

IN THE COURT OF THE II ADDL CIVIL JUDGE AND JMFC
AT DODDABALLAPURA.

Present : SRI PREMKUMAR., M.A., LL.B.,
C/c II Addl. Civil Judge and J.M.F.C,
Doddaballapura.

Dated this 15th day of April -2023

O.S No. 278/2022

PLAINTIFF :

Smt.Bylamma

W/o Late K.P.Ramaiah,
Aged about 70 years,
R/at Karepura Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

(By Sri.R.M.K., Advocate)

V/s

DEFENDANT :

Sri. K.R.Venkatesh

S/o K.G.Ramaiah,
Aged about 45 years,
R/at Karepura Village,
Doddabelavangala Hobli,
Doddaballapura Taluk.

[By Sri.T.K.H.R., Advocate]

ORDERS ON IA No.1 AND II

IA No.1 is filed by the Plaintiff under Order 39 Rule 1 and 2 of CPC for seeking the relief of Temporary Injunction in favour of the Plaintiff and thereby restraining the Defendant from interfering into the suit schedule property, till the disposal of the suit.

2. I.A.No.II filed by the defendant U/o 39 rule 4 of CPC., for seeking the relief of vacate the ad-interim ex-parte order dated:05-07-2022.

3. The Plaintiff sworn to an affidavit in support of the application wherein she has stated that the husband of the plaintiff by name Sri. K.P.Ramaiah has purchased the property bearing Sy No.84/3 Re-Sy No.84 measuring 1 acre 11 guntas from the Smt.Gowramma and her children through registered sale deed dated:21-04-2007. She has further stated that the Katha of suit property standing in the name of husband of plaintiff. After death of husband of

plaintiff the suit property were transferred in the name of plaintiff and she is in peaceful possession and enjoyment over the suit schedule property. She has further stated that the defendant is the owner of land bearing Sy No.84/1. He has filed the appeal before the ADLR for change the survey sketch and Re-phod the land as per possession. The Hon'ble ADLR has allowed the said appeal and directed the Taluk Surveyor to report the land as per title deed and possession on 13-12-2019. As per the order of DDLR the Taluk Surveyor has cancel the phod number and bring the entire land in Sy No.84. The defendant taking advantage of order of DDLR he has interfering into the possession of plaintiff and also tried to dispossess the plaintiff from the suit property. Hence, it is very much require to stop the illegal interference of the defendant and their agents on the schedule property. If this application is not allowed he will be put to great hardship, damage and injury. Any delay in granting the

interim preventive relief will cause irreparable damage. With these averments the Plaintiff has sought for allowing IA No.1.

3. The Defendant has filed the memo to treat the contents of written statement as objections to IA No.1 wherein he has denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. It is further submitted that the mother of this defendant had purchased 2 acres 8 guntas including seven guntas of Kharab land in Sy.No.84 under two sale deeds and thereafter has executed two registered gift deeds infavour of this defendant. It is submitted that this defendant had filed a suit for bare injunction restraining his brother from interfering with his peaceful possession of the property and the same is pending adjudication. He has further submitted that the younger brother of this defendant further filed a suit for partition and in the said suit for partition and interim order of injunction restringing the defendant from cutting the standing trees was initially granted and the same was later

modified by the court permitting this defendant to cut and sell the same and deposit the sale proceeds before the Hon'ble court. The said suit for partition is still pending for adjudication. Therefore, he prayed to dismiss the application and also vacate the temporary injunction order dated:05-07-2022.

4. Heard the Learned Counsel for the parties and perused the materials on record.

5. Now the points that arise for the consideration of this Court are as follows:

1. Whether the Plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?

2. Whether the balance of convenience lies in favour of the Plaintiff?

3. Whether the Plaintiff will be put to irreparable loss and hardship, if IA is not allowed?

4. Whether the defendant has made out sufficient ground to vacate the temporary injunction order?

5. What order?

6. The findings of this Court on the above said 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: In the Negative

POINT No.5: *As per final order for the following:*

REASONS

7. POINT NO.1: The Learned Counsel for the Plaintiff vehemently argued before the Court that the husband of the plaintiff was the owner and in possession of the suit property through registered sale deed dated:21-04-2007. It is further argued that after death of husband of plaintiff, the plaintiff is the absolute owner and in possession of suit property.

She has further argued before the court that the Defendant without having any manner of right, title and interest and also possession over the suit schedule property is interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property. It is further argued by the Learned Counsel for the Plaintiff that the Plaintiff has made out prima-facie case, hence the equitable relief of Temporary Injunction has to be granted in favour of the Plaintiff till the disposal of the suit. With these contentions the learned counsel for the Plaintiff sought for allowing I A No.1 and dismiss the I.A.No.II.

8. Per contra the Learned Counsel for the Defendant argued before the Court that the plaintiff is not in possession of suit property and further denied that the defendant has not interfere with the possession of suit schedule property. He has further argued that he has purchased 02 acres 08 guntas including 07 guntas of kharab land in the land bearing Sy.No.84 through sale deed

and thereafter has executed two registered gift deeds in favour of this defendant. It is further argued that this defendant had filed a suit for bare injunction restraining his brother from interfering with his peaceful possession of the property and the same is pending adjudication. Hence, interim application filed by the plaintiff deserves to be dismissed and also deserved to be vacate the ex-parte temporary injunction order.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

11. In order to ascertain the prima-facie case, this Court has carefully perused the list of documents produced by the Plaintiff. She has produced the certified copy of sale deed dated:21-04-2007, RTC extract of land bearing Sy No.84/3, copy of RTC extract of Sy No.84, order of DDLR, copy of survey notice, copy of sketch, Copy of RTC extract of land bearing Sy.No.84/3, copy of mutation extract, On perusal of these documents it is clear that the husband of the plaintiff had purchased the property measuring 01

acre 11 guntas of land in Sy No.84/3 from Gowramma and her children under registered sale deed dated:21-04-2007. Further appears that as per sale deed the Katha of suit property has transferred in the name husband of the plaintiff and Katha of suit property standing in the name of husband of plaintiff. Further on perusal of on order of DDLR, it appears that they have cancel the hissa numbers in land bearing Sy.No.84 and They have further directed to Tahasildhar and ADLR to survey the property in the land bearing Sy.No.84.

