

Perused the order sheet along with material on record the plaintiff filed I.A. No.1 under Order 1 rule 8 CPC on behalf of all the members of plaintiff association seeking permission to file the suit as against the defendants. The plaintiff has also filed I.A. No.II under Order 39 Rule 1 and 2 CPC to restrain the defendants from interfering with the suit schedule properties. The defendant No.18 has filed I.A. No.III under Order 7 Rule 11(b) of CPC to reject the plaint on the ground of valuation and deficit court fee. The plaintiff has also filed I.A. No.IV under Order 39 Rule 1 and 2 CPC to restrain the defendants from alienating application schedule property. It is also evident that, defendant No.18 has filed I.A. No.VII under Order 39 rule 4 CPC to vacate the ex-parte order of TI granted under I.A. No.II by the predecessor in office. The plaintiff has also filed I.A. No.V under Order 39 Rule 1 and 2 CPC directing the defendant No.7 and 13 to co-operate with the plaintiff in operating the plaintiff's bank account. Further it appears that, both the parties have already filed written arguments on I.A. II and VII before the predecessor in office. In view of pendency of I.A. No.III filed by defendant No.18 to reject the plaint for want of correct valuation and court fee, the parties concerned have already filed written arguments on I.A. No.III also. Objections/arguments on I.A. No.IV did not file.

But, on the last date of hearing it has been wrongly mentioned as orders on I.A. 2, 4 and 7 instead of I.A. 2 to 5 and 7. Hence, the same is hereby rectified and proceed to pass the following:-

:ORDER ON I.A No.III:

The applicant/defendant No.18 has filed the I.A. No.III under Order 7 Rule 11 (b) of Code of Civil Procedure to reject the plaint stating that, the plaintiff has filed the suit for declaration to declare that, both the sale deeds dated 13/11/2018 and 22/11/2018 are null and void and not binding upon the members of plaintiff's association and also sought for permanent injunction, as such, court fee paid is not correct and insufficient, on the other hand, the plaintiff has to value the suit and to pay correct court fee as per Section 24(b) of the Karnataka Court Fee and Suit Valuation Act, on these grounds, prayed for rejection of the plaint.

2. Per contra, the plaintiff has filed objections contending that, the plaintiff is not a party to the said sale deeds, as such, as held by Hon'ble Supreme Court in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh & others (AIR 2010 SC 2807)*, plaintiff need not seek cancellation of sale deeds, as such, the valuation made and court fee paid by the plaintiff is correct and proper. On these grounds prayed for dismissal of the application with costs.

3. Heard and perused the written argument along with material on record.

4. The point that arises for my consideration is:

Whether defendant No.18 shows that plaint is liable to be rejected for want of correct valuation and payment of deficit court fee ?

5. My answer to the above point is in the Negative for the following:

REASONS

6. **Point No.1:** It is worth to note that admittedly plaintiff has filed the above numbered suit against the defendants for the relief of declaration to declare that alleged sale deeds dated 13/11/2018 and 22/11/2018, executed by defendant No.19 to 22 and 26 in favour of defendant No.18 are null and void and not binding upon the members of the plaintiff's association and also sought permanent injunction against the defendants.

7. It is settled that, while deciding an application under Order VII Rule 11 of Code of Civil Procedure Court has to see the averments made in the plaint only and contention taken in the written statement would be wholly irrelevant. In the case on hand, written statement of defendants already taken as not filed. So, if, go through the plaint averments, we can find that plaintiffs are neither the parties nor executants of the alleged sale deeds. Further there is no prayer for cancellation of sale deeds or seeking relief of possession. Accordingly, the plaintiffs have paid court fee as required under Section 24(d) of the Act.

8. It is to be noticed that, another question that arises at this juncture is earlier no declaration of title can be sought by a plaintiff on the basis of adverse possession,

in as much as adverse possession can be used as a shield by a defendant and not as a sword by the plaintiff. But, in view of present legal position as held by the Hon'ble Apex Court in case of Ravinder Kaur Grewal and others (Civil Appeal No.7764/2014, dated 07/08/2019), even the plaintiff can maintain a suit for declaration based on alleged adverse possession over the disputed property along with consequential relief of permanent injunction.

