

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND J.M.F.C.

AT DODDABALLAPURA

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Prl. Civil Judge & J.M.F.C.,
Doddaballapura,
Bengaluru Rural District

Dated This the 26th Day of September 2019

ORIGINAL SUIT NO.279 / 2018

PLAINTIFF : **Smt. Kalpana B.M.**
W/o. Krishnappa
Aged about years
R/at. Kodihalli Village
Konaghatta Post
Kasaba Hobli
Doddaballapura Taluk
Bengaluru Rural District

(By Sri. K.V.L., Advocate)

V/s.

DEFENDANT : **Smt. Renuka**
W/o. Krishnappa
Aged about 38 years
R/at. Kodihalli Village
Konaghatta Post
Kasaba Hobli
Doddaballapura Taluk
Bengaluru Rural District

(By Sri. S.K.B., Advocate)

PARTIES TO I.A. NO.I

APPLICANT/ : Smt. Kalpana .B.M.
PLAINTIFF
V/S
OPPONENT/ : Smt. Renuka
DEFENDANT

ORDER ON I.A No.I FILED BY PLAINTIFF

U/O 39 RULE 1 & 2 R/w.SEC 151 OF C.P.C.

The plaintiff has filed this interim application under Order 39 Rule 1 & 2 R/w.Section 151 of C.P.C. praying to grant an ad-interim order of temporary injunction against the defendant to maintain status-quo and not to put up any construction over the disputed adjacent land in Sy.No.183/6 in respect of the suit schedule property pending disposal of the suit

2. As per plaint averments and affidavit annexed to the I.A.No.1, case of the plaintiff/applicant in brief is as under:

The plaintiff has filed this suit for the relief of permanent injunction against the defendant and her agents or servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and to pass status-quo order in respect of land bearing Sy.No183/6. It is averred that the plaintiff is the absolute owner in physical possession and enjoyment of the residential House property bearing Old Gramatana House List Khatha No.271/81, New Khatha No.271/81/1, measuring to an extent of East-West – 40 square feet and North-South – 15 square feet totally measuring on 600 square feet situated at Kodihalli Village Konaghatta Post, Kasaba Hobli, Doddaballapura Taluk, Bengaluru Rural District which is the suit schedule property.

3. It is further averred that the suit schedule property was originally owned by one late Ganganarappa @ Ganganagappa S/o. Munishamappa. The property totally measuring 1200 square feet was granted to said Ganganarappa by the Government by way of grant. Said Ganganarappa is said to be the fathering-law of the

plaintiff. The said Ganganarappa gifted half portion of the said property in favour of plaintiff through a gift deed. The plaintiff has become the absolute owner of the said property and got changed katha into her name and paying tax in respect of the said property. It is further averred that the defendant who is the owner of the adjacent land bearing Sy.No.183/6 to the suit schedule property. The defendant has no manner of right, title and interest over the suit schedule property is now trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

4. It is further averred that in the month of May 2018, the defendant came near to the western side of the suit schedule property, without conducting any survey or given any notice to the adjacent owners and also not informing the adjacent owner's trying to put up fence in the suit schedule property along with other neighbour's properties. The plaintiff stopped the illegal act of the defendant and the defendant informed that she has purchased the adjacent land on 02-04-2018 from previous owner and used filthy language and started quarreling with the plaintiff Immediately the husband of the plaintiff had given the complaint against the defendant and her husband in the jurisdictional police station and also given request letter to concern Gram Panchayath P.D.O. to conduct the survey and spot mahazar for the sake of protecting her property. The defendant and her husband are financially and politically very much powerful and influential persons in the locality. They are using manpower and money power. The plaintiff is a poor lady with no other alternative, the plaintiff was constrained to file this suit along with the I.A.No.I along with the instant application seeking an ad-interim order of temporary injunction restraining the defendant from not to put up any

construction over the suit schedule property pending disposal of the suit, otherwise, the plaintiff will be put to irreparable loss and injury which cannot be compensated in terms of money. If an order of temporary injunction is not granted, the plaintiff will be put to irreparable loss and hardship which cannot be compensated in terms of money. Whereas, no harm or prejudice will be caused to the other side, if this application is allowed.

5. The plaintiff has filed I.A No.I under Order 39 Rule 1 and 2 R/w.Section 151 of C.P.C. seeking temporary injunction against defendants restraining her from putting up construction over the suit schedule property. The plaintiff sworn to the affidavit and reiterated the entire plaint averments. Further it was averred that plaintiff has got prima-facie case and balance of convenience lies in his favour. If temporary injunction is not granted plaintiff would be put to heavy and irreparable loss which cannot be compensated in terms of money. Therefore, plaintiff filed this suit and I.A. Therefore, they prayed to grant temporary injunction against defendants.

6. In pursuance of the suit summons, defendant appeared the her counsel and resisted the claim of plaintiff by filing written statement and also filed memo adopting the written statement as objections to I.A No.I.

