

**IN THE COURT OF THE I ADDL CIVIL JUDGE & JMFC.,
NELAMANGALA**

PRESENT: Smt Chinmayee.R.H., B.A.L. LL.B.,
I Addl. Civil Judge & JMFC,
Nelamangala.

Dated this the 27th day of November 2020

O.S.No.9/2020

Plaintiff/s: Smt Thimmarajamma
W/o Sri Venkatesh,
aged about 44 years,
R/at. Pete Beedi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

-V/s-

Defendant/s: 1. Smt Manjamma
W/o late Ganganna,
Aged about 61 years,

2. Sri Manjanna
S/o late Ganganna,
Aged about 40 years,

3. Sri Prakash
S/o late Ganganna,
Aged about 35 years,

All are R/at. No.420/2A,
Agasara Beedhi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

PARTIES IN IA.NO.1

Plaintiff/Applicant

Smt Thimmarajamma

/Vs/

Defendants/ Opponents

Smt Manjamma & Others

ORDER ON IA NO.1

The plaintiff has filed this application against the defendants for an order of Temporary Injunction to restrain the defendants or anybody claiming under them from interfering with the plaintiff's possession over the Suit schedule B and C property pending disposal of the above suit in the ends of justice and equity.

2. In the accompanying affidavit it is stated that originally suit schedule house belong to one Ganganarasaiah. The said Ganganarasaiah along with his son Hanumantharaju executed sale deed in favour of Shivanandappa S/o Veerabhadrapa under the registered sale deed dated 25.04.1996. Accordingly, the katha was effected in the name of Shivanandappa. After the death of Shivanandappa, the katha was transferred to his son Theerthaprasad. The said Theerthaprasad executed sale deed in favour of plaintiff on 06.11.2009 and since then the plaintiff is in peaceful possession and enjoyment over the suit schedule property. At the time of purchase of the property there was already a constructed building which was constructed by the plaintiff's vendor. After the purchase the plaintiff has renovated the internal walls and extended first floor building and have commenced to put up the compound wall on the southern side of the suit schedule property. The defendants are trying to interfere with the possession of the plaintiff by using unparliamentary words. In this regard the plaintiff had approached Thyamagondlu police station and as per the acknowledgement given by the police, the plaintiff has filed a suit in O.S.No.396/2017 before this court for the relief of Permanent Injunction. The defendants are neighbors and are residing towards the western side of the suit schedule property. The defendants are trying to claim right, title or

interest over the Suit schedule B and C property and thereby have interfered with the plaintiff's A, B and C schedule property. Towards southern side of the plaintiff's property, the plaintiff has left a passage of East-West: 16 feet, North-South: 4 feet for the purpose of air and light and also for using the drainage pipe. Towards western side of the plaintiff's A schedule property the plaintiff has left passage of 3 feet from East-West and 21 feet from North-South for her own use. The plaintiff has allowed the defendants to reach their house by using the said passage which is the suit schedule C property. The suit schedule B and C property comes within the boundary of A schedule property. The defendants are trying to encroach B and C schedule property. Though the defendants have no manner right, title or interest over schedule B and C property are trying to interfere with the plaintiff's possession. The plaintiff has made out a prima-facie case and balance of convenience lies in favour of plaintiff and if an order of Temporary Injunction is not granted the plaintiff will be put to irreparable loss and injury and thereby prays to allow the application.

3. The defendants have jointly filed written statement and the same is adopted as objection to the said I.A.No.1. The brief facts of the written statement averments are as follows:

Defendants have stated that the plaintiff has suppressed the true facts and is legally barred to grab the vacant land belonging to the defendants which is in existence behind suit schedule A property and the passage towards the southern side of A schedule property which is the C schedule property in the plaint. The vacant space behind A schedule property is the part of the property of the defendants bearing No.420/2A. The C schedule property which is the passage has been in existence from time immemorial and the same is used by the defendants and their family members since several decades. The B and C schedule property in the plaint is the only access to the reach the property of the defendants and their family members bearing 420/2A. Towards the western side of suit A property there exist the property of the defendants. The plaintiff has put up construction in her entire property without leaving any space towards west of A schedule property and in fact the plaintiff's construction is in excess of one feet of her entitlement in A schedule property. It is submitted that the alleged passage towards western side of A schedule property is not the passage and the said vacant space is the absolute property of the defendants and the same is part of property bearing No.420/2A and is the subject matter of counter claim. The C schedule property is the passage to reach the

defendants property and except C schedule property there is no other access to reach the defendants property. The vacant space left by the defendants is for the defendants exclusive use and enjoyment of the defendants and the same is part of property No.420/2A and thereby prays to dismiss the application with costs.