9. Therefore, as observed by the Hon'ble Apex court in the case of Suhrid Singh @ Sardool Singh referred supra (2010) 12 SCC 112), question of payment of ad-valorem court fees on market value does not arise. Therefore, having regard to the facts and circumstances of the case, I am of the opinion that valuation made and court fee paid by the plaintiff is correct and proper. Consequently, IA No.III is liable to be dismissed on payment of cost. Hence, I answer the point raised for consideration is in the Negative and proceed to pass the following:

:ORDER:

I.A. No.III filed under Order VII Rule 11 R/w Sec.151 of Code of Civil Procedure by the defendant No.18 is hereby dismissed on payment of cost of Rs.500/-.

(C.D.KAROSHI)
V ADDL.CITY CIVIL JUDGE
BENGALURU

:COMMON ORDERS ON I.A No.II, IV, V AND VII:

The plaintiff/applicant has filed I.A. No.II under Order 39 Rule 1 and 2 CPC to restrain the defendants from interfering with the suit schedule properties.

The plaintiff/applicant has also filed I.A. No.IV under Order 39 Rule 1 and 2 CPC to restrain the defendants from alienating application schedule property.

The plaintiff/applicant has also filed I.A. No.V under Order 39 Rule 1 and 2 CPC directing the defendant No.7 and 13 to co-operate with the plaintiff in operating the plaintiff's bank account.

2. It is averred in the accompanying affidavits along with plaint averments as well as objections filed to I.A. No.VII that, though defendant No.18 firm claimed to have purchased the schedule properties, but, they never enquired the plaintiff's association who are in exclusive open possession and enjoyment of the schedule properties without interruption by anybody. Further it is averred that, the plaintiff's association have acquired title over the schedule properties by adverse possession and enjoying the same since the month of February 2005, as such, if, the interim relief is not granted then the members of the plaintiff's association would be suffer irreparable injury and hardship, on the other hand no prejudice will be caused to the defendants.

3. It is averred in the accompanying affidavit filed in support of I.A. No.VII filed under Order 39 Rule 4 CPC that, though this court was pleased to allow the President of the plaintiff's association to file the suit as prayed under I.A. No.I, but, as per Section 15 of the Karnataka Societies Registration Act, the competent person has to represent the interest of the society. Further contended that, the plaintiff has obtained ad-interim order of injunction by misleading the court stating that, plaint schedule property is in the possession of the plaintiff from past 13 years which is adverse to the ownership of the land owners, but, there is no reference about the schedule property in either of their documents viz., certificate of registration and letter dated 17/05/2005. On the other hand, defendant No.18 firm is the absolute owner of the property in question by virtue of sale deeds 13/11/2018 and 22/11/2018 for the sale consideration. Further, plaintiff on the strength of the interim order illegally trying to restrain the peaceful possession and enjoyment of defendant No.18 over the schedule property. On these grounds prayed for allowing I.A. No.VII by rejecting I.A. No.II.

4. Heard and perused the written argument along with material on record.

5. The points that arise for my consideration are:

1. Whether the plaintiff has made out a prima-facie case?

2. In whose favour balance of convenience lies?

3. Whether the plaintiff will be put into irreparable loss and injury if the exparte TI passed on IA No.I is vacated?

4. Whether I.A. No.IV and V are fit to be allowed?

5. What order?

6. My answers to the above points are as under.

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

Point No.4 : Partly in the affirmative.

Point No.5 : As per final order

for the following:

:REASONS:

7. **Point No.1 to 4** : I take these points altogether for my discussion as the facts overlap and for the sake of convenience.