7. As per the written statement case of defendant is as under:

The suit of the plaintiff is barred by law and the plaintiff is not having the title over the suit property. The defendant denied the entire plaint averments in toto. The defendant denied that the plaintiff is the absolute owner of the suit schedule property with

clear title and possession. The plaintiff has failed to produce the authenticated documents in support of the plaintiffs' title and possession. The plaintiff has obtained the suit schedule property vide unregistered gift deed dated 23-07-2015. In case of gift transactions the registration is mandatory and without registration of instrument of gift deed, the gift transaction itself is null and void. The plaintiff has paid the stamp duty of Rs.100/- vide e-stamp paper about the gift deed of the suit schedule property. The plaintiff's unregistered gift deed itself is undervalued under the Karnataka Stamp Act. The registration of instrument is also very much required for the Donee's title. The said gift deed is not registered. In spite of the plaintiff is not in a position to stand as title owner of the suit schedule property in any manner. The plaintiff is not qualified person to stand as katha holder of the suit schedule property and the said gift deed is created by the plaintiff for this suit. The plaintiff is intending to extract money from the defendant by filing the present suit. The plaintiff is not having any right to seek any remedy in respect of the suit schedule property. The defendant has not trespassed into the suit schedule property. The plaintiff is seeking remedy against the property of the defendant. Further the plaintiff has produced irrelevant revenue entries over the suit schedule property. The plaintiff has failed to produce the computerized katha of the suit schedule property.

8. It is further submitted that the defendant has purchased the property bearing Sy.No.183/6, measuring 0-17 guntas situated at Konaghatta Village, Kasaba Hobli, Doddaballapura Taluk. The defendant has obtained the revenue entries of the above said properties. It is further submitted that before the purchase of the above said defendant's property, the

earlier owner namely Ramachandrappa has given an application to the survey department for Government survey and sketch on the basis of the said application, the survey authorities conducted the survey and measured the property. Thereafter the defendant has got registered the said property. Further the defendant is suffering a lot from the illegal activities of the plaintiff. The plaintiff has made police complaints also to create the unwanted issues over the defendant's property. The defendant has not disturbed the suit schedule property in any manner. Further the plaintiff has demanded the money from the defendant which was not entertained by him. Therefore, the plaintiff has filed this false suit with created stories. Therefore, the suit of the plaintiff is not maintainable under law and the suit is out of cause of action. On these allegations, the defendant has prayed to dismiss the suit of the plaintiff.

9. Heard both sides.

10. On considering I.A No.1, affidavit and written Statement cum objection to I.A No.1, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiff /applicant had made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiff /applicant?
3. Whether the irreparable loss and injury would be caused to the plaintiff/applicant if the temporary injunction is refused?

4. What order?

11. My answer to the 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

12. **Point No.1**:- I have already narrated in brief as to what the case of plaintiff and defendant is. In order to substantiate his case plaintiff has produced the copy of Hakku pathra issued by the Government, copy of gift deed dated 23-07-2015, copy of Form NO.11 and tax paid receipts, copy of complaint given to the police, copy of acknowledgment given by the police. Copy of request letter given to the P.D.O., copy of sale deed dated 02-04-2018.

13. On the other hand, the defendant has produced the certified copy of sale deed dated 02-04-2018, R.T.C. extract, copy of Patta receipt book, tax paid receipt, survey sketch, photographs and C.D.

14. The learned counsel for plaintiff has argued that plaintiff is the absolute owner of the suit schedule property and she is in peaceful possession and enjoyment of the suit schedule properties having acquired the same through gift deed. The defendant having adjacent property abutting to the suit schedule property and started to put up fence and thereby leveled his property which is causing damage to the plaintiff's property. The

defendant trying to interfere with possession of plaintiff over the suit property. The defendant is trying to interfere and encroach upon the suit schedule property. The plaintiff has made out prima facie case and balance of convenience lies in her favour. If the temporary injunction is not granted, she will be put to great hardship and injury. Therefore, the application may be allowed by granting the temporary injunction order.

15. The defendant counsel argued that the plaintiff has not made out prima facie case and balance of convenience does not lie in favour of plaintiff. Further the plaintiff is seeking temporary injunction in respect of the defendant's property. The plaintiff is no way concerned with the property bearing Sy.No.183/6 measuring 17 guntas situated at Konaghatta Village. If temporary injunction is granted the defendant would be put to irreparable loss which cannot be compensated in terms of money. Therefore the application has to be rejected and temporary injunction order may be vacated. Hence the application has to be dismissed with cost.

16. I have considered documents produced by the plaintiff and defendants. It is important to note here that this court has granted an ad-interim ex-parte temporary injunction order against the defendant in respect of the suit schedule property and restrain the defendant from putting up any illegal construction over the disputed area existed in between the suit schedule property and the property bearing Sy.No.183/6 till next date of hearing.

