

**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C., AT
DODDABALLAPURA**

PRESENT: Smt. Deepa. K.R., B.A.L., LL.B.,
Pri. Civil Judge & JMFC,
Doddaballapura.

Dated: This the 1st day of April 2023

O.S. No.169/2017

Plaintiff/s: Sri. K.A. Nagaraj
S/o K.C. Ashwathappa,
Aged about 69 years,
R/at: # 808,
Fort Road,
Doddaballapura Town,
Bengaluru Rural District
(Repd. By Sri. S.K.N., Advocate)

V/s.

Defendant/s: 1. Smt. Shahanoor Begum,
W/o Late Mir Abbas Ali,
Aged about 72 years,
R/at: # 7/2, II Floor,
4th 'A' Cross, Anepalya,
Neelasandra,
Bengaluru – 30

2. Smt. Aneesa Begum,
D/o Late Baban Sab,
W/o Khalled Hussain,
Aged about 70 years,

3. Smt. Farida Begum,
D/o Late Baban Sab,
W/o Sri. Askar,
Aged about 65 years,

4. Smt. Shakeela Begum,
D/o Late Baban Sab,
W/o Sri. Talab Hussain,
Aged about 55 years,

5. Smt. Khairunnissa,
W/o Late Zakir Ali,
Aged about 50 years,

6. Sri. Babajan,
S/o Late Zakir Ali,
Aged about 30 years,

7. Sri. Afeez Ali,
S/o Late Baban Sab,
Aged about 50 years,

8. Smt. Bibitaj,
W/o Afeez Ali,
Aged about 50 years,

9. Sri. Roshan Ali,
S/o Afeez Ali,
Aged about 25 years,

10. Sri. Shabbeer Ali,
S/o Afeez Ali,
Aged about 22 years,

11. Sri. Nawab,
S/o Zama Ali,
Aged about 50 years,
D.2 to 10 are R/at:
Maruthinagar, Court Road,
5th Ward, Doddaballapura Town,
Bangalore Rural District.

12. Sri. Dabir Ali,
S/o Salaamat Ali,
Aged about 61 years,
R/at: # 1286, Maruthinagar,
Court Road, 5th Ward,
Doddaballapura Town,
Bangalore Rural District.

(D.1 Repd. By Sri. S.N., Advocate)

(D.2 to 11 are Ex-Parte)

(D.12 Repd. By Sri. T.N.B., Advocate)

ORDER ON I.A.NO.I

The plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure for an order of temporary injunction in favour of the plaintiff and against the defendants restraining the defendants, their agents or anybody claiming under them from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property, till the disposal of the suit.

2. It is the case of the plaintiff that, he and his children are the absolute owners of the suit schedule property now bearing Sl. No. 217, property No. 1125/1132/938, (old Khata No. 836, old Door No. 835/155), measuring 51 feet X 38 feet, situated at Kote Beedhi, Doddaballapura Town, more fully described in the schedule hereunder and hereafter referred to as the suit schedule property; that the suit schedule property was purchased by his wife Smt. Yeshodamma from its erstwhile owner Smt. Fatima Bi and her children through a Registered Sale Deed dated 16/02/1981, for valuable consideration, duly registered before the Sub-Registrar, Doddaballapura, that subsequently, the khata of the suit property was transferred to his wife's name and she paid tax to the authorities; that the purchase, his wife was in peaceful possession and enjoyment of the suit schedule property without any hindrance from any quarter what so ever exercising her rights of ownership over the same.

3. It is the further case of the plaintiff that, his wife constructed a house over the suit schedule property to the complete extent of 51 feet X 38 feet and resided there; that his wife died on 18-08-2003

leaving him and his children to succeed to her estate; after that he being the elder member of the family, he looking after the suit schedule property; that the records of the suit schedule property still stands in his wife's name and he have been ping tax in respect of the suit schedule property. It is the contention of the plaintiff that, such being the case, on 03-04-2017, the defendants tried to forcefully and illegally enter the suit schedule property along with her henchmen and agents with a malafide intention of dispossessing him; that he resisted illegal act of the defendants; that the defendants are utter stranger to the suit schedule property and are influential persons and hence he filed this application.

4. Per contra defendant No.12 has filed written statement defendant No.12 adopted the written statement filed by the defendant No.12 and filed an adoption memo to treat the written statement as objection to this application. It is the case of the defendant No.12 that, the property claimed to have been purchased by the plaintiff formed a portion of the property which measured 90 feet east west and 100 feet north south; that this property was owned by Sri. Baban Sab who had to the property at a partition with his brother under a Registered Sale Deed dated 28-08-1918; that after the death of Sri. Baban Sab the plaintiff's father had purchased a portion measuring 51 X 38 feet; that then there was a suit filed for partition by the successors of Sri. Baban Sab in which of the plaintiff and his father were also parties in O.S No. 127/2005 on the file of the Senior Civil Judge, Doddaballapura; that the suit was decreed for partition of property after leaving the portion measuring 38 X 51 feet.

