

IN THE COURT OF THE II ADDL. CIVIL JUDGE
& J.M.F.C., AT NELAMANGALA.

Dated this the 25th day of May, 2023

**PRESENT: SMT Chaithra L B.B.M. LLB.,
II Addl. CIVIL JUDGE
and J.M.F.C., NELAMANGALA**

O.S.NO.29/2020

Plaintiff :	Smt. Brinda W/o. Sri. M. B. Bopaiah, Aged about 48 years, R/at. No.16, 6 th Cross, 9 th Main K.N. Extension, Yeshwanthapura. Bangalore.
	Rep. By Sri.N.L.S. Advocate
	Vs.
Defendant/s:	1. Sri. Kemparaju S/o. Hanumanthaiah, Aged about 50 years. 2. Sri. Venkatesha S/o. Hanumanthaiah, Aged about 52 years. Both are R/at. Kempamma Devi Nagara, Shivanapaura Village, Dasanapuar Hobli, Bengaluru North Taluk. Bangalore Urban District.
	(Rep. By Sri G.M. Advocate for defendant No.1 and 2)

<u>RANK OF THE PARTIES ON I.A.-I</u>	
Applicant/Plaintiff : Smt. Brinda W/o. Sri. M. B. Bopaiah,	
(Rep. By Sri. N.L.S. Advocate)	
V/s	
Opponents/Defendants : Sri. Kemparaju S/o. Hanumanthaiah and another	
(Rep. By Sri. G.M. Advocate for defendant No.1 and 2)	

ORDERS ON I.A.No.I

This application is filed by the plaintiff under order 39 Rule 1 and 2 R/w. Sec.151 of CPC seeking to pass an ad interim order of temporary injunction against the defendants, by restraining the defendants, their agents, legal representatives, henchmen, servants, supporters or any other persons claiming any right under or them from interfering with the plaintiff's peaceful possession and enjoyment over suit schedule property in any manner till pending disposal of suit.

Schedule Property

All that part and parcel of Khatha No.195/21, new PID No.150200200701101263, property No.985/116-21 site No.21, formed out of Sy.No.116 Shivanapura Village, Dasanapura Hobli, Nelamangala Taluk, measuring East to

West:60 feet and North to South: 40 feet and bounded as follows:

East by:	Road
West by:	Site No.24
North by:	Site No.20
South by:	Site No.22

2. In the affidavit annexed to the application as well as in the plaint, it is contented that the property bearing Khatha **No.195/21, new PID No.150200200701101262, property No.985/116/21 site No.21**, formed out of Sy.No.116 Shivanapura Village, Dasanapura Hobli, Nelamangala, measuring East to West 60 feet, North to South 40 feet, which is the “suit schedule property was purchased by her under a registered sale deed dated 19.02.2010 executed by Smt. Ramakka W/o. Govindappa through registered GPA holder Sri. N.S. Gangadhar for valuable consideration of Rs.3,36,000/- and thereby plaintiff has acquired absolute right, title, interest

and possession over the suit schedule property. The Dasanapura Grama Panchayatha accepted the katha in her name with respect to the suit schedule property. The property was brought to assessment and accordingly, plaintiff is paying taxes to the said Grama Panchayat. And plaintiff is in peaceful possession and enjoyment of the suit schedule property without and hit and hindrance.

3. As such being the subject stood, the defendants are without any cause, interest, right over the suit schedule property they are trying to interference with the peaceful possession and enjoyment of plaintiff over the suit schedule property. The defendants have no any right they are utterly strangers to plaintiff property. The defendants have got malafide intention to harass the plaintiff by one or the other manner for only intention to squeezing the money from the plaintiff illegally.

