

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

PRESENT: Smt. Deepa. K.R., B.A.L., LL.B.,  
Prl. Civil Judge & JMFC,  
Doddaballapura.

Dated: This the 1<sup>st</sup> day of April 2023

**O.S. No.407/2022**

Plaintiff: 1.Sri. K.R. Jayachandra,  
S/o S.P. Ramaswamy,,  
Aged about 46 years,  
R/at, Hasangatta Village,  
Kasaba Hobli,  
Doddaballapura Taluk

Repd by his GPA Holder  
Sri. Srirama. R,  
S/o Rangappa,  
Aged about 56 years,  
R/at, No.517, 'F' Block,  
Sahakarnagar, Bangalore-92.

2. Sri. K.K. Venkatesha,  
S/o Late Krishnappa,  
Aged about 47 years,  
R/at: 327, CQAL Layout,  
Sahakaranagar, Bangalore -560092

(Repd. By Sri T.N., Advocate)

**V/s.**

Defendants: Sri. V.R. Anjaneya Reddy,  
S/o Ramareddy,  
Aged about 65 years,  
R/at, No. 51, 5<sup>th</sup> Main, 3<sup>rd</sup> Cross,  
Mattikere,  
Bangalore 560054  
( Repd. By Sri. J.M.R., Advocate)

**ORDER ON I.A.NO.I**

The plaintiffs have filed I.A.No.I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure for an order of temporary injunction restraining the defendants or his henchmen, assignee or anybody claiming under them from interfering with the peaceful possession and enjoyment of the suit schedule property in any manner to the schedule property, till the disposal of the suit.

2. It is the case of the plaintiffs that, he is the GPA holder of the plaintiff in the above suit. It is the contention of the plaintiff that he is the absolute owner of the vacant site No. 290/330/3 measuring East-West 35.22+34.02/2 and North-South 6.19-7.75/2 totally measuring 220.38 Sq. Ft., having Kodigehalli gramapanchayath Katha No. 150300300700820358, situated at Hasngatta Village, Kodigehalli Gramapanchyath, Kasba Hobli, Doddaballapura Taluk, the said site was formed in Doddaballapura Development Authority approved layout formed in Sy. No. 20/2 measuring 1 acre 7-08 Guntas of land, which is more fully describe in the schedule hereunder and hereinafter referred to as suit schedule property. It is the contention of the plaintiff that, he is the absolute owner of the land Sy. No. 20/2 new No. 20/3 measuring 1 acre 7.08 guntas of land situated at Hasnagatta Village, Kasaba Hobli, Doddaballapura Taluk; that he has entered into registered deed No. Doddaballapura-1-01344/2014-15 CD DBPD319, dated 13-05-2014 both documents are registered in the office of the sub registrar, Doddaballapura Taluk, Doddaballapura. He has entered into JAD and GPA with R. Srirama the developer of the layout formation.

3. It is the further case of the plaintiff that, he has obtained land conversion order from the Deputy Commissioner, Bangalore Rural District, vide application No. 47177 dated 13-12-2019 and he has got approved layout plan from the Doddaballapura Development authority dated 06-05-2022 as per the approved layout the developer of the plaintiff has formed the layout with all civil works and amenities and as per the joint development agreement he and the developer have entered into registered sharing agreement deed No. Doddaballapura-1-03388/2022-23 CD DBPD1329 dated 08-06-2022 as Joint Development Agreement terms and conditions, document registered in the office of the sub registrar, Doddaballapura Taluk, Doddaballapura., as per the sharing agreement the suit schedule property; that as per the sharing agreement the suit property was fallen to the share of the developer R. Srirama and K. K. Venkatesh accordingly they have obtained Kodighally Gramapanchayath Katha in their name and they are in possession of the suit schedule property and paying the tax to the local authority, the plaintiff is the absolute owner of the suit property being the general power of attorney holder R. Srirama having all the rights to look after the same on behalf of him.

