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

**PRESENT: Sri.RAVI BETAGAR B.A.LL.B.(Hons.)
II. Addl Civil Judge & J.M.F.C.,
Doddaballapura
Bengaluru Rural District**

Dated this the 6th Day of November 2024

O.S.No.136/2021

Plaintiff/s : 1.Smt.Lakshamma
S/o Nadipanna,
and others.

(By Sri.S.M., Advocate)

- V/s. -

Defendant/s: Smt.Gangamma
W/o Late. Nallagangappa,
aged about 70 years,
and another

(By Sri.R.M., Advocate for defendant)

**Parties in I.A.No.I and II U/o 39 Rule 1 & 2 of C.P.C. filed
by Plaintiff**

Applicant / : 1.Smt.Lakshamma
Plaintiff /s S/o Nadipanna,
and others.

V/s.

Opponents / : Smt.Gangamma
Defendants W/o Late. Nallagangappa,
aged about 70 years,
and another

Orders on I.A.I and II

The plaintiff filed the IA No.I U/O XXXIX Rule 1 and 2 of CPC supported by the affidavit praying to grant temporary injunction restraining the defendants their agents, servants, heirs representatives, assigns, coolies or office bearers or anybody claiming not to put up the any constructions of the suit schedule property in Item No.5.

2. The plaintiff filed the IA No.II U/O XXXIX Rule 1 and 2 of CPC supported by the affidavit praying to grant temporary injunction restraining the defendants their agents, servants, heirs representatives, assigns, coolies or office bearers or anybody claiming not to damage the suit schedule property in Item No.5.

3.Suit schedule property as hereunder:-

Property bearing old Sy.No.8/2, total measuring of 0.01 guntas, situated at Hiremuddenahalli Village, Thubagere Hobli, Doddaballapura Taluk bounded on :-

East By : Doddamuniyappa's Land
West By : Marimakalahalli Road
North By : Chikkasiddappa's Land
South By : Kallikote Rod's land

4.The plaintiff's contention is that plaintiff schedule property Item No.5 is the ancestral property of themselves and it originally belong to one person named Gangappa who is the grandfather of the plaintiffs. He executed registered will deed dated 26th April 1989 in favour of his only daughter Munniakkayamma who is the mother of the plaintiff. and in pursuant to the said will deed she is in possession of the plaintiff schedule property Item No.5 and she died on 16th March 2006. Thereafter the plaintiff is in possession of the same. The plaintiffs along with the henchmen came near the plaintiff schedule property Item No.5 on 25-02-2021 and tried to dig trenches by encroaching the portion of the plaintiff schedule property Item No.5 which was resisted by the plaintiffs with the help of the well wishers and villagers the plaintiff went away stating that they will come with more men and disposes them from the plaintiff schedule property Item No.5.

5.The defendant filed written statement and adopted the same he has objections. The defendant denies the plaintiff's case entirely and states that he is the absolute owner of the property bearing Khaneshumari No.76, property No.71/76, measuring East to West 30 feet and North to South 32 feet, situated at Hiremuddenahalli village, Thubagere Hobli, Doddaballapura Taluk Bengaluru Rural District which he purchased from Gangappa in registered sale deed dated 08-09-1997. Thereafter he is in possession of the property. Also Thubagere Village, Panchayath issued form No.10 and 11 in his favour. The defendant No.2 obtained building licenses for construction of

house on 26-04-2021. when⁴ the defendant No.2 went near the property plaintiff's tried to interfere in his possession in this regard defendant No.2 filed suit against plaintiff in O.S.No.246/2021 which is till pending.

6. Even though the Gangappa executed Will but he already sold the property to the defendant No.2. During his life time as such plaintiff's mother cannot claim property through will. Also the property lost its agricultural nature and it is converted to site. As such the revenue records of the property is maintained by village panchayath. And among other grounds the defendant prays to reject the application filed by the plaintiff.

7. Heard counsels for both the sides and perused the materials available on record.

8. The following points arise for consideration

- 1) Whether the plaintiff has prima-facie case in his favour?**
- 2) Whether the balance of convenience lies in favour of plaintiff?**
- 3) Whether irreparable loss would be caused to the plaintiff if the temporary injunction is not granted? In his favours?**
- 4) What order?**

9. My answer to the ⁵ above points are as under

Point No.1 : In the Negative

Point No.2 & 3 : Do not survive for consideration

Point No.4 : As per final order for
the following:

REASONS

10.**POINT NO.1:** The facts of the case of the plaintiffs and the defendants are stated above. The plaintiff case is that the grandfather of the plaintiff executed registered will in favour of the plaintiff mother with respect to the plane schedule property and on the strength of the will the katha of the plan schedule property was mutated in the plaintiffs mother's name and after her death plaintiff and his legal heirs are in possession and enjoyment of the plane schedule property and even all the revenue records are in their name. The defendants without having any right title or interest over the plane schedule property and their property is on the adjacent to the plane schedule property only to harass the plaintiff and to take the undue advantage of the plaintiff is illiteracy and age the defendants are trying to dig the plaint schedule property and trying to construct a compound wall and fencing in this regard the dependents came to the plaint schedule property on 25th of February of 2021 and try to dispose the plaintiff by trespassing and doing the set activities. The plaintiff registered this act of the defendants and also approached to the defendant No.2 but all of them effort of the plaintiff was in vain left with no other alternatives the plenty

filled the present suit and ⁶ seeking the present relief of permanent injunction.

11.The plaintiff apart from producing the copy of registered will dated 26th April 1989 he has not produced any other documents to show that upon the death of the testator the will was acted upon and khata of the plaint schedule property Item No.5 was changed it into the name of the plaintiff's mother and after her death in the name of the plaintiff. The plaintiff produced RTC copies but the set RTC copies her pertaining to Sy.No.8/1 whereas the plaint schedule property Item No.5 is Sy.No.8/2 and even the RTC is produced by the plaintiff are of 1984-85 till 1988-89 and 1997 and 1998 till 2002 -2003 plaintiff has not produced any recent RTC extracts with respect to the plaint schedule property Item No.5 with respect to which he is claiming the present interim relief. The burden lies on the plaintiff to show that he has a prima facie case in his favour to do that plaintiff apart from pleading has to produce some documentary materials but in the present case the plaintiff apart from relying on the registered will he has not produced any other documents. In such case this court of the considered opinion that the plaintiff has failed to show existence of prima facie case in his favour as a plaintiff has failed to show that he is in possession of the plaint schedule property Item No.5 as on the date of filing of the suit. **Accordingly the point No.1 is answered in the negative.**

12.POINT No.2 and 3: As plaintiff failed to prove the existence of the prima faice case in such circumstances there is no need to discuss point

No.2 and 3. As such ⁷point **No.2 and 3 do not survive for consideration.**

13.**Point No.4:** For the reasons mentioned above this court proceeds to pass the following:

ORDER

I.A.I and II U/o. 39 Rule 1 and 2
of C.P.C. filed by the plaintiff is hereby
dismissed.

(Dictated to Stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court on this the 6th Day of November 2024).

Sd/-
(Sri.Ravi Betagar)
II Addl. Civil Judge & JMFC.,
Doddaballapura.