4. The defendants surprisingly came near the suit schedule property on 14.01.2020 and tried to dispossess the

plaintiff from the suit schedule property illegally. They are using JCB to damage the Civil Enmities in the suit schedule property with antisocial elements. The defendants are having its political background and having a antisocial elements, they have got men and money in the locality. The defendants have got cultivating the bad habit to harass plaintiff for illegal gain. When the defendants trying to dispossess plaintiff and damage the civil enmities in the suit schedule property illegally, plaintiff questioned the illegal act of the defendants they are giving evasive answer to plaintiff. The said high hand illegal act of the defendants, resisted by plaintiff with the help of neighbors, while defendants going back from the suit schedule property they are openly proclaimed that they will come back with other antisocial elements and well equipped machinery to destroy the civil enmities in the suit schedule property as well as they are definitely trying to dispossess plaintiff from the suit schedule property and cause threat repeatedly their act with better force, when the defendants illegally catted against me. Plaintiff has to approach to the Madanayakahanahalli

police station for seeking protection. But, police have neither received the complaint nor acted as per the provisions they simply advise to plaintiff that the matter is civil in nature, the police orally instructed plaintiff to approach the civil court. In view of the said circumstances, the plaintiff finds no alternative remedy except to approach this Hon'ble court. With these plaintiff prays to allow the IA No.I.

5. On the contrary defendants filed written statement and memo to treat written statement as objection to IA No.I. In the written statement filed by the defendants, defendants denied all the contentions put forth by the plaintiff as false. The suit filed by the plaintiff against the defendants seeking relief of permanent injunction in respect of the suit schedule property is not at all maintainable either-in-law nor on facts. The suit is frivolous, fictitious with suppression of true facts. The plaintiff never in possession of the suit schedule property at any point of time and the suit schedule property is not at all existing and boundaries shown in the schedule never exist.

6. The defendants submits the true facts as follows:

The defendants submit that the defendants and their family members are the absolute owners of the land bearing Sy.No.166/P544, measuring to an extent of 1 acre 32 guntas situated at Shivanapuara Village, Dasanapura Hobli, Bengaluru North Taluk, which was granted in the name of Hanumanthappa, who is father of defendants through vide grant dated 12.01.1979 by the order of Deputy Commissioner, Bengaluru.

7. The defendants submits that after the grant in favour of Hanumanthappa S/o. Nanjappa, the RTC and mutation is effected in the name of Hanumanthappa in MR.No.19/1979-80 in respect of schedule property. The said Hanumanthappa and his family members are in physical possession and enjoyment of the written statement schedule property having all the revenue documents in his name.

8. The defendants submit that the one N.S.Gangadhar S/o. Shivarudraiah taking undo advantage of illiteracy and

backwardness of Hanumanthappa have obtained alleged registered General power of Attorney dated 05.06.2000 in his favour in respect of schedule property but before taking any alienation based on GPA on 09.09.2002 the original grantee Hanumanthappa died left his wife and children and grand – children. Due to death of principle the grantee Hanumanthappa, the GPA executed in the name of N.S. Gangadhar is stands cancelled.

9. The defendants submit that, during the life time of Hanumanthappa he converted the written statement schedule property through vide order BDS ALN SR(N)96/1997-98 dated 19.05.2000 by the Deputy Commissioner, Bengaluru. Thereafter the schedule property is converted from agricultural to residential purpose. After the death of Hanumanthappa his children and grand-children succeeded the schedule property and became absolute owners in possession.

10. The defendants submit that after the death of Hanumanthappa the said N.S.Gangadhar though he is aware

of the death of Hanumanthappa have tried to entered into illegal sale transactions hence the defendants and other Lrs of Hanumanthappa submitted an application to the sub-registrar Peenya Indl. Area to cancel the GPA dated 05.06.2000 executed by late Hanumanthappa. In this regard the sellers have filed writ petition No.27160/2019 before Hon'ble High court of Karnataka order dated 29.07.2019 with direction to Sub-registrar, to cancel the GPA and Encumbrance in respect of property. The Hon'ble High court of Karnataka disposed the said writ petition with a direction to sub-registrar to consider the application for the cancellation of GPA. The sub-registrar peeny Indl. Area on 21.09.2019 canceled the GPA I.e., document No.395/2000-01, volume -686, pages 183-189.