12. On the other hand, the defendant has produced the survey report, mahazar. Notice, survey sketch and hissa survey sketch, copy of Akhaar bund, copy of mutation extract and RTC extract of land bearing Sy.No.84/2. After perusal of documents of defendants it appears that the land bearing Sy.No.84/2 measuring 02 acres 08 guntas of land is standing in the name of defendant. Further appears that as per the mutation extract in the year 2022 the land

bearing Sy.No.84/1 measuring 01 acre 11 guntas is standing in the name of plaintiff. Further as per survey sketch prepared by the survey authority had divided the suit property and they have divided the hissa number as Sy.No.84/1.

13. The material on record reveals that the plaintiff has maintained the suit for the relief of Permanent injunction based on the registered sale deed in respect of suit property. Subsequent to the purchase of the husband of the plaintiff the Katha has been changed in the name of husband of plaintiff. After death of husband of plaintiff, the plaintiff is in its possession and enjoyment. Whereas the defendant has denied the ownership and possession of the plaintiff over the suit schedule property, but they have taken the contention that he is the owner and in possession of 02 acre 08 guntas in the land bearing Sy.No.84. On perusal of RTC extracts of land bearing Sy No.84/2, it appears that the defendant is in possession of 2 acres 8

guntas of land in Sy No.84/2. Moreover the defendant has not claimed the any right over the suit schedule property.

14. At this stage the plaintiff has produced the certified copy of sale deed. On perusal of the same it is clear that the husband of the plaintiff was the owner of suit property under registered sale deed dated:21-04-2007 and the Katha of suit property has changed in the name of husband of plaintiff. Presently the suit property is standing in the name of plaintiff. These documents prima-facie make it clear that the plaintiff is in possession of suit property as on date of the suit. On the other hand, the specific contention of the defendant is that he is the owner and in possession of 02 acre 08 guntas in land bearing Sy.No.84. In the regard the defendant has produced the record of rights of Sy No.84/2. Further, the defendant has not claimed any right over the suit property, but he has denied the rights and possession of plaintiff over the suit property. It is clearly appears that the has interfere with the possession

of plaintiff by denying the rights of plaintiff over the suit property.

15. At the stage firstly, I have considered what is the relief sought in the IA No.1. The plaintiff has sought the relief against the defendant restraining him from interfering into the suit schedule property. The defendant has denied the possession of the plaintiff over suit schedule property. Further he has taken contention that the plaintiff is not the owner of suit property. It is already discussed above that the plaintiff is in possession of suit property. At this stage the plaintiff has produced the RTC extracts. On perusal of the same it is clear that the plaintiff is possession of the suit schedule property. Moreover it is important to note that the plaintiff is in possession of suit property under title deed. It is clear that the defendant is trying to interfere with the possession of plaintiff over the suit property by denying the rights of plaintiff over the suit schedule property.

16. Further, the plaintiff has produced the certified copy of sale deed standing in the name of husband of plaintiff. By virtue of sale deed of the husband of plaintiff is contenting that she is the owner of the suit schedule property. Thus it is well settle law of that, always possession follows the title. The title of the suit schedule property is standing in the name of husband of plaintiff as per the registered sale deed dated:21-04-2007. At this stage this court can only looked into prima facie case for grant of temporary injunction. It is also noticed that the plaintiff is in legal possession over the suit property. The contention taken by the defendant need further-proof and cannot be appreciated at this stage. Hence, considering all these aspects, the need of the hour is to safe-guard the possession of plaintiff over the suit-property, failing which the plaintiff would suffer irreparable-injury. Thus, the plaintiff has made out a prima-facie case for grant of Temporary injunction and the balance of convenience also lies in her favour. Therefore, there are no grounds to dismiss the I.A.No.I filed by the

plaintiff. Further there is no ground to vacate the temporary injunction order as per I.A.No.II. Accordingly, Points No.1 to 3 are answered in the Affirmative and Point No.4 is answered in the Negative.

17. POINT No.5: For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A.No.I filed U/Order 39 Rule 1 of CPC by the plaintiff is hereby allowed.

I.A.No.II filed U/Order 39 Rule 4 of CPC by the defendant to vacate the ad-interim exparte order dated:05-07-2022 is hereby rejected.

Further the defendant is hereby restrained from interference into the possession of plaintiff over the suit schedule property by way of Temporary Injunction till disposal of the suit.

No order as to cost.

(Directly Dictated to the Stenographer on laptop, typed by Stenographer and script revised and corrected and then pronounced by me in the open Court on this the 15th day of April 2023.)

(PREMKUMAR)
C/c II Addl. Civil Judge & JMFC.,
Doddaballapura

**(Order pronounced in the open Court
Vide Separate order)**

O R D E R

***I.A.No.I filed U/Order 39 Rule 1 of CPC by
the plaintiff is hereby allowed.***

***I.A.No.II filed U/Order 39 Rule 4 of CPC
by the defendant to vacate the ad-interim
exparte order dated:05-07-2022 is hereby
rejected.***

***Further the defendant is hereby
restrained from interference into the
possession of plaintiff over the suit schedule
property by way of Temporary Injunction till
disposal of the suit.***

No order as to cost.

**Addl. Civil Judge & JMFC.,
Doddaballapura**