

IN THE COURT OF THE PRL., CIVIL JUDGE & JMFC
AT ANEKAL

PRESENT: SRI. GOKULA .K, B.A.L.LB.
Prl., Civil Judge & J.M.F.C.,
Anekal.

OS.No.510/2017

Dated on this the 01st day of September 2018

K.S Narayan V/s Rakesh

ORDERS ON IA

PETITIONERS/PLAINTIFFS:-

1. K.S Narayan S/o K.S Srinivas Iyengar,
Age: 49years,
2. G Padmavathi W/o K.S Narayana,
Age: 36years,
R/at: Koppa villge, Jigani Hobli,
Anekal Taluk, Bangalore District.

(By Sri. P.P.H. Advocate)

// Versus //

RESPONDENTS/DEFENDANTS:-

Sri. Rakesh S/o. Ramaswamy,
Aged: 30 years,
R/at: Harappanahalli village,
Jigani Hobli, Anekal Taluk, Bangalore.

(Sri. YVK Advocate)

ORDERS ON IA.NO.I

The plaintiffs have filed the application U/o. XXXIX Rule 1 & 2 of CPC to restrain the defendants from interfering/ trespassing with the peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

2. Brief case of the plaintiff is as under:

The plaintiff No.1 claimed to be owner and in possession of the suit schedule "X" property bearing No.92 katha No.480 situated in Classic Champakadhama layout Harappanahalli Village, Kalbalu grampanchayath, Anekal Taluk having purchased the same from Smt. Shanthi Venkatesh through registered sale deed dated 25-04-2016. The defendant No.2 also claimed ownership and possession over suit schedule "Y" property bearing Sy.No.101 katha No.480 situated at Classic Champakadhama Layout Harappanahalli Village, Anekal Taluk having purchased the same from Smt. Indira Ramprakash under the registered sale deed dated 31-12-2010. The plaintiff claimed that the katha of the suit schedule property is mutated in the name of the plaintiffs in respect of their respective sites. On 03-06-2017 the defendant came to the suit property and destroyed the portion of compound wall by using JCB and caused extensive damage to the suit schedule property. The plaintiff approached the Jigani Police Station but they have not taken any action. Therefore the plaintiff has approached this court.

3. The defendant has filed written statement and adopted the

same as objection to the application. In the written statement the defendant has denied the plaint averements and also denied ownership and possession of the plaintiff over suit schedule property. The defendant has admitted that he has entered into joint development aggrement with Prabhakar Reddy but said Prabhakar Reedy has failed to develop the land and has created fraudulent and illegal approved plan and sold non-existing sites to general public. The defendant has executed the general power of attorney only for the purpose of development of land and not authorized to sell the property. The defendant has also denied the alleged interference to the possession of the plaintiff. It is stated that the defendant is the owner of Sy.No.83/2, 97/4, 97/3, 98 and 99/2. The partner of Classic Enterprise by name Prabhakar Reddy has fraudulently created documents and fake approved plan in respect of site No. 92, 93, 94, 96, 99, 100, 101, 102, 103, 104, 106, 109, 110, 115, 126, 127 and 128 and sold the sites to various persons. Said sites are not approved by the planning authority. The plaintiffs have claiming that they have purchased each one such site bearing No.92 and 101. It is stated that he has lodged the complaint against the said Prabhakar Reddy and H.S

Narayan before CCB police, Bangalore. The CCB police have called for information from Anekal planning authority regarding number of sites approved. From the documents supplied by the planning authority it is clear that the Prabhakar Reddy has sold non existing sites to the plaintiffs and said suit sites are not in existence. The plaintiff has filed this false suit to knock off the valuable property of the defendant. Therefore the defendant has prayed for dismissal of the application.

4. Heard arguments. Perused the records.

5. The following points arise for the consideration of this court:-

POINTS

1. Whether the plaintiffs have made out a prima-facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiffs are entitled for the relief of Injunction as prayed for?
5. What order?

