

KABR500004272024



IN THE COURT OF THE ADDL.CIVIL JUDGE & J.M.F.C.,
AT : HOSAKOTE

PRESENT

SMT. CHAITRA V. KULKARNI,
B.A.,LL.B., LL.M.
II ADDL. CIVIL JUDGE & J.M.F.C., HOSAKOTE

Original Suit NO.87/2024

DATED THIS THE 30th DAY OF SEPTEMBER-2024

PLAINTIFF :

Sri. B.Basavaraju

-Vs.-

DEFENDANTS :

Sri. Venkatesh. B

RANK ON I.A.NO.I

APPLICANT / ORI. PLAINTIFF :

Sri. B.Basavaraju

(By Sri.P.C., Advocate)

-Vs.-

OPPONENTS / ORI. DEFENDANTS :

Sri. Venkatesh. B

(By Sri.N.R., Advocate,)

**ORDER ON APPLICATION UNDER ORDER 39 RULE 1
AND 2 R/W SECTION 151 OF CPC**

The present application has filed by the plaintiff by seeking Temporary injunction to restrain the defendant, his henchmen, servant , general power of holder or anybody claiming through or under him from interfering with his possession over the suit property till disposal of suit.

2. In the annexed affidavit it is stated that, he acquired the suit property under partition dated:15.10.2001 and the revenue authorities have also mutated his name in the revenue records. He is in the peaceful possession of the suit property. Further, by taking advantage of old age of the plaintiff, the defendant tried to interfere in the suit property, hence he approached the jurisdiction police but the police directed him to

approach Civil Court , since the matter is of civil in nature. Hence, plaintiff constrained to institute present suit and filed present application.

3. On the other hand, the defendant has filed objections to the present application by denying all the contents of the affidavit and further contended that, originally the land bearing Sy.No.61 measuring 4 acres situated at Doddanallalla village, Jadigenahalli hobli, Hosakote taluk was granted to one Chikka Venkatappa vide No LNDCR 255/1964-65. The said Chikka Venkatappa had in-turn sold the property bearing Sy. No. 61 in favour of one Mr.Balaji Singh and the said Mr.Balaji Singh in-turn sold the entire extent measuring 4 acres of land in Sy. No. 61 in favour of one Mr Muniyappa S/o Lakshmaiah. Further contended that the said Muniyappa and his daughter Smt.Motamma have sold the property in favour of one Kodandarama Shetty for a valuable consideration on 27-5-1982. The said Kodandarama Shetty and his family members have sold in favour of one

Obareddy in the year 1995 for a valuable consideration. The said Obareddy in-turn sold the property bearing Sy.No.61 measuring 4 acres situated at Doddanallalla village, Jadigenahalli hobli, Hosakote taluk in favour of one Beerappa S/o Late Venkatappa on 02-01-1996 who is none other than the father of the defendant. After the death of father of defendant, all the legal heirs of Beerappa are in lawfull possession and enjoyment of Sy.No 61 measuring 4 acres of land situated at Doddanallalla village, Jadigenahalli hobli, Hosakote taluk as an absolute owners thereof. Further contended that, since from the year-1996 all the legal heirs of Beerappa including defendant are in lawful possession and enjoyment of Sy.No 61 measuring 4 acres as an absolute owners which is bounded East by: Beerappa land, West by : Chikka Chanappa property, North by: Rudrappa's property and South by: Siddamma's property. Further he was growing ragi, paddy in the said survey number without any let or hindrance from any of the third parties from past 29 years.

Further contended that the land in Sy.No. 61 situated at Doddanallala village, Jadigenahalli hobli, Hosakote taluk is consisting a larger extent and number of persons had acquired the said property bearing Sy.No. 61 by way of grant and on their individual capacity and all the purchasers of Sy.No.61 was cultivating in their possession. Further the plaintiff surveyed the property very recently without issuing the notice to the adjacent property holders and tried to encroach at Western portion measuring more than one and half acre of land which is in possession and occupation of defendant and the plaintiff has not surveyed the property as per physical possession of both the plaintiff and defendant and by obtaining the interim order from this Court he himself harassing the defendant day by day with large number of supporters with rowdies with anti social elements and trying to dispossess defendant from his possession. Further contended that in the year 2020 the brother of the plaintiff one Chikkachanappa had filed suit in O.S.No 97/2020 against one Jagannatha and

