

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT SANDUR.**

Present : Sri. Devaraddy B.A., LL.B, LL.M.
Civil Judge & JMFC., Sandur.

Dated this the 19th day of November, 2022.

O.S. No. 162/2022.

Plaintiff : T.J. Radhakrishna.

V/S

Defendant : Shekharappa.

I.A. No. III

**Applicant /
Plaintiff** : T.J. Radhakrishna.

(By Sri. P.R.P. Advocate)

V/S

**Opponent /
Defendant** : Shekharappa.

(Placed Exparte)

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ORDERS ON I.A. No. III

The plaintiff/applicant has filed IA No.III under Order XXXIX Rule 1 and 2 R/W/S 151 of CPC, and prays to grant exparte temporary injunction order to restrain the

defendant, his men, agents, representatives, legal heirs, associates, supporters, followers, assignees and anybody claiming through him from interfering in the peaceful possession and enjoyment of the plaintiff over the suit schedule properties till disposal of the suit.

2. The said application filed by accompanying affidavit and in the affidavit it is stated that, item No.1 of the suit schedule property was purchased from his mother by name Gangamma W/o late T.M. Jeevarathnam from its previous owner by name Dodda Basappa S/o Sharanagouda under registered sale deed dated 11.04.2008. Item No.2 also purchased from his mother from its previous owner by name G.Kumaraswamy S/o Dodda Basappa under registered sale deed dated 23.07.2008, since then she was in possession and enjoyment of the schedule properties till her death. By virtue of sale deeds suit schedule properties were mutated in her name. The said Gangamma was died on 26.07.2018

by leaving him as her legal heirs. After death of his mother suit schedule properties was mutated in his name, since then he has been in possession and enjoyment of the suit schedule properties.

3. Further stated that the defendant without any right, title or interest over the suit schedule properties has been trying to interfere in the peaceful possession and enjoyment of the plaintiff thereon. On 28.06.2022, the defendant has made attempt to interfere with the possession of the plaintiff and to encroach the said properties, but it was resisted by him with great difficulty. Further stated that the defendant has been making efforts to encroach the suit schedule properties with his whims and fancies in order to gain unlawful benefit. The defendant once again made attempt to interfere with the possession of the plaintiff on 02.07.2022 and 19.07.2022, for which, the plaintiff approached the local police for seeking protection from interfering in the possession over

the suit schedule properties. But the concerned police have refused to intervene in the matter since the said dispute is the civil in nature. Hence plaintiff filed this suit against the defendant for necessary relief.

4. Further stated that the defendant without having any right, title or interest over the suit schedule properties has been trying to encroach the same. Further stated that the has made out prima-facie case and balance of convenience lies in his favour. If the application is not allowed then he will be put great hardship and injustice. Hence, prays to allow the application.

5. The defendant has not appeared before the court even though suit summons and notice on I.A. No. III duly served on him and he has not filed objections on the present application.

6. Heard hearing on IA No.III.

7. On the basis of above contention, the following points arise for consideration.

1. *Whether the plaintiff/applicant proves that he has made out a prima facie case?*
2. *Whether the plaintiff/applicant proves that the balance of convenience lies in his favour?*
3. *Whether the plaintiff/applicant proves that he would suffer irreparable injury if temporary injunction is not granted in his favour?*
4. *What order?*

8. Based on the materials, the above said points are answered as under;

Point No.1 : **In the Affirmative.**

Point No.2 : **In the Affirmative.**

Point No.3 : **In the Affirmative.**

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

REASONS

Point No.1 :

9. The plaintiff has filed the present suit for the relief of permanent injunction with regard to suit schedule

properties. The plaintiff also filed this application to restrain the defendant, his men, agents, representatives, legal heirs, associates, supporters, followers, assignees and anybody claiming through him from interfering in suit schedule properties till disposal of the suit.

10. The plaintiff contended that suit schedule properties were purchased from his mother under registered sale deeds from its previous owner in the year 2008. Further contended that after death of his mother suit schedule properties were mutated in his name and he has been in possession and enjoyment of the same. Further contended that the defendant without having any right and interest over the suit schedule properties has been trying to encroach the suit schedule properties.

11. It is the plaintiff to prove that he has made out prima-facie case with regard to suit schedule properties, for which, the plaintiff has produced the documents such as certified copy of registered sale deeds dated 11.07.2008

and 23.07.2008, Computerized mutation register, Computerized RTC's and death certificate of Gangamma.

12. As already stated above that the defendant has not appeared before the court even though suit summons and notice on this application duly served on him. For which, there is no objection on the present application. Hence contention of the present application remained unchallenged and undisputed.

13. On perusal of certified copy of registered sale deeds dated 11.04.2008 and 23.07.2008 it reveals that suit schedule properties purchased from the mother of the plaintiff under registered sale deed from its previous owner. On perusal of Computerized mutation register it reveals that suit schedule properties were mutated in the name of Gangamma W/o late T.M. Jeevarathnam by virtue of sale deeds in the year 2008-09. On perusal of Computerized RTC's it reveals that suit schedule properties were mutated in the name of plaintiff by its M.R.

No. H10/2018-19 dated 16.05.2019 by way of pouthi. On perusal of death certificate it reveals that mother of the plaintiff was died on 26.07.2018.

14. On perusal of contents of the present application and also documents which are produced by the plaintiff, at this stage it reveals that suit schedule properties were purchased by mother of the plaintiff and after death of mother of the plaintiff katha of the said properties changed in the name of plaintiff. Further reveals that plaintiff has been in possession of the suit schedule properties. The plaintiff has mentioned the boundaries with regard to suit schedule properties as per the boundaries mentioned in the registered sale deed. As already stated above that the defendant has not appeared and challenged the case of the plaintiff even though summons and notice duly served on him.

15. From going through the above discussion and grounds and also materials available on record at this

stage it reveals that plaintiff has made out prima-facie case. Hence, Point No.1 is answered in the **Affirmative**.

Point No.2:

16. The plaintiff has produced the documents in respect of suit schedule properties to show that, he has made out prima-facie case. Based on documents adduced by the plaintiff, it shows that, the balance of convenience also lies in favour of the plaintiff. Hence, in view of the above discussion, the Point No.2 is answered in the **Affirmative**.

Point No.3 :

17. On the basis of contention has taken by the plaintiff and defendant and also based on the documents produced by the parties and as the plaintiff /applicant has made out prima-facie case and also balance of convenience lies in his favour, it is very clearly show that, if the temporary injunction order is not granted it is the plaintiff who will be caused great hardship and irreparable loss

than the defendants. Hence, the Point No.3 is answered in the **Affirmative**.

Point No.4 :

18. In view of discussion of Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A. No.III filed by the plaintiff Under Order 39 Rule 1 and 2 R/W/S 151 of CPC, is hereby allowed.

The defendant, his agents, servants or anybody on his behalf are hereby restrained from interfering to the plaintiff possession and enjoyment of suit schedule properties till disposal of the suit.

No order as to costs.

[Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open court on this day of **19th day of November, 2022**]

(Devaraddy)

Civil Judge and J.M.F.C.,
Sandur.