5. It is the further case of the defendant No.12 that, the parties in O.S No. 127/2005 came together to sell the property measuring 9 X 62 feet to this defendant through a Registered Sale Deed dated 26.08.2016; that the khatha of the property has since been changed to the name of this defendant and this defendant is in possession of the property; that the sellers of the property to the defendant have been arrayed as defendant No.1 to 11; that the portion purchased by the plaintiff's father Sri. Nagaraj measuring 38 X 51 feet is to the south of the portion sold to this defendant.

6. It is the further case of the defendant No.12 that, the plaintiff was always aware of these facts and was a party to suit in O.S No. 127/2005; that the plaintiff deliberately sets out wrong boundary in the plaint that property of Sri. Kubendra Naidu (Which is now owned by Anjuman E Hydaria); that this is an attempt to usurp property in possession of he defendant; that the plaintiff deliberately sets out boundaries to mislead the court abuse the process of law; that the plaintiff has to define his property correctly to make his entitled for an equitable remedy hence prays to dismiss the application.

7. Heard the learned counsel for the plaintiff and defendants.

8. The points that arise for my consideration are:

- Whether the plaintiff has made out a prima facie case for grant of temporary injunction?
- Whether the plaintiff proves that the balance of convenience lies in his favour?

- Whether the plaintiff proves that irreparable loss and injury will be caused to them, if an order of temporary injunction is not granted?
- What Order?

9. My findings on above points are 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 final order
for the following

REASONS

POINT NO.1:-

10. At the stage of deciding an application under Order XXXIX Rule 1 and 2, the court cannot embark upon a trial as to the veracity or otherwise of the allegations and counter allegations made. Therefore, firstly the court have to see whether the plaintiff has made out a prima facie case, whether the balance of convenience lies in his favour and whether any irreparable loss and injury would be caused in the event of an injunction not being granted.

11. The plaintiff at this stage has produced copy of the Sale Deed, Copy of the Demand Extract, Tax paid Receipts, Challan, Form II (SAS Form for Properties with Building), Copy of the Property tax Payment Challan, Sketch, Sale Deed, Death Certificate of the plaintiff's wife, Postal Receipts and Photograph.

12. The defendant at this stage has not produced any documents.

13. The first principle as regards deciding an application for temporary injunction is that the court cannot hold a roving enquiry into the various allegations and counter allegations and documents produced by both the parties. It is the contention of the plaintiff that the suit schedule property is purchased by his wife through a Registered Sale deed dated 16.02.1981. In this regard plaintiff has produced the photocopy of Registered Sale deed. As it is a registered document court has to believe the same at this juncture. Further registered document will be having its own presumptive value. Moreover it is not the contention of the defendant that the registered sale deed has been challenged before any court of law. Further though defendant denies the possession of plaintiff over the suit schedule property, no other contra material available to contend that the plaintiff is not in the possession of suit schedule property. Whether the plaintiff is entitled for the peaceful possession of the suit schedule property is a matter of trail. Hence at this stage it can be held that the plaintiff have raised triable issues and once the plaintiff raises triable issue they are entitled to grant of temporary injunction. In this regard I am supported by the judgment of our **Hon'ble High Court of Karnataka** in a case of **L.SHIVALINGAIAH –VS- PANCHAJANYA VIDHYA PEETA REPORTED IN 2005(5) KLJ 625**, wherein their Lordship's have held as under:-

“It is a well-settled proposition of law that grant of an injunction is a matter of judicial discretion and the party seeking such relief will have to establish (a) a prima facie case; (b) balance of

convenience in his favour; and (c) he would suffer an irreparable injury, if his prayer for Temporary Injunction is disallowed. This is a sine qua non. Even if a case is made out to bring the case within the ambit of a “triable case”, the relief of injunction has to be granted. Therefore, we will have to see as to whether the Appellant has made out a “Triable case”.

Therefore, I answer point No.1 in the **Affirmative.**

Point No.2 and 3:-

14. So far as point No.2 is concerned court has to take into note that in whose favour balance of convenience lies. So far as point No.3 is concerned, it pertains to the plaintiff proving that they would suffer irreparable loss or injury if injunction were not to be granted. Further the plaintiff is seeking for the peaceful possession of the schedule property and as such court feels defendants will not suffer any hardship if the injunction is granted. On the other hand, it is the plaintiff who will be put to irreparable loss. Hence the balance of convenience lies in favour of plaintiff.

In view of the above discussion as at this juncture the balance of convenience is in favour of plaintiff and as the plaintiff will be put to irreparable loss if injunction is not granted I answer point No.2 and 3 in the **Affirmative.**

Point No.4:

15. In the light of the aforesaid discussion, I pass the following

ORDER

I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants, their agents and anybody claiming under them are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property pending disposal of the suit.

No order as to costs.

(Dictated to the Typist, transcribed by her, the transcript corrected by me and then pronounced by me in the open court on this the 1st day of April 2023)

-Sd-

(Deepa. K.R.)
Prl., Civil Judge & JMFC.,
Doddaballapura.