

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
J.M.F.C., AT DEVANAHALLI**

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 24th Day of November, 2023

O.S.No.644/2021

Mr. Baitulla Khan : **Plaintiff**

(By Sri.R.C.K.S
Advocate)

V/s.

Sri. M. R. Chandra Raju and Others : **Defendants**

(D2 & 3 - Exparte)
(D5 - By Sri.A.R.S.R
Advocate)

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**ORDERS ON I.A.NO.1 AND I.A.NO.3**

The plaintiff has filed the above I.A.No.1 under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. along with the suit on 18.08.2021 by seeking ad-interim Temporary Injunction against the defendants by restraining them from creating third party rights in respect of the residential site bearing No.23,

Assessment No.67 in Khatha No.23/67 totally measuring 670 Feet of Sathnuru Village. The above property will be called as the suit schedule property in future.

2. The defendant No.5 has filed the I.A.No.3 dated 30.09.2021 under Order 39 Rule 4 read with Section 151 of C.P.C, by seeking Vacating of the Exparte Temporary Injunction Order dated 23.08.2021 passed on the I.A.No.1.

3. In support of the I.A.No.1, the plaintiff by name Mr. Baithulla Khan has filed his affidavit by deposing on oath that, he has filed the above suit for the relief of Declaration of ownership and also for Declaration to declare the Registered Sale Deed dated 09.11.2017 in between the defendants No.1 to 4 as not binding and also to declare the Sale Deed dated 02.07.2021 in between the defendants No.4 and 5 as not binding on him and for delivery of vacant physical possession of the suit schedule property from the defendant No.5 and also for Permanent Injunction. The plaintiff has purchased the suit schedule property from the defendant No.1 on 02.07.2016 and his Vendor, the defendant No.1 has purchased the land bearing Sy.No.67 measuring 6A from one Sri. Y. S. Puttaraju under a Registered Sale Deed dated 17.11.1988 and become the absolute owner thereof. The defendant No.1 has formed a Layout known as Sana Enclave and the plaintiff has purchased the Site No.23 out of the said Layout. The plaintiff is a resident of Mumbai and he came to

the suit schedule property during the last week of June 2021 and visited the same. To his surprise and astonishment, the plaintiff has found that, some illegal excavations were carried out in the suit schedule property by the defendants. On enquiry, the plaintiff learned that, the defendants No.1 to 5 have created Sale Deeds dated 09.11.2017 and 02.07.2011. Therefore, the plaintiff has filed the suit for the above said relives and he has filed the I.A.No.1 for ad-interim Temporary Injunction against the defendants. The plaintiff has submitted that, he is having a prima facie case and balance of convenience in his favour and he will be put to irreparable loss if Temporary Injunction is refused. Therefore, he has prayed for the allowing of his I.A.No.1.

4. The defendant No.5 has filed his written statement and Memo of adoption to treat the same as his objections to the I.A.No.1. The written statement averments of the defendant No.5 in brief are those of total denial of the plaintiff's case from Paragraphs No.1 to 9. The defendant No.5 has submitted his case from Paragraph No.10 onwards in his written statement that, he is the absolute owner of the entire Sy.No.67 in which he has formed a residential layout and he has executed a Registered G.P.A. dated 16.09.2015 in favour of the defendants No.2 & 3 and put them in possession of the sites bearing No.12 to 15 and the Site No.23 (the suit schedule property). The said G.P.A. dated 16.09.2015 is coupled with consideration and on the date of its execution itself, the defendant No.1 has received the entire

consideration from the defendants No.2 & 3 and put them in possession of the aforesaid sites. Since the possessory rights of the defendant No.1 over the suit schedule property was extinguished on the date of the G.P.A. on 16.09.2015 itself and therefore, he has no manner of right, title or interest over the same. Based on the said G.P.A., the defendants No.2 & 3 have sold the suit schedule property in favour of the defendant No.4 under a Registered Sale Deed dated 09.11.2017 and thereafter, the defendant No.4 has executed a Registered Sale Deed dated 02.07.2021 in favour of the defendant No.5. Consequent to his Sale Deed, the defendant No.5 has started laying of foundation in the suit schedule property and therefore, the plaintiff's claim is not maintainable. For these reasons, the defendant No.5 has prayed for the dismissal of the I.A.No.1.

5. With the same averments as those of his written statement, the defendant No.5 has filed the I.A.No.3 by seeking Vacating of the Exparte Temporary Injunction Order granted on 23.08.2021. His affidavit averments are entire reiteration of his written statement averments which are already narrated in the preceding Paragraph of this Order and therefore, it is not necessary to repeat the same here.

6. The plaintiff again filed his objections to the I.A.No.3 by denying the averments made in the I.A.No.3, affidavit and

written statement of the defendant No.5 and he has sought for the dismissal of the I.A.No.3.

7. Heard arguments of the rival parties and perused the documents.

8. On appreciation of the facts leading up to filing of the I.A.No.1 and I.A.No.3, the Points that arise for my consideration are as follows:

**POINTS IN THE I.A.NO.1**

- 1. Whether the plaintiff has made out a prima-facie case for grant of an order of equitable relief of temporary injunction against the defendant No.5?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff would be put to irreparable loss and injury, if the injunction were refused?**
- 4. What Order ?**

**POINTS IN THE I.A.NO.3**

- 1. Whether the defendant No.5 shows that, the Exparte tempoary**

***Injunction Order dated 23.08.2021  
is liable to be Vacated?***

***4. What Order ?***

9. Now, my answers to the above Points on both the I.A. No.1 and I.A.No.3 are as follows:-

**ANSWERS IN IA NO.1**

|                           |                                                         |
|---------------------------|---------------------------------------------------------|
| <b><i>Point No.1:</i></b> | <b><i>In the Negative</i></b>                           |
| <b><i>Point No.2:</i></b> | <b><i>Does not survive for my consideration</i></b>     |
| <b><i>Point No.3:</i></b> | <b><i>Does not survive for my consideration</i></b>     |
| <b><i>Point No.4:</i></b> | <b><i>As per the final order for the following:</i></b> |

