

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC., AT DEVANAHALLI**

Present: Sri.Sandesha.K, M.A. LLB.,
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 16th day of July, 2021

O.S.No.347/2019

Plaintiff/s : Sri.G. Ragu,

V/S

Defendant/s: : Sri. Rama

PARTIES IN I.A. NO.I

Applicant/Plaintiff : Sri.G. Ragu,

V/S

Opponent/Defendant : Sri. Rama

PARTIES IN I.A. NO.III

Applicant/Defendant: Sri. Rama

V/S

Opponent/plaintiff : Sri.G. Ragu,

**ORDER ON I.A No.I FILED BY PLAINTIFF UNDER
ORDER XXXIX RULE 1 & 2 OF CPC. AND ORDER ON
I.A No. III FILED BY THE DEFENDANT U/O XXXIX
RULE 3 & 4 R/W SECTION 151 OF CPC**

The plaintiff has filed I.A No.I U/o 39 Rule 1 and 2 of C.P.C seeking an ad-interim temporary injunction restraining the defendant, his agents or any body claiming under him from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, till the disposal of suit.

On the other hand the defendant has filed I.A No.III U/o 39 Rule 3 and 4 R/w 151 of CPC and pray to vacate the ex-parte ad-interim order of temporary injunction granted in favour of the plaintiff .

Case of the plaintiff in brief is as under:

2. The plaintiff has filed the suit against the defendant seeking for relief of permanent injunction and other consequential relief. The plaintiff is acquired the suit schedule property by virtue of register sale deed dated 16-09-2006. Subsequently, the concerned panchayath issued katah in the name of the plaintiff and also he has paid tax to the concern authority. Therefore, the plaintiff is in peaceful possession and enjoyment of the suit schedule property. The defendant stranger to the suit schedule property, came near the suit schedule property along with anti-social elements tried to interfere with the possession. Then plaintiff legally objected to the illegal act of defendant. And plaintiff succeeded to send to defendant away from the suit schedule property. While going the

defendant was canvassed that, the Assistant commissioner has passed an order in favour of the defendant K.SC,ST No.36/2003-04 to an extent of 2 acre in Sy. No. 54 of Sathanur village. Immediately the plaintiff verified before the office of Assistance Commissioner, Bengaluru North. Then it was came to know without making plaintiff as a party to the proceedings. The said order is not binding on the plaintiff. In fact the alleged order of the Assistance Commissioner was passed on 01-10-2012. But that time plaintiff has already purchased the schedule property from one Sri. M. Manjunatha. After acquisition the said property he formed layout and sold all the sites in favour of purchasers. It is further submitted that, taking advantage of the order of Assistance Commissioner, the defendant trying to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. Even Several times plaintiff requested the jurisdictional police, but declined to take any action against the defendant. Hence this application.

3. Per contra, the defendant has filed a memo and stating that, written statement of the defendant adopted the objection of I.A No.I. In the written statement he contended that, the plaintiff has filed false, frivolous and vexatious suit against the defendant. The suit filed by the plaintiff seeking permanent injunction in respect of the suit schedule property is not maintainable. Originally Sy.

No.54 of Sathanur village, Jala holbi, Bengaluru North Taluk measuring to an extent of 2 acres was granted in favour of the defendant's father by name Sri. Hemanna on 16-01-1962 as he belongs to schedule Cast and Schedule Tribe community. It is further submitted that, one Sonnappa S/o Chowdappa misguided defendant and his Mother by making false promises and got the sale deed executed in his name on 10-08-1984, even though there was a condition precedent that the said land not to be alienated violating the conditions of the grant, the defendant and his mother continued in possession.

3(a). It is further submitted that, the defendant challenged the said sale before Assistant Commissioner, Bengaluru North Sub Division in the year 2003 vide K.SC,ST No.36/2003-04, on various grounds alleging that the Sonnappa got registered the sale deed by false and misrepresentation as the defendant was unaware of the said procedure. The Assistant Commissioner, Bengaluru North Sub Division rejected the claim of the defendant on 26-05-2005. The defendant challenged the said order before the Deputy commissioner, Bengaluru Urban District in SCST(A) 116/2005-04, the Deputy commissioner after perusing the entire records felt that, there was a conditions violated by the Sonnappa and remanded the matter for fresh consideration to the Assistant Commissioner. The Assistant Commissioner , Bengaluru

North Sub Division passed an order allowing the appeal of the defendant and resumed the said land in favour of the defendant and set aside the sale deed executed by the defendant and his mother in favour of Sonnappa.

