

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

PRESENT: SUSHMA.M. B.A., LL.B.

IIAddl. Civil Judge & J.M.F.C.,
Doddaballapura, Bengaluru Rural District.

Dated this the 8th day of August 2023

O.S.No.146/2021

Plaintiff/s : Sri. H. Venkatesh
S/o Late. Hanumaiah,
Aged about 50 years,
R/at, Koogonahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bangalore Rural District.
(By Sri. M.G.V., Advocate)

- V/s. -

Defendant/s : 1. Sri. M. Ramamurthy
S/o J. Muniyappa,
Aged about 59years,
R/at: Hunasamaranahalli,,
JalaHobli,
Bangalore North Taluk,

2. Sri. Y. M. Venkatesh
S/o Y. V. Muniraju,
Aged about 49 years,
R/at: # 52E, 2nd Main, GKVK,
Allalassandra Layout,
Bangalore -65.
(D.2 By Sri. L.M., Advocate)

**Orders on I.A.4 No.3 U/o XXXIX Rule 1 & 2 of C.P.C
filed by the plaintiff**

1. The plaintiff has filed I.A.1 U/o. 39 Rule 1 and 2 of C.P.C. seeking for an ad-interim order of temporary injunction restraining defendants from putting any compound wall or stone pillar in the southern side of the suit schedule 'A' property, till the disposal of the suit.

2. The plaintiff has filed the suit for seeking relief of temporary injunction against the defendanta in respect of suit schedule property. It is the case of plaintiff that, the plaintiff is filed the above suit against the defendants for the relief of permanent injunction. It is further submitted that he is the owner of the property bearing Sy. No. 65 measuring to an extent of 1 acre 20 guntas situated at Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk, which is more fully described in the schedule hereunder and referred to as suit schedule 'A' property. It is further submitted that, originally the suit schedule property belongs to Government and the Government has granted the same in favour of the plaintiff and he is in peaceful possession and enjoyment over the suit schedule property without disturbance from anybody. It is further submitted that, the defendants are stranger to the plaintiff's property and they are owner of land bearing old Sy. No. 65/p-14 new Sy. No. 164 measuring 1-20

guntas and Sy. No. 161 measuring 0-20 guntas situated Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk more fully described in as the 'B' schedule of the suit.

3. It is the further case of the plaintiff that, the defendants have colluded with each other and having executed a sale deed between them on 19.02.2021 without property measuring their schedule 'B' property and they have not conducted any phody he property belongs them and the defendants on the imaginary ground have tried to vacate plaintiff from the suit schedule 'A' property by putting stone pillars in the southern side and the defendants have men and moneyed person, by taking undue advantage of the revenue entries they are trying to disturb the peaceful possession of the plaintiff and saying that the suit schedule property belongs to him and he is the owners of the suit schedule property. It is further submitted that, on 21.03.2021 the defendants along with their henchmen came near the suit schedule property and tried to dispossess the plaintiff and the plaintiff restricted the illegal acts of the defendants with the intervention of the elders of the village, but were no avail, in the meantime he have approached the jurisdictional police and the police have intimated the plaintiff to obtain an order from the court since the matter is civil in nature. The

defendants continuously putting his efforts along with their henchmen to disturb the peaceful possession of the plaintiff in the southern side. Hence, plaintiff has filed this application.

4. Per contra the defendant No.2 filed written statement and also filed memo to treat the written statement as objection to this application. In the written statement the defendant No.2 denied all the allegation made in the plaint and submitted that, the case is that originally the land bearing Sy. No. 161 measuring 20 guntas of Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk was originally belongs to Sri. M. Ramamurthy S/o J. Muniyappa which he acquired by way of registered sale deed dated 15.05.2008. Accordingly the land bearing Sy. No. 164 measuring 1 acre 20 guntas of Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk was originally belongs to Sri. M. Ramamurthy S/o J. Muniyappa which he acquired by way of registered sale deed dated 07.03.2008. Thereafter the khatha and other revenue documents were transferred in his name and the same is duly mutated in the mutation register extract vide MR. No.37/2007-08 and MR No. 24/2007-08 respectively and the same is reflected in the RTC Extract. It is further submitted that, since from the year 2007-08 the said Sri. M. Ramamurthy S/o J.

Muniyappa was in peaceful possession and enjoyment of the said lands without any interference from any body. Thereafter this defendant has purchased the aforesaid lands from the said Sri. M. Ramamurthy S/o J. Muniyappa by way of registered sale deed dated 19.02.2021. Thereafter the Katha and other revenue documents were transferred in his name. On the date of execution of sale deed, the vendor Sri. M. Ramamurthy S/o J. Muniyappa had delivered and put this defendant in actual, physical possession of the said land. On such purchase of the land bearing Sy. No. 161 measuring 20 guntas of Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk and the land bearing Sy. No. 164 measuring 1 acre 20 guntas of Kooganahalli Village, Doddabelavangala Hobli, Doddaballapura Taluk the mutation in respect of said lands is made in favour of this defendant and consequently the RTC also written in the name of this defendant. It is the further case of the defendant No.2 that, the plaintiff is not owner or in possession of the land and he is not entitled to seek any relief against defendant No.2 with respect to the suit schedule 'B' property. Hence, prayed for dismissal of application.

