

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

**Present :** Sri. Girisha R.B.,  
B.A.L., LL.B.,  
Addl Civil Judge & JMFC, Hosakote.

**Dated: This, the 12<sup>th</sup> day of March 2021**

**O.S. No.68-2019**

**Plaintiff :** Smt. Lakshmidevi

- **V/s** -

**Defendants:** Sri. Ramaswamy and others

**IA No.I & II**

**Applicant :** Smt. Lakshmidevi

- **V/s** -

**Opponent ::** Sri. Ramaswamy and others

\*\*\*

**COMMON ORDERS ON IA NO.I AND II UNDER  
ORDER XXXIX 1 AND 2 R/W SEC 151 AND OF CPC**

The present suit is filed by the plaintiff for the relief of permanent injunction order restraining the defendants, either acting by themselves or through their agents, Power of Attorney Holders, representatives, assigns etc, not to interfere with the

plaintiff's peaceful possession and enjoyment of the suit schedule property and not to obstruct the construction work in respect of the suit schedule property till pending disposal of the suit.

2. The brief facts of the plaintiff case is that She is the absolute owner and in possession and enjoyment in respect of property bearing serial number, 87, Kaneshumari Number 75 totally measuring to an extent of 29x17 feet, out of 75x24 feet. The suit schedule property belongs to her grandfather and he has acquired the land through a registered sale deed dt:22.01.1963 bearing through a registered Sale deed dt:22.01.1963 bearing register number 3238/62-63 page number 52 to 54 from his Vendor Nanjappa S/o Ramaiah, after the death of her grandfather and his father, She and her brother, sister are in the joint possession and enjoyment over the suit schedule property. Thereafter in the year 2015 some family dispute

arises between plaintiff family members and she had filed the partition suit before the Senior Civil Judge Bengaluru Rural District at Bengaluru for the relief of partition and separate possession against her mother, brother and sister and as per the said partition suit the plaint schedule property was allotted to her share as per compromise petition dated.05.06.2017.

3. It is further averred that as per the compromise decree passed in O.S. 440/2015 she is in peaceful possession and enjoyment of the suit schedule property without any interference from any one till today. Recently when she started plainning to construction in the suit schedule property the defendants have trying to interfere in the suit schedule property without any manner of right, title and interest over the suit schedule property all of a sudden the defendants came near plaintiff property and trying interfere the same

without any right. These grounds plaintiff prayed to allow the present I.A. No. I & II.

4. The defendants have filed memo to adopt the written statement as objection to this application.

5. Considering the applications, plaintiff averments and on perusal of the records following points arose for my consideration for proper adjudication of the present applications.

1. Whether the plaintiff has made out a prima-facie case in his favor?
2. Whether the balance of convenience lies in favor of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and damage, if the temporary injunction as sought for is not granted?
4. What order?

6. Having heard arguments on the above applications and also after considering the applications, plaint averments and documents available on record, my answer to 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 the final order  
for the following:

### **REASONS**

7. **Point No.1 to 3** : Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

8. The present suit is filed for the relief of permanent injunction. While dealing with these kinds of the application the court has to consider the following classical ingredients.

1. The prima- facie case
2. Balance of convenience

3. In reparable loss or injury
4. Other factors.

9. It is significant to note that, the court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that, pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending of the suit. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail.

10. The present applications are filed by the plaintiff and sought for restraining the defendants from interfering over the suit property and obstructing the constriction over the same. In support of his claim the plaintiff has relied upon the certified copy of the sale deed dated 22-01-1963, mutation record no. 07 of 99-2000, certified copy of the plaintiff in so no,440 of 2015, certified copy of the compromise petition in Os no. 440/2015 and photo copies os suit property. On the other hand defendants have filed written statement thereby denied the case of the plaintiff and further filed memo and sought for adoption of their written stamen as objection to these IA 's.

11. Before adverting to the material available on record, it is better to go through the arguments advanced by the both the learned counsels in brief. It the strong arguments of the learned counsel for the plaintiff that the plaintiff has got the suit

property through the compromise decree entered in os no. 440/2015. It is further argued that since the alleged date, she in peaceful possession and enjoyment of the same. It is further argued that the defendants without any manner of rights trying to interfere over the same.

12. On the other hand it is the strong arguments of the learned counsel for the defendants that the plaintiff is trying to claim excess land which belongs to the defendants. It is further argued that the plaintiff has not come with the proper identification of the suit property. It is further argued that plaintiff is trying to grab the defendants property. On these grounds prayed to dismiss the present applications.

13. On the above said light of arguments it is better to go through the material available on record. During the course of arguments learned counsel for the plaintiff has brought the notice of

this court, that the copy of the os no.59/2019, which appears that this court has already declined to accept the claim of the defendants in the above said suit and rejected the interim application filed by the defendants herein. It should be noted that the plaintiff has claimed her right over the suit property on the strength of the compromise decree in os no.440/ 2015 . On careful reading of the said decree, it appears that the suit property was allotted to the share of the plaintiff herein. During the course of arguments learned counsel for the defendants has vehemently argued that the plaintiff is claiming excesses land of 4 feet's. It is significant to note the the defendants have not tried to challenge the decree passed in os no440 of 2015.,nor order passed on IA in os 59 of 19 till today to the best reasons known to them. Further, the defendants have not taken any steps to retain the excess land, if really the plaintiff encroached same.

14. It is pertinent to note that while deciding these applications ,this court is not suppose to conduct the mini trail to decide the alleged encroached by the plaintiff as contended by the defendants. Whether the plaintiff has claiming excess land belongs to the defendants or not needs to decided at full pledged trail. Therefore, at this stage this court is of the opinion that the plaintiff has made out prema faci case and other factors to consider these applications. Thus, this court has not hesitation to answer the points no. 1 to 3 in the **affirmative** ,accordingly this court answered the points no. 1 to 3 in the **Affirmative**.

15. **Point no.4**; For the above said reasons ,this court pass the following;

### **ORDER**

IA No. I & II filed by the plaintiff  
U/Order 39 Rule 1 and 2 r/w 151 of CPC  
are hereby allowed.

It is further order that the defendants, either acting by themselves or through their agents, Power of Attorney Holders, representatives, assigns etc, not to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property and not to obstruct the construction work in respect of the suit schedule property till pending disposal of the suit.

(Directed to the stenographer directly on the computer and after correction pronounced by me in the open court on this the 12<sup>th</sup> day of March 2021)

I/c Prl. Civil Judge & JMFC.,  
Hosakote.

**Order Pronounced in the open court  
vide separate sheet]**

**ORDER**

IA No. I & II filed by the plaintiff  
U/Order 39 Rule 1 and 2 r/w 151 of CPC  
are hereby allowed.

It is further order that the  
defendants, either acting by  
themselves or through their agents,  
Power of Attorney Holders,  
representatives, assigns etc, not to  
interfere with the plaintiff's peaceful  
possession and enjoyment of the suit  
schedule property and not to obstruct  
the construction work in respect of the  
suit schedule property till pending  
disposal of the suit.

I/c Prl Civil Judge & JMFC.,  
Hoskote.