3(b). On 02-05-2005 Sonnappa has said to have been sold the property in favour of M. Manjunatha. However, coming to know the said fact the defendant impleaded the said Manjunatha before the Assistant Commissioner, Bengaluru North Sub Division in the appeal and the Assistant Commissioner after perusing the entire record and after stating that, several opportunists were given to Sonnappa and Munjunath and they being not present before the Assistant Commissioner, the said Assistant Commissioner proceeded to pass the order in favour of the defendant and since the said sale deed dated 10-08-1984 as become null and void. The said order passed by the Assistant Commissioner on 01-10-2012 and since then neither said Manjunatha who has purchased the land from Sonnappa nor Sonnappa who had purchased from the defendant and his mother has not challenged the order of the Assistant Commissioner.

3.(c) It is further submitted that, the plaintiff does not have any locus standi to file the said suit, because the order of the Assistant Commissioner as his vendor's sale deed is declared as null and void. Therefore the

subsequent sale deed in favour of the plaintiff by his vendor does not holds any title over the suit schedule property to claim to the said land. The plaintiff to say that, he is in possession of the property have not produced an iota of document to show that, he is in possession of the suit schedule property. The very fact that, the claim made by the plaintiff is false is proved as the said land is still in the status of agricultural in nature and no competent authority as converted to use of land from agricultural to non agricultural residential purpose. There is no documents to show that, the said site of the plaintiff is on the land granted in favour of the defendant father. The defendant is owner and in peaceful possession of 2 acres land in Sy. No.54/P9 situated at Sathnur village, Jala hobli, Bengaluru Noerth Taluk and it is till continuing as agricultural land having within the limits of Green Belt, thus the plaintiff is not entitle any relief. Hence pray for dismissed the I.A No.1 filed by the plaintiff with cost.

The brief of fact of the defendant on I.A No.3 is as under:

4. The plaintiff has filed false, frivolous, vexatious suit against the defendant not maintainable. The plaintiff has filed suit against the defendant for the permanent injunction and obtaining on ex-parte interim order from this Hon'ble court. The said property is agricultural land bearing old Sy. No. 54 new Sy. No. 54/P9 situated at

Sathnuru village, Bengaluru North Taluk is the absolute property of the defendant. The plaintiff suppressing and misrepresenting the true and correct facts had filed suit along with application not to interfere with regard to schedule property. The suit schedule property is not in existence and the said suit is filed on imaginary grounds. Originally Sy. No.54 of Sathanuru village, Jala Hobli, Bengaluru North Taluk, measuring to an extent of 2 acres was granted in favour of the defendant father by name Hemanna on 16-01-1962 as he belongs to schedule Cast and Schedule Tribe community. One Sonnappa S/o Chowdappa misguided defendant and his mother by making false promises and got the sale deed executed in his name on 10-08-1984. Even though there was a condition precedent that the said land not to be alienated violating conditions of the grant.

4(a). The defendant challenged the said sale before the Assistant Commissioner, Bengaluru North Sub Division in the year 2003 vide K SCST 36/2003-04, on various grounds alleging that the Sonnappa got the sale registered by false and mis representing as the defendant was unaware of the sale procedure. The Assistant Commissioner rejected the claim of the defendant. Then the defendant challenged the said order before the Deputy Commissioner Bengaluru Urban District in SCST(A) 116/2005-04, The Deputy Commissioner, after perusing

the entire records felt that there was a conditions violating by Sonnappa and remanded the matter for fresh consideration to Assistant Commissioner. The Assistant Commissioner allowing the appeal and resume the said land in favour of the defendant and set aside the sale deed executed by the defendant and his mother in favour of the Sonnappa.

4(b). On 02-05-2005 the Sonnappa has said to have been sold the property in favour of M. Manjunatha through register sale deed. However to know the said fact once again defendant impleaded the said land in favour of Manjunath before the Assistant Commissioner. Sonnappa and Sri. Manjunatth are not present before the Assistant Commissioner, the Assistant Commissioner proceed to pass the order in favour of the defendant that since sale deed dated 10-08-1984 as become null and void. The Subsequently sale deed by Sonnappa in favour of Manjunath dated 02-05-2005 as become null and void and clearly stated that, the said Manjunath does not derive any right title over the said property.

4(c). It is further submitted that, the said order passed by the Assistant Commissioner neither the said Sri. Manjunatha nor Sonnappa has not challenged. The plaintiff in the said plaint does not have any locus standi to file suit, because the order of the Assistant

Commissioner as his vendor's of the sale deed is declared as null and void. The plaintiff has not produced any document to shows that, he is in possession of the suit schedule property. The plaintiff has not made out prima-facie case, balance of convenience does not lies in his favour and no irreparable hardship or loss would caused to the plaintiff , on the other hand if the interim order is not vacated irreparable loss and hardship would be cause to defendant. Hence pray for vacate the interim order.