4. It is the further case of the plaintiff that, he is being absolute owner of the suit schedule property under the registered deeds and as per the katha certificate and possession, he is in peaceful possession and enjoyment of the suit schedule property since from the date of the registered sharing agreement, he is in possession of the suit schedule property. It is the contention of the plaintiff that he is being absolute owner of the suit schedule property since from the date of the registered sale deed to till this date without their being any intervention and obstructions either by the

society or any other one else interfere the suit schedule property by the strangers so far, he is in peaceful possession of the suit schedule property. It is the contention of the plaintiff that, the defendant without having any right, title and interest in the suit schedule property the defendant is trying to interfere his suit schedule property trying interfere his construction of compound wall in the suit schedule property; that the defendant without having right title and possession of the suit schedule property, the defendant is trying to interfere on 10-08-2022; that himself and his friends have prevented the same; that he has made efforts and restrains the illegal act of the defendant with great difficulty and also the defendant left the suit schedule property, by threatening and warning to the plaintiff that, they will come back with the men and material and see that in the suit schedule property is acquired by him; hence, the plaintiff has no other alternative except approach this Hon'ble Court for suitable to relief to restrain the defendant illegal act and hence he filed this application.

5. Per contra the defendant filed objections. In the objections the defendant denied all the allegation made in the plaint and submitted that the suit property is stated to be part of the land measuring 1 acre 07.08 guntas of land in Sy. No. 20/2 of Hasangatta Village, Kasaba Hobli, Doddaballapura Taluk; that the plaintiff No.1 claims to have got the land measuring 1 acre 07.08 guntas converted for residential purpose as per order dated 13.12.2019; that as per the said order, the Deputy Commissioner sanctioned conversion subject to various conditions specified therein; that additional condition No.4 specified under the official memorandum dated 13.12.2019 issued by Deputy Commissioner 06 ½ guntas of B-Kharab land as his own and part of the layout plan; that they layout plan is obtained in contravention

of the said specific condition mentioned in the conversion Order; that the alleged layout plan referred to and produced by the plaintiffs is not in accordance with law; that the Government B-Kharab land of 6 ½ guntas cannot be part of the layout plan; that being so, the alleged layout plan is unreliable and same cannot be considered; that further the layout plan has been taken for non-existing suit property.

6. It is the contention of the defendant that, the plaintiff No.1 K.R. Jayachandra, his wife and children have stated to have entered into Joint Development Agreement with R. Srirama for the formation of Residential Layout; that as per the description of the property under alleged Joint Development Agreement dated 12/05/2014, the eastern boundary of Sy. No. 20/2 has been shown as Sy. No. 20/3; that it means to say the land bearing Sy. No. 20/2 is to the west of land bearing Sy. No. 20/3; that the suit schedule property is stated to be part of Sy. No. 20/2; that if it is part of Sy. No. 20/2 the suit schedule property must be to the west of land bearing Sy. No. 20/3 but in the schedule to the plaint the land bearing Sy. No. 20/3 has been shown towards north of suit schedule property; that there is an inherent defect in the description and location of suit schedule property; that the above suit suffers from fundamental defects and same is liable to be dismissed on the ground of maintainability itself.

7. Further It is the case of the defendant that, the plaintiffs have stated that, the suit schedule property was fallen to the share of the Developer R. Srirama (GPA Holder of plaintiff No.1) and K.K. Venkatesh plaintiff No.2; that if that is so, R. Srirama and K.K. Venkatesh have to file suit as per the alleged sharing agreement, that the plaintiff No.1 is nothing to do with the

suit property; that further in para-5 of the plaint it has been stated that R. Srirama and K.K. Venkatesh are in possession of suit property and paying tax but suit has been filed in the names of K.R. Jayachandra and K.K. Venkatesh; that even according to the averments the suit filed in the names of K.R. Jayachandra and K.K. Venkatesh is not maintainable.