5. Heard the arguments of both side counsels and perused the materials on record. The following points arise for my consideration:

1) Whether the plaintiff has made out a prima-facie case?

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

3) Whether irreparable loss and injury would cause to plaintiff if temporary injunction as prayed in I.A.No.1 is not granted?

4) What order?

6. 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

7. **Point No.1 to 3**: These points are taken up together for consideration to avoid repetition of facts. On perusal of plaint averments, affidavit, application and documents filed along with plaint. It is not in dispute that the plaintiff is in possession of suit schedule 'A' property, original the suit schedule property was belongs to Government. The Government has granted the same in

favour of plaintiff in respect of 'A' schedule property. As per say of plaintiff the defendant No.1 executed sale deed in favour of defendant No.2 on 19.02.2021 without properly measuring their schedule 'B' property. The plaintiff has produced sale deed. On perusal of said sale deed it clearly discloses that the defendant No.1 executed sale deed in favour of defendant No.2 in respect of 'B' schedule property. In the said sale deed it is mentioned as Northern side plaintiff's 'A' schedule property. The plaintiff is contending that the defendant No.2 have not conducted any phodi in respect of their property, though imaginary grounds he is trying to vacate the plaintiff from 'A' schedule property by putting stone pillars in the southern side. On perusal of plaint averments and documents it can be gathered that, the plaintiff is in peaceful possession over the suit schedule 'A' property. The RTC also got mutated in the name of plaintiff in column No.9 and 12 of RTC. It is enough to say that the plaintiff is in possession and enjoyment over his property and also it appears that defendant No.2 is adjacent owner of plaintiff's 'A' schedule property. The contention of plaintiff that without measuring 'B' schedule property the defendant No.2 is putting stone pillars in the southern side can be believable.

8. Further he contended that defendant No.2 is illegally trying to encroaching the southern side of the suit

schedule 'A' property and interfering over the peaceful possession and enjoyment of the suit schedule property. To show that defendant No.2 is illegally encroaching in the southern side of the suit schedule 'A' property, the plaintiff has not produced any documents. Though from the plaint averments it can be said that the defendant No.2 is adjacent owner. The apprehension of plaintiff can be believable at this stage. On perusal of overall records it appears to me that the plaintiff is in possession and enjoyment over the 'A' schedule property bearing Sy. No. 65 measuring 1 acre 20 guntas. It is true that the defendant No.2 is adjacent owner of the suit schedule 'A' property. The defendant No.2 land is situated southern side of the suit schedule 'A' property.

9. On other hand, the defendant no.2 contended that he is in possession and enjoyment of land bearing Sy. No.164 /4 measuring 1.20 guntas and Sy.No.161 measuring 20 guntas. As per records, it is true that defendant is in peaceful possession of his land. Moreover defendant no.2 has not denied that the plaintiff is in peaceful possession and enjoyment of the suit schedule A property. The plaintiff has also not denied that, the defendant is in possession over B schedule property but contended that phodhi has not been conducted in respect suit schedule property. Such being the case, At this stage

it can be gathered that the plaintiff is in possession of suit schedule A property. Therefore plaintiff's possession can be protected by giving temporary injunction.

10. By considering oral argument and other materials, I am of the opinion at this stage that there is prima-facie case in favor of the Plaintiff. Hence, I am of the opinion that it is necessary to allow the application by restraining the defendant, their henchmen and claiming under them from plaintiff's peaceful possession and enjoyment over the Suit Schedule Property. Hence, it is atmost necessary by considering overall case that, subject matter of the suit has to be preserved at this stage.

11. Therefore the contention of the plaintiff is to be acceptable at this stage. Accordingly, I am of the opinion that the plaintiff has prima-facie shown that he is in possession of the suit property as per RTC and Mutation, balance of convenience lies in his favor rather than the defendant and if Temporary Injunction is granted, greater hardship will not be caused to the defendant and if the temporary Injunction is not granted, greater hardship and irreparable loss will be caused to the plaintiff. Further more, looking to the balance of convenience and irreparable loss, the same lies more in favor of plaintiff rather than the defendant. Therefore, the plaintiff is entitled to the relief of Temporary Injunction against

defendant from restraining the defendant, their henchmen and claiming under them from plaintiff's peaceful possession and enjoyment in respect of suit property till disposal of the suit. I am of the opinion that the plaintiff is entitled to the preventive remedy. Therefore, the point No. 1 to 3 are answered in the affirmative.

12. **Point No. 4** : In view of above discussions, I pass the following :

ORDER

I.A. No. 1 filed by the plaintiff u/o. XXXIX Rule 1 and 2 CPC is hereby allowed.

Defendants are restrained from putting any compound wall and stone pillar in the southern side of the suit schedule 'A' property in any manner, till disposal of the suit.

No order as to cost

(Dictated to the Typist, corrected and pronounced in the open court on this the 8th Day of August 2023).

-Sd-

**(SUSHMA. M.)
II Addl. Civil Judge & JMFC,
Doddaballapura.**