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.148/2017

Dated on this the 19th day of June 2018

Kaverappa Vs Y. Abdul Rahaman and others

ORDERS ON IA

PETITIONER/PLAINTIFF:-
Kaverappa S/o late Gurappa
Age: 70 years, R/at: No.98, Rayasandra village,
Huskur post, Sarjapura Hobli, Anekal Taluk.
Bangalore Urban District.

(By Sri. CSR Adv.,)

// Versus //

RESPONDENTS/DEFENDANTS:-
1. Y. Abdul Rahaman S/o late Yaseen Sab,
Aged about 51 years. R/at: No.3, Bowee lane, D street, Ashok Nagar, Bangalore – 25.

2. Praveen S/o Gopal
Age: 29 years, R/at: Goolimangala village, Sarjapura Hobli, Anekal Taluk, Bangalore Urban District.

3. Ragu Nandan @ Raju S/o Venkatesh
Age: 24years, R/at: Kaggalipura village, Sarjapura Hobli, Anekal Taluk, Bengaluru Urban District.

(D.No.2 & 3 are Ex-parte, D.No.1 By Sri.MAS Adv,)

ORDERS ON IA.NO.I

The plaintiff has filed the application U/o. XXXIX Rule 1 & 2 of CPC seeking temporary injunction restraining the defendants from interfering in the peaceful possession over the suit schedule property.

2. Brief case of the plaintiff is as under:

The plaintiff is the absolute owner an din possession of suit schedule property bearing Sy.No.6 measuring 18 guntas situated at Rayasandra village. Said property is Neeraganti Inamthi land. The plaintiffs father Gurappa rendered service as Neeraganti and Thoti. Considering the service of the plaintiffs father and the application filed by the plaintiffs father, the Thasildhar of Anekal has granted the suit schedule property. The concerned revenue authority has also entered the name of father of the plaintiff and his brothers as khatedhar as per MR.NO.14/1985-86. The plaintiff father died on 09-10-2001. During his life time he was in possession and enjoyment of the suit schedule property along with his brothers. After his death the plaintiff and his brothers acquired right over the suit

property by inheritance. Thereafter legal heirs of Chikkaguru and Papaiah filed the suit for partition in OS.No.92/2015 on the file of Hon'ble Senior Civil Judge court, Anekal. In the said suit matter was settled and compromise decree was passed. In the said partition the plaintiff has acquired the suit schedule property and his name is entered in the revenue records. It is stated that, the defendants without having any right, title or interest over the suit property attempted to interfere to the possession on 02-04-2017. The plaintiff has complined the same to the jurisdictional police. But they have advised to approach the civil court. Hence, the plaintiff has filed this suit and sought for interim relief.

3. The defendant No.1 appeared through his counsel and filed written statement. In the written statement the defendant has denied the ownership and possession of the plaintiff over the suit schedule property. He has contended that, plaintiffs father has executed GPA in favour of one B. Mohan and said Mohan has sold the property in favour of Ibrahim Kham through registered sale deed dated 31-03-1995. Said Ibrahim

Khan has sold the written statement schedule property the site No.14, old khata No.107, new khata No.2556/107, 14 measuring to an extent of 1672.5 sq.ft situated at Rayasandra village. The said property is the part and parcel of the suit schedule property bearing Sy.No.6 of Rayasandra village. Thus the defendant has claimed possession over said property and claimed that said property is formed within the suit schedule property. It is stated that by suppressing earlier sale, the plaintiff and other family members have filed the suit for partition and obtained the decree by way of compromise. It is further stated that the defendant No.1 herein filed the suit in OS.No.153/2007 for permanent Injunction in respect of written statement schedule property and which is pending for consideration. Therefore, defendant has contended that there is no prima-facie case is made out by the plaintiff and the balance of convenience is in his favour. Hence, the defendant has prayed to dismiss the application.

4. Heard arguments. Perused the documents.

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

POINTS

1. Whether the plaintiff has made out a prima-facie case for granting temporary injunction?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will suffer irreparable loss, if injunction is not granted?

4. Whether the plaintiff is 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 to 4 - Affirmative

Point No.5 - As per final order for the following:-

R E A S O N S

7. **Points No.1:** The plaintiff claimed that suit schedule property is an agricultural property allotted to his father by the Thasildhar. To substantiate this fact, he has produced the order of the Thasildar and the mutation order and he has also produced the record of rights of the suit schedule property

standing in the name of plaintiffs father Gurappa. The plaintiff has also produced order sheet in OS.No.92/2015 and compromise petition and the decree passed by the court as per the compromise. The plaintiff has produced the RTC standing in his name in pursuance of said final decree. All these documents prima-facie shows that the plaintiff is in possession of the suit schedule property. The defendant has contended that the written statement schedule property is formed in Sy.No.6 within the suit schedule property and he has purchased the same from one Ibrahim Khan through registered sale deed dated 17-07-2014 and said Ibrahim Khan has purchased the same from the plaintiffs father Gurappa. The plaintiffs father has represented by his GPA holder B. Mohan. But to substantiate all these pleadings the defendant he has not produced any documents. He has not produced the conversion order, sale deed, GPA or khata extract of the written statement schedule property to prima facie show that he is in possession of the written statement schedule property and the same is within the suit schedule property. In the absence of any such documents only on the photographs

produced by the defendant, it cannot be held that he is in possession of the written statement schedule property and it is within the boundaries of suit schedule property. Therefore at this prima-facie stage the plaintiff has made out prima facie case to protect his possession. Hence I answer the point No.1 in the affirmative.

8. **Point No.2 to 4:** The plaintiff has claimed that suit property is agricultural property and he is cultivating the same. The defendant has contended that the suit property is the vacant site which is purchased by him. The nature of the property and allegations of the both parties have to be proved in the evidence. At this stage, the plaintiff has made out prima-facie case that he has is in possession of the suit property. In this regard the plaintiff has relied on the decisions reported in 2008 ICC (1) 431 between Gurmit Kaur Vs Mohinder Singh of Hon'ble Panjab and Haryana High court, (ii) 1999(1)ICC 805 between Satyam @ Ramaiah and others Vs Karnataka Milk Federation Co-operative Ltd (iii) ILR 2000 KAR 435 between P. Prabhavathi and another Vs Divisional Controller and others. I

have gone through the principles laid down in these decisions. In these decisions it is laid down that even if a trespasser or a person in settled possession of the property is entitled to protect his possession and he cannot be dispossessed without due process of law. In this case the possession of the plaintiff is supported with entry in the revenue records. The defendant who claims possession of the site and claims that it is situated with in the suit property, has not produced any documents except photographs. Therefore the the defendant, who claims that suit property is the vacant site, may cause interference to the plaintiffs possession and he may change the nature of the property. Under such circumstances, the plaintiff will suffer huge loss and it will cause much inconvenience to the plaintiffs. On the other hand the defendant will not suffer any loss as he claims that it is an vacant site. Therefore, balance of convenience leans in favour of the plaintiff in granting temporary injunction. Therefore, the plaintiff is entitled for the relief of injunction claimed in the application. Hence, I answer points No.2 to 4 in the affirmative.

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

O R D E R

The application filed by the plaintiff U/o.39 rule 1 & 2 of CPC hereby allowed.

The defendants, their men, agents, servants or any persons claiming under them are hereby restrained from interfering to the plaintiff's possession till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer transcribed and typed by her and corrected and initialed by me and then, pronounced in the open court on this 19th day of June 2018)

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