

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

Dated this the 28th day of August 2019

PRESENT: Sri Arun S Gudigenavar
B.A., LL.B (Hon's) LL.M.,
Prl. Civil Judge & JMFC.,
Nelamangala.

O.S.No.211/2018

Plaintiff: The Archdiocese of Bangalore,
A Public Religious Charitable Trust,
No.75, Miller's Road, Benson Town,
Bangalore.

By its Sole Trustee
The Archbishop of Bangalore,
Presently Most Rev. Dr.Bemard
Moras, represented by his attorney
Rev. Fr.Deva Dass D
Aged about 40 years,

(By Sri R.M.Rosario, Advocate)

-V/s-

Defendants: 1. Sri H.R.Umesh,
S/o H.C.Raju,
Aged about 42 years,
R/at No.34, 2nd Cross,
Vidhanasouda Layout,
Laggere, Bengaluru.

2. Sri Narayanappa,
S/o Mahimanna,
Aged about 89 years,
3. Shashidhara,
S/o Narayanappa,
Aged about 53 years,

Defendant No.2 and 3 are
R/at Vajarahalli Village,
Kasaba Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

(D1 By Sri K.S.R, Advocate)
(D2 and D3 Exparte)

PARTIES IN IA.NO.1 and 2

Applicant/

Plaintiff: The Archdiocese of Bangalore,
A Public Religious Charitable Trust
Presently Most Rev. Dr.Bernard Moras,
Represented by his attorney
Rev. Fr.Deva Dass D

V/s

Opponents/defendants: Sri H.R.Umesh and others.

COMMON ORDER ON IA.NO.1 AND 2

The plaintiff has filed these applications under Order
39 Rule 1 and 2 of Civil Procedure Code seeking

temporary injunction order restraining the defendant No.1, his agents, servants etc., from alienating the suit schedule “Ga” property in any manner till pending disposal of the suit and restraining the defendant No.1 from changing the nature of “Ga” property in any manner till the pending disposal of the suit.

SCHEDULE “Ka” PROPERTY

All the piece and parcel of vacant land measuring 1 acre 10 guntas in Sy.No.39 of Nelamangala Village, Kasaba Hobli, Nelamangala Taluk, converted by the Deputy Commissioner, Bengaluru Rural District as per order bearing No.ALN(N): SR:21/1991-92 dated 24.06.1996 for the establishment of educational institutions, later reconverted for residential purpose by order No.ALN (Ne) CR 9/2004-05 dated 26.11.2004 bounded by;

East: Road,
West: Private property,
North: Private property,
South: Road.

SCHEDULE “Ga” PROPERTY

All the piece and parcel of vacant land measuring 12 guntas out of residential converted land 1 acre 10 guntas in Sy.No.39 Nelamangala Village, Kasaba Hobli, Nelamangala Taluk, by order of the Deputy Commissioner, Bengaluru Rural District as per order bearing No.ALN (Ne) CR 9/2004-05 dated 26.11.2004, bearing Nelamangala Town Panchayath katha No.7049/1 and bounded by;

East: Remaining portion of the same number,
West: Private property,
North: Private property,
South: Remaining portion of the same number.

2. Brief facts of the plaintiffs' case are as under:

The plaintiff in his affidavits annexed to these applications has stated that he is the absolute owner of "Ka" schedule property having purchased the property through Sale Deeds dated 22.10.1998 and 23.10.1998 from the defendant No.2. The defendant No.3 has put his signature to both the Sale Deeds as a witness to the said sale transactions. Further the plaintiff has stated that the defendant No.2 has got converted the said properties for the establishment of educational institution as per the order bearing No.ALN(N) SR 21/1991-1992 dated 24.06.1996. Since the date of purchase he has been in peaceful possession and enjoyment of the said "Ka" schedule property. But due to over sight it has been wrongly mentioned as Sy.No.39 of Vajaranahalli in both the Sale Deeds instead of Nelamangala Village. He has also stated that in order to rectify the said error he filed suit in O.S.No.520/2005 against defendant No.2 and 3

seeking the relief of Declaration and permanent injunction. The said suit was later transferred to the Hon'ble Senior Civil Judge, Nelamangala and was re-numbered as O.S.No.268/2009 which came to be decreed on 02.07.2010. The said decree has not been challenged by defendant No.2 and 3.

3. The plaintiff has further stated that he also filed suit in O.S.No.21/2017 seeking the relief of rectification of error occurred in Sale Deeds dates 22.10.1998 and 23.10.1998 which is still pending for adjudication. He has also stated that the defendant No.2 and 3 by taking undue advantage of error crept in the Sale Deeds got converted the entire "Ka" schedule property for residential purpose and sold the same in bits to defendant No.1 and other six purchasers. The defendant No.2 and 3 have sold a bit of site property in favor of defendant No.1 as per Sale Deed dated 27.01.2006 which is described as "Ga" schedule property. Therefore, defendant No.2 and 3 were not having any manner of right, title and interest so as to sell "Ga" schedule property in favor of defendant No.1. Therefore, the very transaction is null and void and the Sale Deed is liable to

be cancelled. The plaintiff has further stated that one V.Srinivasamurthy filed suit against him for the relief of Declaration and permanent injunction in O.S.No.486/2014 on the filed of Hon'ble Senior Civil Judge, Nelamangala with respect to "Ka" schedule property which is still pending for adjudication. He has also stated that he has made out prima-facie case and balance of convenience lies in his favour. If temporary injunction is not granted it would cause him irreparable injury. Hence, he has prayed to allow his application.