6. My answer to the above points is as under

Points No.1 - In the Negative
Points No.2 – In the Negative
Points No.3 – In the Negative
Points No.4 – In the Negative
Point No.5 - As per final order

for the following:-

REASONS

7. **Points No.1 to 4:-** All these points are interconnected to each other, hence taken for discussion together.

The plaintiff claimed possession over the suit schedule “X” and “Y” property having purchased the same under the registered sale deed. The plaintiff to prove his possession has produced their respective sale deeds, wherein there is an averment of delivery of the possession. The plaintiff no. 2 derived her title and possession over suit Y property from Indira Ramprakash. The vendor of the plaintiff No.1 Shanthi Venkatesh has also derived the title to the property from Indira Ramprakash under the registered sale deed dated 27-06-2011. It is admitted fact that the original owner of the Sy.No. 91/1, 91/2, 107, 108, 108/1, 108/2, 109 is Indira Ramprakash. As per the averments in the sale deed of the plaintiffs said Indira Ramprakash has converted said properties for non agricultural purpose as per the order of special Deputy

Commissioner dated 09-08-2006. The said Indira Ramprakash has entered into joint development agreement on 15-02-2006 with M/s Classic Enterprises through its partner Prabhakar Reddy on 15-02-2006. The said Prabhakar Reddy as a general power of attorney of Indira Ramprakash and the partner of Classic Enterprises sold the suit property infavour of Shanthi Venkatesh vendor of the plaintiff no. 1 in respect of suit schedule "X" property. The plaintiff no. 2 purchased the suit schedule "Y" property through registered sale deed dated 13-12-2010 directly from Prabhakar Reddy, who represented as general power of attorney holder of Indira Ramprakash and partner of Classic Enterprises. The plaintiff has also produced the encumbrance certificate showing the registration of sale deed. The plaintiff has also produced the Form No.11 and 9 in respect of suit schedule property and also produced the complaint lodged to the Jigani Police against the defendant.

8. On the other hand, the defendant has contended that the Prabhakar Reddy has created fake layout plan and commencement certificate from town planning authority and created fake sites bearing No.92, 93, 94, 96, 99, 100, 101, 102,

103, 104, 106, 109, 110, 115, 126, 127 and 128. The suit property bearing site No.92 and 101 is in the list of said created false sites. In this respect the defendant has contended that he has lodged the complaint to the CCB police Bengaluru and they have written the letter to the town planning authority, Anekal. The town planning authority has issued the copy of layout plan and the same is produced by the defendant, shows formation of 90 sites in Sy.No. 97/1, 97/2, 107, 108, 108/2 and 109. The commencement certificate dated 02-01-2008 shows release of only 54 sites out of 90 sites for reregistration by Anekal town planning authority. As per these two documents site 92 and 101 are not approved by town planning authority. In the report submitted by Anekal town planning authority to the CCB police, it is also stated that there is manipulation in the layout plan and order of town planning authority. The defendant has produced FIR registered against the said Prabhakar Reddy for formation of fake sites with out approval of town planning authority and sale of the same. From these document produced by the defendant at this prima-facie stage, it is clear that the existence of suit sites 92 and 101 itself is doubtful. When the existence of the suit sites

itself is doubtful the court cannot hold that the plaintiff is in possession of the suit schedule property. Therefore in the plaintiff who has failed to show his prima facie possession is not entitled for temporary injunction. When the plaintiff has failed to make a prima-facie case, the court need not consider the aspect of balance of convenience or inconvenience that may be suffered by the plaintiff and the loss that may be suffered by the plaintiff. Hence this court holds that the plaintiff is not entitled for the relief of temporary injunction. Therefore I answer I answer point No.1 to 4 in the Negative.

09. **Point No.5:-** In view of the answers to point No.1 to 4, I will proceed to pass the following:-

ORDER

The application filed by the plaintiffs U/o.39 rule 1 & 2 of CPC is hereby rejected.

No order as to cost.

(Partly dictated to the Stenographer, transcribed and typed by her & partly dictated to the stenographer directly on computer and corrected and initialed by me and then, pronounced in the open court on this 1st day of September 2018)

(Gokula .K)
Prl., Civil Judge & JMFC.,
Anekal.