8. It is further contention of the defendant that, the plaintiff No.1, R. Srirama and K.K. Venkatesh are in collusion with each other and they have created documents to lay a false claim over the land of the defendant in Sy. No. 20/3 measuring 0.28.08 guntas including Kharab land of 0.06 ½ guntas; that the defendant is the absolute owner in actual and lawful possession and enjoyment of 0.22 guntas in Sy. No. 20/3 having purchased the same from the plaintiff No.1 K.R. Jayachandra and his family members under the registered sale deed dated 17.05.2013 for valuable consideration; that the revenue entries have been mutated in his name based on acquisition of ownership and possession; that he got the land so purchased survey and phodi conducted; that the concerned survey authorities have fixed the boundaries of his land in Sy. No. 20/3 after giving notice to the adjacent land owners including the plaintiff No.1; that the plaintiff No.1 was present at the time of survey and phodi and fixation of boundaries and he is also a signatory to the phodi proceedings; that after the completion of survey, phodi and fixation of boundaries, the defendant had constructed shed in the south western corner of the land in Sy. No. 20/3; that fully knowing that, the defendant has been in possession and enjoyment of the said 0.22 guntas of land in Sy. No. 20/3 right from the date of purchase the R. Srirama (GPA holder of plaintiff No.1 and .K.K. Venkatesh (Plaintiff No.2) had made wrongful invasion and demolished the shed by adopting high handed method

on 03-10-2022; that the defendant had lodged complaint to Doddaballapura Rural Police Station; that the complaint so filed has been registered in Crime No. 0251/2022 against the said R. Srirama and K.K. Venkatesh for the offences punishable under section 427, 447, 448 and 506 read with 34 of Indian Penal Code.

9. It is the further case of the defendant that, the GPA holder of the plaintiff No.1; that the plaintiffs are not in possession and enjoyment of the suit schedule property; that the plaintiff No.1 in para-6 of the affidavit has stated that, the suit schedule property was fallen to the share of developers; that the alleged developers have to file suit and have to sworn the affidavit. It is the contention of the defendant that, further the plaintiff No.1 in para-7 of the affidavit has stated that, he is the absolute owner and in possession and enjoyment of the suit schedule property contrary to his earlier statement; that the plaintiff No.1 has further falsely stated in para-8 of the affidavit that, he is the absolute owner of suit schedule property since from the date of registered sale deed to till this date; that the alleged sale deed referred has not been produced in the above case. It is the contention of the defendant that, the plaintiffs have no prima facie case entitling for the relief claimed in the suit or in the application; that the plaintiffs have no balance of convenience; that the plaintiffs have not suffered any legal injury nor suffered any hardship; that they will not suffer any hardship or injury in future also; that the alleged apprehension is baseless and unreliable; that the defendant will suffer irretrievable injury in the event of granting injunction in the above suit; that the averments and allegations which are not specifically traversed herein are hereby denied; that the plaintiffs are put to

strict proof of all the averments and allegations made in the affidavit accompanying to the application and hence prays to dismiss the application.

10. Heard the learned counsel for the plaintiff and defendants.

11. The points that arise for my consideration are:

- Whether the plaintiff has made out a prima facie case for grant of temporary injunction?
- Whether the plaintiff proves that the balance of convenience lies in his favour?
- Whether the plaintiff proves that irreparable loss and injury will be caused to them, if an order of temporary injunction is not granted?
- What order?

12. My findings on 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**

#### **Point No.1to 3:-**

13. As these points are interconnected with each other, hence in order to avoid repetition of facts, these points are taken for common discussion.

14. At the stage of deciding an application under Order XXXIX Rule 1 and 2, the court cannot embark upon a trial as to the veracity or otherwise of the allegations and counter allegations made. Therefore, firstly the court have to see whether the plaintiff has made out a prima facie case, whether the balance of convenience lies in his favour and whether any irreparable loss and injury would be caused in the event of an injunction not being granted.

15. The plaintiffs at this stage has produced copy of the Mutation Register MR No. H10/2012-13, Copy of the Sy. No. 20/2, Copy of the GPA registered deed No.Doddaballapura-4-00058 CD DBPD319, dated 13-05-2014, Copy of the Order Deputy Commissioner, Bangalore Rural District, vide application No. 47177 dated 13-12-2019, copy of the Doddaballapura Development Authority dated 06-05-2022 as per the approved layout, copy of the Registered Sharing Agreement deed No. Doddaballapura-1-03388/2022-2023 CD DBPD 1329 dated 08-06-2022 as Joint Development Agreement terms and conditions, copy of the Kodigehalli Gramapanchayath Khatha No. 150300300700820358, Tax paid receipt of suit schedule property, copy of the Sy. No.20/1, copy of the Sy. No. 20/1, 20/2 and 20/3 Hissa phodi, copy of the Akarabandh Sy. No. 20/1, 20/2 and 20/3, copy of the Sy. No. 20/1, 20/2, 20/3 Pakka Book, copy of the land acquired fro Development of Road Acquired property.

