.A. No.I/21, II/21 and III/21 is seeking temporary injunction restraining the defendants from alienating the entire suit schedule properties, from interfering in her possession of entire suit schedule properties and from dispossessing her from the entire suit schedule properties until disposal of the suit.

This suit is filed on 18.12.2021. The plaintiff is questioning the registered gift deeds dated 3.12.1987 after lapse of about more than 39 years from the execution of those registered gift deeds.

The Counsel for plaintiff has furnished a decision reported in AIR 1952 Travancore-Cochin 424, wherein their Lordships of Travancore-Cochin High Court, have held as under:

“In an application for injunction made in a suit if the Court finds that the plaintiff had no title at all, even prima facie, no injunction can be granted, but if there seems to be a fair question to raise regarding the legal right claimed by the plaintiff then the application for injunction has to be

considered upon the grounds of balance of convenience, injury to the parties, and so forth. The fact that the Court considers that the plaintiff's claim to the property in suit is doubtful is no reason to dismiss the application. Further, one consideration that should guide courts is that as far as possible the status quo at the time of the suit should be maintained.”

The Counsel for defendant has furnished the following decisions in support of his arguments.

(1) AIR 2010 SC 296 (Kashi Math Samsthan and Others vs. Sudhindra Thirtha Swamy and others), wherein their Lordships of Hon'ble Supreme Court, have held in para No.13 as under:

“13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that the party fails to prove prima facie case to go for trial, question of considering the convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”

(2) AIR 2012 SC 1727 (Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack de Sequeria (Dead) through L. Rs), wherein their Lordships of Hon'ble Supreme Court have held in para Nos.64 and 101 as under:

“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

101.

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.”

In view of the discussion I made above and in particular the admission made by defendant about the permissive possession of plaintiff in portion of the suit schedule properties, I am of the opinion that plaintiff is able to make out prima facie case in her favour for granting temporary injunction restraining the defendant from interfering in the possession of portion of suit schedule properties and from dispossessing the plaintiff from portion of the suit schedule properties as admitted by defendant. Plaintiff is failed to make out prima facie case in her favour for granting temporary injunction from alienating suit schedule properties by the defendant. Hence, I answer point No.1 in partly affirmative.

11. Point Nos.2 and 3:- As defendant himself has admitted that plaintiff is in permissive possession of portion of the suit schedule properties, I am of the opinion that balance of convenience lies in favour of the plaintiff and irreparable loss or injury would be caused to plaintiff only if defendant is allowed to interfere in the possession of portion of suit schedule properties and defendant is further allowed to dispossess the

plaintiff from portion of the suit schedule properties. Hence, I answer point Nos.2 and 3 in partly affirmative.

12. Point No.4:- In view of the answer I arrived to point Nos.1 to 3, I proceed to pass the following:

O R D E R

I.A. No. I/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908, filed by the applicant/plaintiff is rejected.

I.A. No. II/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908, filed by the applicant/plaintiff is partly allowed as under:

The defendant, his agents, henchmen or any other person's claiming under him are restrained by temporary injunction from interfering in the portion of suit schedule properties i.e., first floor room in property No.91 (Old No.355) and Terrace area and also passage in property No.89 (old Nos.357 and 358) backside until disposal of the case.

I.A. No. III/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908, filed by the applicant/plaintiff is partly allowed as under:

The defendant, his agents, henchmen or any other person's claiming under him are restrained by temporary injunction from dispossessing the plaintiff from the suit schedule properties i.e., first floor room in property No.91 (Old No.355) and Terrace area and also passage

in property No.89 (old Nos.357 and 358) backside until disposal of the case.

No order as to costs.

(Dictated to the Judgment Writer, transcribed and typed by him, transcript corrected, signed and pronounced in the open court on this the 25th day of November, 2022).

(G.Raghavendra)
XXXIV Addl. City Civil & Sessions Judge
Bengaluru.