

**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: Hunasamarahalli,,
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. No.4 U/o. 39 Rule 1 and 2 of C.P.C. seeking for an ad-interim order of temporary injunction restraining defendant No.2 from in any way alienating or encumbering in the 'B' schedule property either by himself in any manner or through his agent, servant, till the disposal of the suit.

2. The plaintiff has filed the suit for seeking relief of temporary injunction against the defendant No.2 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 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 him from the suit schedule 'B' property and the defendant No.2 trying to alienate the suit schedule 'B' property in favour of 3rd parties to deprive his legitimate share over the schedule property, he protested the said transaction, but the defendants have abused him in foul and filthy language and also the above is still pending in this Court and also on 23.04.2021 this court was passed

order stating that, the defendants hereby restrained from putting any compound wall or stone pillar in the southern side of suit schedule 'A' property in any manner, but the defendants trying alienate the 'B' property to the third parties. Hence, plaintiff has filed this application.

3. 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.

4. 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.IV is not granted?

4) What order?

5. My answer to the above points are as under

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per final order

For the following:

REASONS

6. **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. The plaintiff contended

that he is in possession of suit schedule 'A' property. The defendants have executed sale deed between them on 19.02.2021 without measuring the 'B' schedule property and they have not conducted any Podi on imaginary grounds they have tried to vacate the plaintiff from the suit 'B' schedule property and defendant No.2 is trying to alienate the suit schedule 'B' property in favour of 3rd parties. On perusal of plaint averments and documents it is clear that the plaintiff is in possession of 'A' schedule property, southern side of 'A' schedule property the defendant 'B' schedule property is situated. The suit schedule 'A' and 'B' property are different from each other. The defendant No.2 has purchased the 'B' schedule property from defendant No.1 under registered sale deed dated 19.02.2021. It also appears that from the date of purchase the defendant No.2 has been in peaceful possession and enjoyment over the 'B' schedule property. And the revenue documents has been transferred in the name of defendant No.2 vide MR No. 37-2007/2008 and MR No. 24-2007/08. The defendant No.1 was in possession over the 'B' schedule property by virtue of registered sale deeds. The plaintiff is claiming over 'B' schedule property. The plaintiff has no right over the 'B' schedule property. The registered sale deeds executed in favour of the defendant No.1 and 2 carries presumptive values. The plaintiff cannot seek injunction over 'B' schedule property

from alienating the 'B' schedule property. The defendant No.2 property is situated southern side of plaintiff 'A' schedule property because of that reason the plaintiff cannot seek injunction against the defendant No.2 and it is not maintainable. The plaintiff has produced copy of undertaking. On perusal of said statement it is mentioned that defendant No.1 was in peaceful possession over the Sy. No. 164 and the plaintiff is in possession over the Sy. No. 65 and defendant no.1 has no objection to get Podi, in case any encroachment made in his property he is ready to give up the same extent otherwise suitable action can be taken against him. The plaintiff has right to get survey in respect of his property but he has no right to obstruct the alienation of the defendant No.2.

7. It is the contention of defendant No.2 that, he is in possession of suit schedule 'B' property is believable. The said property came into his name by virtue of Registered sale deed executed by defendant No.1 in his favour. On perusal of sale deed produced by the plaintiff it is very clear that the defendant No.2 is the absolute owner and in possession of 'B' schedule property. The khatha also got mutated in the name of defendant No.2 in respect of suit schedule 'B' property as per sale deed. Suit schedule 'B' property is no way related to suit schedule 'A' property.

The defendant No.2 has produced sufficient materials on record to show his possession over his property.

8. On perusal of overall documents it clearly goes to show that, the defendant is in possession and enjoyment over the suit schedule 'B' property. Though plaintiff is seeking relief from restraining defendant not to alienate over the suit schedule property does not arise. From the above documents it is clear that the defendant No.2 is in peaceful possession and enjoyment over his property. Such being the case, At this stage it can be gathered that the plaintiff has not shown possession of suit schedule property. Therefore the contention of the plaintiff cannot be appreciated.

9. By considering oral argument and other materials, I am of the opinion at this stage that there is no prima-facie case in favor of the Plaintiff. Hence, I am of the opinion that plaintiff is not entitled for the relief sought in the application. Hence, it is atmost necessary by considering overall case that, subject matter of the suit has to be preserved at this stage.

10. Accordingly, I am of the opinion that the plaintiff has not shown prima-facie case, balance of convenience does not lies in his favor and if the temporary Injunction is not granted, greater hardship and irreparable loss will not

be caused to the plaintiff. Further more, looking to the balance of convenience and irreparable loss, the same lies more in favor of defendant rather than the plaintiff. Therefore, the plaintiff is not entitled to the relief of Temporary Injunction against defendant. I am of the opinion that the plaintiff is not entitled to the preventive remedy. Therefore, the point No. 1 to 3 are answered in the negative.

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

ORDER

I.A. No. 4 filed by the plaintiff u/o. XXXIX
Rule 1 and 2 CPC is hereby rejected.

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.