17. It is case of defendants that he is the absolute owner of the land bearing Sy.No.183/6. The plaintiff is no way concerned with the said property. The plaintiff in order to extract money from the defendant has come up with the present suit. The plaintiff even

not acquired valid right, title and interest over her property. The unregistered gift deed did not confer the valid right, title and interest over the suit schedule property to the plaintiff. Therefore, the plaintiff is not entitled for any relief from the hands of this Court. The defendant never interfered with the plaintiff's possession over her property, but on the other hand it is the plaintiff who is trying to knock off the property of the defendant by misguiding this Hon'ble court.

18. It is noteworthy to mention here that party who seeks the relief of temporary injunction has to come to the Court with clean hands and has to place all the material facts before this Court. The party seeking the relief has to prove that he has made out a prima-facie case and the balance of convenience lies in his favour and if the temporary injunction is not granted he will be put to irreparable loss and injury, which cannot be compensated in terms of money.

19. On perusal of the plaint averments and I.A. affidavit it is clear that plaintiff is claiming right over property bearing House list khata No271/81 new katha no.271/81/1 measuring East-West – 40 square feet and North-South – 15 square feet totally 600 square feet situated at Kodihalli Village. Whereas the defendant is claiming right over land bearing Sy.No.183/6 measuring 17 guntas. It is clear that the property of the plaintiff and property of defendant are different. However, the property of the defendant situates towards western side of the plaintiff's property. It seems that there is a boundary dispute in between the plaintiff and defendant.

20. The parties did not dispute the existence of their properties adjacent to each other. However the real crux of dispute lies in between the parties is regarding the fixing of boundaries to their properties.

21. So on perusal of the documents produced by plaintiff and defendants it is clear that the properties of plaintiff and defendants are different and these properties bears different survey numbers and katha numbers. The plaintiff has produced document regarding her property. Whereas the defendant has produced the photographs which shows that the defendant has leveled down his property to the extent of 2 to 3 feet from the surface. The plaintiff and other properties situates just adjacent to the defendant's property. The photographs also reveals that on the edge of the plaintiff's house property, the defendant has levelled down his property to the extent of 2 to 3 feet which may cause damage to the wall of plaintiff's house. No doubt, the plaintiff by way of the I.A. seeking temporary injunction against the defendant property, but it is to be noted here that the plaintiff seeking the relief of temporary injunction just to safeguard and protect her property from any kind of damage.

22. It is to be noted here that it is not the function of the court at this stage of litigation to try to resolve difficult question of facts of law which requires elaborate evidences to be recorded in the trial. Under these circumstances when there is a material worth investigating, then it can be said that there is a prima facie case. Therefore, considering the pleadings and affidavit and documents placed on record, the court is of the considered view that plaintiff

has got an arguable case and have got prima facie case. **Hence, accordingly I have answered Point No. 1 in the affirmative.**

23. **Point No. 2 & 3** :- Both these points are taken up together for common discussion to avoid repetition of facts.

24. The court has to see that the plaintiff will sustain such injuries which cannot possibly and adequately be remedied by way of damage and the said damage would be inadequate in case of the success of plaintiff/applicant. Considering question of balance of convenience the court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in their favour. The grant of injunction being the discretionary relief the party who seek such relief should come to court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order. It is averred in the application that defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property and also trying to encroach the suit schedule property. Further, defendants have produced documents regarding their property. Hence at this stage there is no reason to disbelieve the apprehension of plaintiff that defendant is trying put up construction over the pt and thereby leveled down his property to the extent of 2 to 3 feet from the land surface. If the defendant further level down his property, this will definitely damage the foundation of the plaintiff's house property. Therefore, it is necessary to restrain the defendant from doing any kind of work towards his eastern side of his property which may cause damage

to the plaintiff's house property. If the defendant succeed in her attempt irreparable loss and injury would be caused to the plaintiff which cannot be compensated by way of damage. Hence, I am therefore of the opinion that balance of convenience lies in favour of both plaintiff and defendant. Therefore, in order to avoid multiplicity of proceedings and to keep the property intact and also to protect the legitimate rights of the parties, it is appropriate to grant temporary injunction in favour of the plaintiff in respect of suit property till the disposal of the suit. Hence, on all these reasons, I am of the opinion that ***balance of convenience lies in favour of the plaintiff and loss and injury will be caused to the plaintiff. Hence, I answered point no.2 and 3 in the 'affirmative'.***

25. **Point No.4:-** In view of my findings on Points No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.II filed by the plaintiff under Order 39 Rule 1 & 2 R/w.Section 151 of C.P.C. is hereby allowed.

The ad-interim order of temporary injunction granted 30-06-2018 is hereby modified as follows:

The defendant is hereby restrained from doing any act on the eastern side of her property which may cause damage to the plaintiff's property pending disposal of the suit.

Cost of this application will follow
the result of this suit.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in the Open Court on this 26th Day of September 2019).

(Sandeep.A.Naik)
Principal C.J. & JMFC
Doddaballapura