5. The plaintiff has filed objection to the I.A No.3 filed by the defendant, the plaintiff stated that, the application filed by the defendant is not maintainable. The defendant has no local standi to file application seeking for vacating an interim order. The property in question Sy. No.54/P9 measuring to an extent of 2 acres situated at Sathnur village, Bengaluru North Taluk belongs to Sri. Hemanna. who claims to be father of the defendant. Subsequently Said Hemanna died leaving behind the defendant and his mother to succeed his estate. The defendant and his mother has sold the entire property in Sy. No.54/P9 to an extent of 2 acres in favour of Sonnappa under registered sale deed dated 10-08-1984. Thereafter, they have delivered the possession of the said property in favour of Sonnappa. Again the Said Sonnappa and his legal heirs were sold the entire extent in favour of M. Manjunatha under register sale deed dated 02-05-

2005. Under the said sale deed the possession also delivered in favour of said M. Manjunath. Therefore, the defendant cannot claim that he is in possession of the said property. The said M. Manjunath by virtue of registered sale deed dated 02-05-2005 he become the owner of the property and rightly he has formed a revenue layout in the form of sites, since the entire area was urbanized and no agricultural activities were carried out. The entire area is developed and constructions were come up in surrounding the said property. After purchasing the suit schedule property panchayath also conceding the possession of the plaintiff effected the katha in his name and he is paying tax to concerned authority. Therefore, the defendant after laps of 20 years he cannot claim that he is in possession and enjoyment of the entire Sy. No.54/P9 hence, liable to be dismissed.

5(a). It is further submitted that, in affidavit to the application he has taken a contention that, the has initiated the proceedings before the Assistant Commissioner, challenging the validity of sale deed dated 10-08-1984 and subsequently got set aside the sale deed and therefore, he is claiming to be a possession of the said property. It is relevant to state that even in earlier circumstances, the Assistant Commissioner by order dated 26-03-2005 rejected the case of the defendant on the ground that there is no grant records and therefore, an

absence of records, it cannot be termed that the property was granted to the schedule caste. Subsequently, he has challenged the order before Deputy commissioner in appeal, the said matter was got remanded to the Assistant Commissioner again, further the Assistant Commissioner though observing that there is no grant records erroneously allowed the petition and against which an appeal was filed by the plaintiff and others in KSCST appeal No.31/2019-20 and got the stay of the said order also. Therefore, on the operation execution of the order of the Assistant Commissioner not in force, then he cannot claim that he is in possession of the entire extent in Sy. N.54/P9. Further there was no possession handed over as per section 5(1) of PTCL Act to the defendant. Therefore he cannot claim that he is in possession of the entire extent. Moreover, either the plaintiff or the site holders are not the parties before the Assistant Commissioner or before the Deputy Commissioner,

5(b). It is further submitted that, the entire extent in Sy. No54/P9 is not available as it is, since the entire property was converted into sites long ago and the plaintiff and others are in possession and enjoyment of the said property. Now the defendant cannot say that he is in possession of the entire extent in Sy. NO.54/P9 after laps of 20 years, taking an advantage of the order of the Assistant Commissioner , the defendant cannot claim that

he is in possession of the said property. The plaintiff is in legal possession and enjoyment of the schedule property from the date of registered sale deed. Subsequently, Panchyath authority also effected Katha in the name of the plaintiff. Therefore the present suit is only bare injunction and the Hon'ble court has see whether the plaintiff is in lawful possession and enjoyment of the schedule property. In order to substantiate legal possession of the schedule propriety, the plaintiff has produced all the necessary documents before this court. Hence prays for dismiss the application filed by the defendant with exemplary cost.

6. Heard on arguments both side and perused the pleading materials on record.

7. The following points that arise for the consideration of this court.

POINTS

- 1. Whether the Plaintiffs/applicants have made out a prima-facie case?**
- 2. Whether balance of convenience lies in favour of the Plaintiffs?**
- 3. Whether the Plaintiff will be put to irreparable loss and injury if temporary injunction is not granted as prayed?**

4. Whether the defendant has made out sufficient ground to vacate the order of ad-interim temporary injunction granted in favour of plaintiff?

5. What order?

8. The findings on the above points are as hereunder:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative.

Point No.4: In the Negative.