others for relief of bare injunction in respect of Sy.No.61 and in the said judgment, there is a admission made by the brother of the plaintiff that in respect of Sy.No.61 there is 1 ½ acre of land was utilized for formation of road for Doddanallalla to Injanahalli main road for utility of public purpose and the said property absolutely comes at Western side. Further the plaintiff without surveying the entire property of Sy.No. 61 which includes formation of road, the plaintiff fraudulently by colluding with revenue officials has surveyed the property without considering the road and trying to fix the boundary by encroaching the property belongs to defendant with support of police officials. Further contended that at the Eastern boundary shown by the plaintiff in the suit schedule which is not at all in existence but the plaintiff by colluding with the revenue officials has phoded the property by showing the Eastern boundary is that the land bearing Sy.No.135 was situated and the survey authorities have made malicious error while conducting the survey and not at all shown the

defendant's property at Eastern side of the property bearing Sy.No.61 which measuring 4 acres of land. Further as per the sketch prepared by the survey authorities the defendant's property was not at all in existence then how the defendant can interfere in the property which belongs to the plaintiff. Further, he is the absolute owner in lawful possession and enjoyment of the Eastern portion of the plaint schedule property by virtue of registered sale deed dated 1996. Hence on all these grounds he has prayed to reject the application.

4. Heard both sides. Perused the materials placed on record.

10. The following points arise for my consideration :

POINTS

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

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

3) *Whether the plaintiff would suffer loss and hardship if the application is rejected ?*

4) *What order ?*

5. My findings on 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

6. **Point No.1 to 3**: Admittedly the plaintiff has filed suit for relief of Permanent injunction.

7. To prove the prima-facie case, the plaintiff has produced the documents such as, copy of sale deed, mutation extract, partition deed, RTC extracts etc,. On the other hand the defendant has produced copy of sale deed, RTC extract, survey sketch, copy of complaint etc,.

8. It is well settled legal principle that, in order to entitle for temporary injunction, plaintiff must establish prima-facie case. It is needless to state that, in order to entitle the temporary injunction, establishing the prima-facie case is a pre-requisite condition. While considering the prima- facie case, the Court cannot dwell into merits of the case and to consider whether plaintiff has made out a triable case for granting temporary injunction or not.

9. In the present case, there is no dispute in respect of existence of suit property, it is only contention of the defendant that, the plaintiff has not got fixed the boundaries of the suit property and alleged that the survey authorities have not shown proper boundaries at the time of conducting survey, they have not shown his property at Eastern side of Sy.No.61, but he has not produced any document to show that he has challenged the survey to set it aside. Further, in para No.13 of written statement the defendant has admitted that, the property of the plaintiff was existing at Western side of his property, but he has

stated that, the plaintiff got surveyed his property including road , not by bifurcating the road from his property, hence the admission in the pleading in written statement prima facie shows that the defendant has admitted the existence of the suit property, further, whether the plaintiff has shown right boundary or wrong boundary has to be looked into at trial, at this stage there are no documents to prima facie show that, the plaintiff has shown wrong boundaries and defendant has not placed any document in respect of the same.

10. Further, as per the RTC extract produced by the defendant itself prima facie show that, the Sy.No.61 is having larger extent more than 400 acres, under such circumstances, there are possibilities of existence of properties of both parties. Therefore at this stage plaintiff has shown prima facie case and the counter allegation by the defendant show that he is interfering with the possession of the plaintiff in the suit property. Therefore since the plaintiff has successfully established the prima-

facie case , if the application filed by him will be rejected then more hardship will be caused to him rather to the defendant and balance of convenience also leans in his favour. Hence, considering all these aspects of the case and totality of the circumstances, I answer the Points No.1 to 3 in the “**Affirmative**”.

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

ORDER

The I.A.No.I filed by the plaintiff U/O. XXXIX Rules-1 and 2 R/w. Sec.151 of the C.P.C. is hereby “Allowed”.

The defendant his henchmen, servants, anybody claiming under him are hereby restrained from interfering with the possession of plaintiff over suit schedule property till further order.

Further it is made clear that, this order binds only to the property situated within the boundaries shown in the plaint.

***Considering the peculiar circumstances
of the case, there will be no order as to
costs.***

*(Directly dictated to the stenographer & typed by her, the same
is edited, revised and corrected by me & then pronounced in the
Open Court on this the 30th day of September-2024.)*

**(Smt. Chaitra V. Kulkarni)
II Addl. Civil Judge & J.M.F.C.,
Hosakote.**