16. The defendant at this stage has produced copy of the sale deed dated 17.05.2013, copy of the Mutation Register MR No. H10/2012-13, RTC extract for the years 2021-22 and 2022-2023, copy of the Hudbust

sketch in respect of Sy. No. 20/3, copy of the Pakka Book (Hissa Survey), copy of the Karnataka Revision Settlement Akharband, copy of the FIR in Crime No. 0251/2022, copy of the sketch showing Sy. No. 20/1, 20/2 and 20/3 and photographs.

17. It is the case of the plaintiff that they are the absolute owner of the suit schedule property and that the plaintiff and the developer have entered into registered sharing agreement dated 08-06-2022 as per joint development agreement terms and conditions. It is the further case of the plaintiff that as per the sharing agreement suit property fallen to the share of developer Sri. R. Srirama. Hence, though as per the pleading itself Sri. R. Srirama is the owner of the suit schedule property, very interestingly he was not made party. Further plaintiffs once in pleading says they are the owner and in possession of suit schedule property and once says that Sri. R. Srirama is the owner of suit schedule property.

18. Further in plaint schedule survey number 20/3 is shown in Northern side but in joint development agreement the Sy. No. 20/3 is shown in the Eastern side. On the contrary, it is the contention of defendant that the Sy. No. 20/3 is in possession of him and that the said survey number 20/3 was purchased by the defendant under a registered sale deed. In this regard he has produced the photocopy of sale deed. The contention of the defendant that the boundaries of Sy. No. 20/3 has been fixed and in this regard he has produced the survey sketch. It is the contention of the defendant is that the plaintiffs have made wrongful invasion to Sy. No. 20/3 and demolish the shed. The defendant is disputing the boundary identity and measurement of the suit schedule property. Further it is the contention of the defendant that

the layout plan of the suit schedule property is obtained in contravention of the specific condition mentioned in the conversion order. As the exact location, boundary of the suit schedule property itself is in dispute, court at this juncture cannot hold that the plaintiff is in possession of the plaintiff schedule property. Hence, looking at the facts and circumstances of the case there are too many facts which are required to be vetted at trial. Before trial court cannot come to any finding as in whose possession in the suit schedule property belongs to. I would like to quote decision reported in **2008 SAR(Civil) 401** in case of **Sri. Thimmaiah V/S Shabeera** and others which speaks about possession of plaintiff over the property and without their being proof of possession injunction cannot be granted.

19. Hence looking at the fact and circumstances and relying on the documents produced by the both plaintiff and defendants, at this juncture court cannot come to conclusion that plaintiff is in possession of plaintiff schedule property. Hence it can be said that the plaintiff has utterly failed to prove the prima facie case which is one of the ingredient of the granting injunction. Hence if injunction is granted in favour of plaintiff there are very much possibilities of inconvenience and loss to the defendants. Moreover it is the contention of the defendants that there is wrongful invasion on his property i.e., Sy. No. 20/3. Hence, there would be more hardship on the defendants than plaintiff. As documents in rival dispute are required to be vetted at trial, I am of opinion that this is not a fit case to grant injunction. Hence with these observations, I answer point No.1 to 3 in the **Negative.**

**Point No.4:**

20. The learned counsel for defendant has produced following decisions:

1) AIR 2008 Supreme court 901 between Gurunath Manohar Pavaskar and others V/s Nagesh Siddappa Navalagund and others.

2) 2012 (1) AIR Kar R 485 between Channabasappa V/s Safoorbai and another.

These decisions aid the case of defendant.

Therefore in the light of the aforesaid discussion, I pass the following..

**ORDER**

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

*(Dictated to the Typist, transcribed by her, the transcript corrected by me and then pronounced by me in the open court on this the 1<sup>st</sup> day of April 2023)*

-Sd-  
(Deepa. K.R.)  
Prl., Civil Judge & JMFC.,  
Doddaballapura.