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

REASONS

9.Point Nos.1 : It is case of the plaintiff that, the plaintiff has filed present suit against the defendant for the relief of permanent injunction and other consequential relief. The plaintiff is acquired the suit schedule property by virtue of register sale deed dated 16-09-2006. Subsequently, the concerned Panchayath issued katah in favour of the plaintiff, the plaintiff has paid tax to the concern Gramapanchayth. The plaintiff is in peaceful possession and enjoyment of the suit schedule property. The defendant stranger to the suit schedule property came near there suit schedule property along with anti social elements tried to interfere with the

plaintiff peaceful possession. The plaintiff is objected to the illegal act of the defendant. The defendant canvassed that, the assistant commissioner has passed an order in favour of the defendant K.SC,ST No.36/2003-04 to an extent of 2 acre in Sy. No. 54 of Sathanur village. Immediately the plaintiff verified before the office of Assistance Commissioner, Bengaluru North. Then it came to know the plaintiff that, without making a party to the proceedings. The defendant obtained an order from the Assistant Commissioner. Before passing an order of the Assistant Commissioner, the plaintiff has purchased the scheduled property from one Sri. M. Manjunatha. The defendant is a stranger to the suit scheduled property without any right, title interest, he is trying to interfere with the plaintiff's possession. Hence, this application.

10. The defendant counsel argued that, Originally Sy. No.54 of Sathanur village, Jalahalli, Bengaluru North Taluk measuring to an extent of 2 acres was granted in favour of the defendant's father by name Sri. Hemanna on 16-01-1962, one Sonnappa S/o Chowdappa misguides the defendant and his Mother by making false promises and got the sale deed executed in his name on 10-08-1984. Even though there was a condition precedent that, the said land not to be alienated violating the conditions of the grant, the defendant and his mother continued in possession. The defendant is challenging the same before

Assistant Commissioner, Bengaluru North Sub Division in the year 2003 vide K.SC,ST No.36/2003-04, on various grounds alleging that the Sonnappa got registered the sale deed by false and misrepresentation as the defendant was unaware of the said procedure. The Assistant Commissioner was rejected the claim of the defendant. The defendant challenged the said order before the Deputy commissioner, Bengaluru Urban District in SCST(A) 116/2005-04, the Deputy commissioner perusing the entire records felt that, there was a conditions violated by the Sonnappa and remanded the matter for fresh consideration to the Assistant Commissioner. The Assistant Commissioner allowing the appeal of the defendant and resumed the said land in favour of the defendant and set aside the sale deed executed by the defendant and his mother in favour of Sonnappa. The plaintiff has not in possession of the suit schedule property, he has not produced signal document to show that he is in possession of the suit schedule property. Hence plaintiff is no manner of the over the suit schedule property, hence pay for reject the I.A No.1 filed by the plaintiff and vacate the interim order.

11. The plaintiff has produce sale deed dated 10-08-1984 executed by the defendant and his mother Smt. Jogamma in respect of Sy. No.54 to an extent of 2 acres of Sathanuru village, Jala hobli, Bengaluru North in favour

of Sri. Sonnappa. The said Sonnappa sold the 2 acres of land in Sy. No. 54/P9 in favour of Sri. M Manjunatha through register sale deed dated 02-05-2005. After that, said Sri. M Manjunatha formed revenue layout in different dimension and sold the sites to different person along with plaintiff. On perusal of certified copy of register sale deed dated 10-08-1984 produced by the plaintiff, the defendant and his mother Jogamma has deliver the possession to the Sonnappa in respect of Sy. No.54 to an extent of 2 acres of land. After that, the said Sonnappa has sold the property to one Sri. Manjunatha. The said Manjunatha has formed revenue layout and sold the sites in different persons. The plaintiff has produced sale deed dated 16-09-2016 in respect of the suit schedule property. On perusal of the same, Sri. M. Manjunatha has sold the suit schedule property in favour of the plaintiff through register sale deed. Thereafter the katha has been mutated in favour of the plaintiff in the Gramapanchayth. Thereafter the plaintiff has paid tax to the concern Gramapanchayath.

12. It is relevant to note hear that, decision report in (2015) 5 Kant LJ 656 T Krishamurthy V/s Prema kumari. The Hon'ble apex court held that,

**“ Civil procedure code 1908 order 39
Rule 1 and 2- Temporary injunction grant of
plaintiff having actual possession claiming**

based on sale deed executed in his favour. Grant to the temporary injunction in favour of plaintiff based on documentary evidence proper as he had made out prima face case, the defendant having filed another suit for declaration and injunction to seek appropriate relief'

13. In the present case in hand, on 10-08-1984 the defendant and his mother sold the agricultural land in Sy. No.54 to an extent of 2 acres in favour of Sonnappa. On the said sale deed, possession of the said property has been delivered to the said Sonnappa. Thereafter the said Sonnappa has sold the agricultural land in Sy. No. 54/P9 measuring to an extent of 2 acre in favour of one Sri. Manjunatha. After purchase the said property, the said Manjunatha has formed revenue layout in the different dimension sites. The plaintiff has purchase the vacant site No.31, Katha No. 54/P9/31 situated at Sathnur village to an extent of East to West 40 feet and North to South 30 feet. On perusal of the sale deed dated 16-09-2006 produced by the plaintiff, it is clearly shows that, plaintiff has purchased the suit schedule property from Sri. M. Manjuntha through register sale deed. On care full perusal of the document produce by the plaintiff, he has made out prima-facie case and go for trial.