11. The defendants submit that, as submitted above the written statement schedule property is free from any encumbrances in view of cancellation of GPA dated 05.06.2000 executed by late Hanumanthappa in favour of N.S.Gangadhar and in view of death of Hanumanthappa died earlier to any alienation taken place based on alleged GPA by

N.S.Gangdhar based on GPA is not valid and the alleged purchaser cannot claim any rights based on alleged sale deeds executed by N.S.Gangadhar. The said N.S. Gangadhar without any right in respect of written statement schedule property in order to make unlawful gain have sold several sites in the written statement schedule property to the various persons including in faovur of plaintiff. As discussed herein above the defendants made out very clearly that the N.S. Gangadhar have no any rights or possession to alienate the written statement schedule property as a sites to anybody muchless to the plaintiff. Hence the plaintiff cannot claim any ownership or possession in respect of suit schedule property since the suit schedule property is part and parcel of written statement schedule property. The alleged vendor of the plaintiff never possessing any rights or possession in respect of suit schedule property. Hence the question of claiming rights or possession by the plaintiff does not arise and the plaintiff never conveyed valid rights by the alleged vendor through sale deed dated 18.03.2015 in respect of schedule property.

12. The defendants submit that, the original owner Hanumanthappa left his wife and children and grand-children consisting of more than 20 members and the legal heirs of Hanumanthappa already filed a comprehensive suit for partition in OS No.542/2018 on the file of Hon'ble Senior Civil Judge Nelamangala and there is an interim order also. In the said suit all the alleged alienation in respect of written statement schedule property are sought for declaration of null and void and does not bind upon the Lrs of Hanumanthappa including defendants herein. Absolutely no alienation made by the defendants or other Lrs of late Hanumanthappa in favour of plaintiff or in favour of anybody, under these circumstances the plaintiff cannot claim the alleged possession over the suit schedule property and cannot claim any ownership.

13. The defendants submit that, except alleged sale deed no other documents are in the name of plaintiff to show that on date of suit the plaintiffs was in possession. The title of the plaintiffs is not accordance of transfer of property act since

as on date of alleged sale deed the alleged vendor was not possessing any right.

14. The defendants submits that there is no layout plan issued by competent authority and never formed any sites though there is no existence of sites in the written statement schedule property wherefore that the plaintiffs claiming of injunction against this defendants does not arise for consideration hence the question of attempt to interfering in the suit schedule property against this defendants does not arise. The plaintiff suppressing the true facts have filed this present suit against only defendants though the plaintiffs is aware that late Hanumanthappa Lrs are morethan 20 members. With these contention defendants prays to dismiss the IA No.I.

15. Heard the arguments of the Learned Counsel appearing for the plaintiff. In spite of providing opportunity defendants failed to address the arguments on IA No.I.

Therefore arguments by defendants is taken as nil and posted for orders.

16. Now the following points arise for consideration of this Court are.

Point No.1: Whether the Plaintiff has made out prima-facie case for grant of Permanent Injunction as sought for?

Point No.2: Whether the balance of convenience lies in favour of the Plaintiff?

Point No.3: Whether the Plaintiff will be put irreparable loss and hardship, if IA No.1 is not allowed?

Point No.4 : What Order?

17. 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: *As per the final order for the following*

REASONS

18. **Point No.1:** Admittedly the suit is filed for the relief of permanent injunction by the plaintiff against the defendants. In support of the contention of the plaintiff, plaintiff produced copy of sale deed, copy of E-khatha extract and photos. On perusal of copy of sale deed one Ramakka through the GPA holder sold the suit schedule property for valuable consideration in favour the plaintiff. On perusal of copy of sale deed one Ramakka through the GPA holder sold the suit schedule property for valuable consideration in favour of the plaintiff. On the basis of the said sale deed, Khatha is effected in concerned grama Panchayath in favour of plaintiff.