8. It is pertinent to note that on careful examination of the pleadings, contents of the affidavits, documents and as well as the written arguments filed on both the

sides makes it clear that plaintiff's association has filed the main suit for the relief of declaration to declare that, the alleged sale deeds dated 13/11/2018 and 22/11/2018 are null and void and not binding upon the members of the plaintiff's association and also sought consequential relief of permanent injunction. Per contra, the defendant No.18 would contend that, the said firm became the owner of the schedule properties by virtue of aforesaid registered sale deeds executed by the defendant No.19 to 22 and 26.

9. So it is well settled principles of law that an injunction is a serious matter as to be passed on sound principles of law if the plaintiff shows prima-facie case, irreparable injury and balance of convenience. As could be seen from perusal of plaint averments along with contents of affidavit filed in support of I.A. No.II as well as documents relied by the plaintiff's association that, the defendants never questioned the plaintiff's exclusive and open possession over the schedule property since February 2005, as such, it is the case of the plaintiff that, the plaintiff's association has perfected its title by adverse possession. This aspect has been categorically supported by the the correspondence documents viz., e-mail communication letters from 29/08/2005 till the month of May 2017 and thereafter continued as on the date of the suit to show that, plaintiff has got prima facie case.

10. Further, though the defendant No.18 has filed I.A. No.VII by claiming to be the owner of the disputed properties based on the alleged sale deeds dated 13/11/2018 and 22/11/2018, but, the plaintiff has seriously disputed the authenticity of said documents and thereby made out a arguable case to believe that, balance of convenience also lies in favour of the plaintiff's association.

11. It is to be noticed that, another question that arises at this juncture is earlier no declaration of title can be sought by a plaintiff on the basis of adverse possession, in as much as adverse possession can be used as a shield by a defendant and not as a sword by the plaintiff. But, in view of present legal position as held by the Hon'ble Apex Court in case of Ravinder Kaur Grewal and others (Civil Appeal No.7764/2014, dated 07/08/2019), even the plaintiff can maintain a suit for declaration based on alleged adverse possession over the disputed property along with consequential relief of permanent injunction.

12. In this connection our Hon'ble High Court has held in the case of Smt.Ratnama V/s Gupta reported in KLJ-1999 (1) Head Note Point C Page.578 that grant of primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of the parties are settled and further it is observed that prima-facie case is not to be confused with prima-facie title.

13. Wherefore having regard to facts and circumstances of the case I am of the opinion that if the exparte order of temporary injunction is vacated then the plaintiff will be put to irreparable loss and inconvenience. In my opinion in order to avoid multiplicity of litigation it is just and proper to allow the I.A No.II and IV. Accordingly the written arguments filed on plaintiff's side on this aspect holds good. On the other hand any amount of written argument filed by the counsel for defendant No.18 not accepted, consequently, I.A. No.VII is liable to rejected.

14. Though, the plaintiff/applicant has also filed I.A. No.V under Order 39 Rule 1 and 2 CPC seeking direction to defendant No.7 and 13 to co-operate with the plaintiff in operating the plaintiff's bank account, but plaintiff has not furnished supporting documents before this court, therefore, the written arguments filed by the counsel for defendant No.18 to that extent holds good. Consequently, I.A. No.V is liable to rejected. Hence, I answer Point No.1 to 3 in affirmative and Point No.4 partly in affirmative.

15. **Point No.5:** For the foregoing reasons I proceed to pass the following:

:ORDER:

I.A. No.II and IV filed under order 39 rule 1 and 2 of C.P.C by the applicant plaintiff are hereby allowed.

The defendants are hereby restrained from interfering with the plaintiff's possession

and enjoyment over the suit schedule properties and shall not alienate the schedule property till disposal of the suit.

In the result IA VII filed under order 39 Rule 4 r/w 151 of C.P.C by applicant/defendant No.18 is rejected.

I.A. No.V filed under Order 39 Rule 1 and 2 CPC by the plaintiff against defendant No.7 and 13 stands rejected.

No order as to costs.

Office is hereby directed to maintain running index so as to avoid inconvenience to the court and the litigant public and put up after verifying the written statement of remaining defendants or plaintiff's evidence by 14/10/2019.

(C.D.KAROSHI)
V ADDL.CITY CIVIL JUDGE
BENGALURU