4. Heard the learned counsel.
5. Following points for arise for my consideration;
 1. Whether the plaintiff has made out prima-facie case for grant of Temporary Injunction?
 2. Whether the plaintiff proves that the balance of convenience lies in favour of the plaintiff for grant of Temporary Injunction?
 3. Whether the plaintiff proves that she would be put to irreparable loss and injury if an order of Temporary Injunction is not granted?
 4. What Order?
6. Considering the averments of the respective parties, documents produced and the arguments canvassed, my answer to the above points is as follows;

Point No.1	-	In the Negative
Point No.2	-	In the Negative

- Point No.3 - In the Negative
- Point No.4 - As per the final order for the following:

REASONS

Point No.1: The plaintiff claims that the B and C schedule properties are part and parcel of A schedule property and she is the absolute owner of the same while at the other end, the defendants specifically claim that C schedule property is the property of the defendants bearing No.420/2A and B schedule property is the path leading to reach their property i.e., 420/2A and that the plaintiff has constructed the house in the entire extent of 16x21 feet and has no left no space in the mentioned extent and in fact has exceeded the extent.

8. The documents produced by the plaintiff shows that the plaintiff is the owner of 16x21 feet i.e., A schedule property. It is pertinent to note that the defendants have not denied the ownership of plaintiff's 'A' schedule property. In this regard, at this stage, the schedule and boundaries play an important factor to decide the application. A sneak into the schedule mentioned by the plaintiff speaks that towards the eastern side of A schedule property there is road and towards the western

side is the defendants' property. Then the schedule mentioned in the Partition Deed dated:29.05.2012 produced by the defendants, mentions the existence of road towards eastern side and that the other three sides are surrounded by houses. Therefore from the schedule of both the plaintiff and defendants property, at this stage it can be noticed that the defendants have to reach their property through the road that is situated towards the eastern side of their property. Added to this , the plaintiff herself at para 12 of plaint has mentioned the usage of B and C schedule property by the defendants to reach their property.

9. Therefore, from the very description of the schedule and boundaries mentioned in the A schedule property and defendants' property bearing No.420/2A, it is apparently seen that defendants property is situated at the western side of the plaintiff's A schedule property and that the Partition Deed discloses that towards eastern side of the defendants' property there exists a road.

10. Had the plaintiff or her vendors constructed the house utilizing the entire space of 16x21feet or had left any passage as claimed by the plaintiff or is there any existence of road as claimed by the defendants to reach their property is a question of trial. At this stage ambiguity still exists. This court at this

stage opines that a substantial amount of oral and documentary evidence are required to prove that B and C schedule property are the part and parcel of A schedule property which exclusively belong to the plaintiff.

11. No doubt the existence of plaintiff and defendants property is not in dispute. Prima facie the Partition Deed of the defendants describe that there is a road to defendants' property towards the eastern side and the other sides are all covered up by houses. Moreover the plaintiff has also admitted that the defendants are using the passages in question to reach their property. The very purpose of granting Temporary Injunction is to preserve the property in dispute till adjudication of the rights of the parties. The court at this stage cannot come to any decision without the aid of sufficient evidence. As the property in question has to remain in tact, this court is of the opinion that the plaintiff has not made out a prima facie case at this stage for grant of Temporary Injunction and accordingly this point is answered in the Negative.

Point No.2 & 3: When compared, the balance of convenience, tilts more in favour of the defendants than that of the plaintiff. If the defendants are restrained from using the B and C schedule property that too at this stage, the defendants will be put to irreparable loss and injury than that

of the plaintiff. At this stage the plaintiff or the defendants have not shown any other alternative road or passage to reach the defendants' property. In absence of any alternate road or path to reach the defendants property, this court is of the opinion that balance of convenience does not lie in favour of plaintiff and also that this court at this stage does not foresee any irreparable loss and injury to the plaintiff and accordingly these points are answered in the Negative.

Point No.4: For the reasons discussed supra, I proceed to pass the following:

ORDER

IA.No1 filed by the plaintiff under Order 39 Rule 1 and 2 CPC is hereby dismissed.

(Directly dictated to Stenographer through computer, revised and corrected by me and then pronounced in the Open Court, on this, **the 27th day of November 2020**)

(Chinmayee.R.H.)
I ADDL. CIVIL JUDGE & J.M.F.C.,
NELAMANGALA.