19. On the contrary in order to substantiate the defendants contention, defendant, has produced genealogical tree issued by revenue department, grant certificate issued in favour of one Hanumanthappa, mutation extract No.19/79-80, wherein on perusal of said mutation extract, khatha is ordered to be effected in favour of Hanumanthatppa S/o. Nanjappa pertaining to Sy.No.116 measuring to an extent of 1 acre 32 guntas. Further defendants produced RTC for the year 2019.

Further defendants also produced copy of order of alienation made by Special Deputy Commissioner in the year 19.05.2000. On perusal of writ petition No.27106/2019 on the file of Hon'ble High court of Karnataka, it makes it clear that Hon'ble High court of Karnataka as given direction to Sub-registrar to consider the representation made by the defendants in the accordance with law. Accordingly sub-registrar Peeny canceled the GPA dated 30.08.2000.

20. Further defendants produced copy of plaint in OS No.542/2018 pending on the file of Hon'ble Senior Civil Judge Nelamangala. It is very clear from the document produced by the defendants that Hanumanthappa in whose favour Sy.No.116 is granted is passed away 09.09.2002. The said Sy.No.116 measuring to an extent of 1 acre 32 guntas is granted in favour of Hanumanthappa S/o. Nanjappa as per the order dated 01.09.1979.

21. Plaintiff counsel vehemently argued that the property one claimed by the defendants and property of Ramakka who executed GPA in favour of N.S.Gangadhar are entirely different.

Defendants has no manner of right, title and interest over the property bearing Sy.No.116. It is to be noted that defendant has produced sketch wherein Ramakka S/o. Govindappa also allotted 1 acre 20 guntas in Sy.No.116. The property of defendant and the property of Ramakka who executed GPA in favour of one N.S. Gangadhar are entirely different and phoded. Therefore defendant contention that disputing the title and the contention of property of plaintiff does not exist is not tenable. Ramakka has right to enter into GPA with N.S. Gangadhar. The only GPA is canceled by the Sub-registrar of Peenya is entered between defendants father i.e., Hanumanthappa and N.S. Gangadhar. The GPA entered between Ramakka and N.S. Gangadhar is not in dispute.

22. Defendant has not taken contention that the GPA entered by Ramakka is with respect to his property. Hence, documents produced by the plaintiff at this stage makes out prima facie case in favour of plaintiff. Further it is also to be noted that plaintiff is not a party to the partition suit filed in OS No.542/2018 on the file of Senior Civil Judge Judge

Nelamangala. **Therefore with this observation I answer Point No.1 in the Affirmative.**

23. **Point No.2 & 3:-** The second and third condition for granting interim injunction is that the balance of convenience must be in favour of the applicant and it is necessary to show that plaintiff suffers irreparable loss. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by not granting it.

24. In order to show that plaintiff is suffering irreparable loss and injury and comparative mischief caused by the defendants, plaintiff has produced photographs. Mere apprehension in the mind of the plaintiff of eminent threat to the suit schedule property is enough to grant an order of injunction. Therefore if an order of temporary injunction is not granted plaintiff will be put to irreparable loss and injury and balance of convenience tilts in favor of plaintiff. With these observations I answer **Point No.2 and 3 in the Affirmative.**

25. **Point No.4:** For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A. No.1 filed by the plaintiff under Order 39 rule 1 and 2 R/w. Sec.151 of CPC is hereby allowed.

Consequently defendant or his agent, attorneys, officials, subordinates, contractors, or employees or any person claiming any right through or under the defendant is hereby temporarily restrained from interfering with plaintiff peaceful possession and enjoyment of suit schedule property until pending disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly to the computer, typed by her corrected, signed and then pronounced by me in the open court this the **25th day of May, 2023**)

**(Smt.Chaithra L)
II ADDL.CIVIL JUDGE
& J.M.F.C. NELAMANGALA.**