14. It is relevant to note hear that, decision report in 2014(3) KCCR 1999 A.N Nagarjunaiah V/s B Aravind and others, the Hon'ble apex court held that,

“Civil procedure Code order 39 Rule 1 and 2 transfer of property Act 53(A), 54 registration Act- section 17 amendment Act- Temporary injunction- proof of possession- sale deed containing recital that possession had been delivery to plaintiff purchaser on the date of sale- prima-facie case lawful possession made out by the plaintiff- grant of temporary injunction for the plaintiff is proper.”

15. In the case in hand, Originally the property bearing Sy. No.54 measuring to an extent of 2 acres granted in the name Hemanna. Subsequently the defendant and his mother has sold the property one Sonnappa through register sale deed. The said sale deed clearly shows that, possession of the property has been delivered in favour of the Sonnappa. Thereafter said Sonnappa has been sold to the said property in favour of Sri. M. Manjunatha. On perusal of the said sale deed, it is clearly indicated that, the possession of the property has been delivered in the name of the purchaser. Thereafter Sri. M. Manjunatha formed revenue layout sites in different dimension. The plaintiff has purchased the suit

schedule property from one Sri. M. Manjunatha. Thereafter, the katha has been mutated in the name of the plaintiff. The plaintiff has paid tax to the concern Gramapanchayth. On perusal of the document produced by the plaintiff i.e., sale deeds, demand register extracts and tax paid receipts. It is clearly indicated that, the plaintiff has made out prima face case and go for trial. At this stage there is no reason to disbelieve the document produced by the plaintiff. The plaintiff has made out prima-facie case. **Accordingly point No.1 in the Affirmative.**

16. Point No.2: The document produce by the plaintiff more particular sale deeds dated 16-09-2006 , demand register extract, tax register extract pertaining to the suit schedule property, prima-facie case disclosed that, the plaintiff is in possession of the suit schedule property. Therefore, temporary injunction is not granted in favour of the plaintiff it would caused more inconvenience rather than the defendant. **Accordingly point No.2 in the Affirmative.**

17. Point No.3: It is already stated *supra*, the plaintiff has made out a prima facie case and also balance of convenience in his favour. Therefore, if the temporary injunction is not granted it would caused great hardship and inconvenience, irreparable loss and injury to the

plaintiff, which cannot be compensated in terms of money if the defendant dispossess the plaintiff from the suit schedule property. **Accordingly I answer Point No.3 in the Affirmative.**

18. Point No.4: The defendant has not produced any documents with respect of the suit schedule property to vacate the interim order passed by the Hon'ble court in favour of the plaintiff. The contention of the defendant cannot be consider at this stage. It can be consider at the time of evidence. **Accordingly I answer Point No.4 in the Negative.**

19. Point No.5: In view of the discussion, this court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiffs U/o XXXIX Rule 1 and 2 of CPC is hereby allowed with cost.

The defendant, his agents or any body claiming under him are hereby temporarily restrain from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, till pending disposal of suit.

I.A. No. III filed by the defendant
Under Order 39 Rule 3 and 4 R/w
Section 151 of CP.C is hereby rejected.

(Dictated to Stenographer, transcribed and computerized by him, in the same is corrected and pronounced by me in the open court on this the 16th day of July, 2021.)

(Sri. Sandesha.K)
Prl. Civil Judge and JMFC.,
Devanahalli.

ORDER PRONOUNCED IN THE OPEN COURT
(VIDE SEPARATE)

ORDER

I.A.No.I filed by the plaintiffs U/o XXXIX Rule 1 and 2 of CPC is hereby allowed with cost.

The defendant, his agents or any body claiming under him are hereby temporarily restrain from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, till pending disposal of suit.

I.A. No. III filed by the defendant Under Order 39 Rule 3 and 4 R/w Section 151 of CP.C is hereby rejected.

For compliance of section 89 of C.P.C and for issues by

Prl. Civil Judge and JMFC.,
Devanahalli.