**ANSWERS IN IA NO.3**

|                           |                                                         |
|---------------------------|---------------------------------------------------------|
| <b><i>Point No.1:</i></b> | <b><i>In the Affirmative</i></b>                        |
| <b><i>Point No.2:</i></b> | <b><i>As per the final order for the following:</i></b> |

**R E A S O N S**

10. **Point No.1 in both the I.A.No.1 and I.A.No.3:-** To avoid repetition of discussion, I will take up the Point No.1 in both the I.A.No.1 and I.A.No.3 together.

11. I have already narrated the case pleaded by the Plaintiff and by the Defendant No.5 at the inception of the above

Orders and therefore, it is not necessary for me to reiterate the same once again.

12. The plaint averments and the I.A.No.1 affidavit averments show that, the plaintiff has contended that, ***it is pertinent to note that the plaintiff is residing in Mumbai. The plaintiff having come from Mumbai during the last week of June 2021 on 4<sup>th</sup> July 2021 the plaintiff and his friend Mr. Syed Rizwan visited the property. To his utter shock and dismay the plaintiff noticed that certain excavation activities were illegally done by certain persons. On enquiry the plaintiff learnt that the defendant No.5 was in the process of putting up a structure on the plaint schedule property.*** The above pleadings clearly shows that, the plaintiff is not residing in the area in which the suit schedule property is situated and the plaintiff is resident of Mumbai. The address of the plaintiff given in the cause title of the plaint also confirms the same. The relives sought by the plaintiff in the suit are **not only for Declaration about plaintiff is the absolute owner in possession of the plaint schedule property** but also, he seeks to **direct the defendant No.5 to deliver vacant physical possession of the plaint schedule property.** Therefore, the seeking of the relief of recovery of possession clearly shows that, the plaintiff is not in physical or symbolic or constructive possession over the suit schedule property.

13. The plaint averments shows that, the plaintiff has purchased the suit schedule property from the defendant No.1 under a Registered Sale Deed dated 02.07.2016. In support of the said contentions, the plaintiff has produced the certified and downloaded copy of the Sale Deed dated 02.07.2016 and he has not produced the original Sale Deed for the inspection of the Court. In the said copy of the Sale Deed, the property is described as Site No.23, Assessment No.67, Khatha No.23/67 measuring 640 Sq. Ft bounded on the East by: Road, West by: Site No.12, North by: Site No.22 and South by: Private property. The plaintiff has also produced the Encumbrance Certificate from 01.04.2019 to 04.07.2021 in which his Sale Deed has been mentioned. But, after the purchase of the property, the plaintiff appears not to have obtained any change of Khatha in his name and therefore, as of now, except the Sale Deed and the Encumbrance Certificate, there are no other documents to support the plaintiff's claim. The property is alleged to be purchased on 02.07.2016 and the suit is filed on 18.08.2021 but, not even a single Tax Paid Receipt is produced for the intervening period for the inspection of the Court to prove about exercising ownership and possession over the suit schedule property by the plaintiff.

14. On the other hand, the defendant No.5 has contended that, the defendant No.1 has executed a Registered G.P.A. dated 16.09.2015 in favour of the defendants No.2 & 3 by receiving entire sale consideration and he was ceased to exercise

any rights over the properties of which G.P.A. was executed. In support of the said contentions, the defendant No.5 has produced the copy of the Registered G.P.A. dated 16.09.2015 that shows about the execution of the Registered G.P.A. in respect of the Site No.23 (suit schedule property) bearing the same description and boundaries as mentioned in the Sale Deed of the plaintiff dated 02.07.2016. Therefore, the Registered G.P.A. dated 16.09.2015 executed in favour of the defendants No.2 & 3 was earlier to the Sale Deed of the plaintiff dated 02.07.2016. The non-exercise of any rights by the plaintiff over the suit schedule property from the year 2016 till filing of the suit in the year 2021 clearly shows there is no prima facie case in his favour. The plaintiff's suit is based on chances and surmises and therefore, unless the plaintiff is able to prove his title by way of evidence and unless he makes payment of the proper Court Fee for recovery of possession of the suit schedule property from the defendant No.5, the plaintiff has no prima facie case in his favour and therefore, I answer the **Point No.1 in the I.A.No.1 in the Negative and the Point No.1 of the I.A.No.3 in the Affirmative.**

15. **Points No.2 and 3 in the I.A.No.1:** In the case reported in **ILR 1989 KAR 1701**, the Hon'ble High Court of Karnataka has held that, when a prima facie case is not made out by the plaintiff, then it is not necessary for the Court to consider the points on balance of convenience and irreparable

loss and injury. Therefore, the **Points No.2 and 3 in the I.A.No.1 does not survive for my consideration.**

16. **Point No.4 in the I.A.No.1 and Point No.2 in the I.A.No.3:-** For the above discussion, I proceed to pass the following:

**ORDER**

**The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. is hereby dismissed.**

**The I.A.No.3 filed by the defendant No.5 under Order 39 Rule 4 read with Section 151 of C.P.C. is hereby allowed and the Exparte Temporary Injunction Order dated 23.08.2021 is hereby set aside.**

**Posted for framing of issues on 30.01.2024.**

(Dictated to the Typist directly on computer, same is corrected and then pronounced by me in the open court on this the 24<sup>th</sup> day of November, 2023).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**