4. On the other hand, the defendant No.1 has filed memo adopting his written statement as objection to the present applications. The defendant No.2 and 3 have been placed exparte. The defendant No.1 has denied the entire averment of applications as false and baseless. Further he has contended that he is not aware of the suits filed by plaintiff in O.S.No.520/2005 and O.S.No.21/2017. Further he has contended that he is not aware of suit filed by V.Srinivasamurthy in O.S.No.486/2014. However, he has admitted that the defendant No.2 and 3 have sold "Ga" schedule property in his favour through Sale Deed dated 27.01.2006.

Further, he has contended that originally the land measuring 1 acre 12 guntas in Sy.No.39 of Nelamangala Village belong to defendant No.2 who acquired the same as per order dated 29.08.1981 passed by the Land Tribunal. The defendant No.2 has got converted the said land for residential purpose as per conversion order dated 29.06.1991 and thereafter at the request of the land owner the same was permitted to be utilized for educational purpose. Thereafter, the defendant No.2 has filed application converting the said land for residential use. After getting the said order he has purchased 12 guntas of land from defendant No.2 and 3 out of 1 acre 12 guntas in Sy.No.39 of Nelamangala Village. Since, then he has been in possession and enjoyment of said land by mutating the katha in his favour.

5. The defendant No.1 has further contended that the defendant No.2 and 3 have executed GPA in favor of one N.Narayanswamy and R.Ravi who have formed residential sites and also sold various sites to different persons through Sale Deeds. The defendant No.1 has further contended that the plaintiff and the vendor of the plaintiff colluded and committed fraud on the purchasers

of sites in Sy.No.39 of Nelamangala Village. He has also contended that the plaintiff cannot seek the prayer to cancel Sale Deed executed between defendants as the property purchased by the plaintiff is entirely different in extent, boundaries and the name of the village. He has also contended that the suit of the plaintiff is barred by limitation. Therefore, he has prayed to dismiss the application.

6. Based on the above rival contentions of the parties the following points arise for my consideration.

POINTS

1. Whether the plaintiff has made out prima facie case in his favor?
2. Whether the plaintiff shows that the balance of convenience lies in his favor?
3. Whether the plaintiff shows that, if temporary injunction is not granted it would cause his irreparable injury?
4. What order?

7. Heard the arguments of both sides. Perused the documents placed on record.

8. My findings to the 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 the final order for the following;

REASONS

9. **Point No.1 to 3:** These three points are taken up together for common discussion as they are interlinked with each other and also to avoid repetition of facts.

10. It is admitted fact the defendant No.1 has purchased "Ga" schedule property from defendant No.2 and 3 through registered sale deed dated 27.01.2006. According to plaintiff he is the absolute owner in possession and enjoyment of suit schedule "Ga" property and "Ga" schedule property is part and parcel of "Ka" schedule property. According to plaintiff the name of the village "Vajaranahalli" has been wrongly mentioned in the Sale Deeds dated 22.10.1998 and 23.10.1998 instead of "Nelamangala Village". Therefore, in this regard he filed suit in O.S.No.520/2005 which was transferred to the Hon'ble Senior Civil Judge, Nelamangala and

renumbered as O.S.No.268/2009 which came to be decreed on 02.07.2010. Further according to plaintiff he filed in O.S.No.21/2017 seeking the rectification of the name of village mentioned in both the Sale Deeds dated 22.10.1998 and 23.10.1998 which is still pending for adjudication. Further according to plaintiff one V.Srinivasamurthy filed suit in O.S.No.486/2014 on the file of Hon'ble Senior Civil Judge, Nelamangala seeking the relief of declaration and permanent injunction which is still pending for adjudication. Further according to plaintiff if the defendant No.1 alienates or change the nature of "Ga" schedule property then it would cause him irreparable injury. Hence, he has prayed to pass the order of temporary injunction restraining the defendant No.1 from alienating or changing the nature of "Ga" schedule property till the pending disposal of the suit.

11. On the other hand, the defendant No.1 has categorically denied the allegations of the plaintiff. Further he has contended that originally the land measuring 1 acre 12 guntas in Sy.No.39 of Nelamangala

Village belong to defendant No.2 who acquired the same as per order dated 29.08.1981 passed by the Land Tribunal. The defendant No.2 has got converted the said land for residential purpose as per conversion order dated 29.06.1991 and thereafter at the request of the land owner the same was permitted to be utilized for educational purpose. Thereafter, the defendant No.2 has filed application converting the said land for residential use. After getting the said order he has purchased 12 guntas of land from defendant No.2 and 3 out of 1 acre 12 guntas in Sy.No.39 of Nelamangala Village. Since, then he has been in possession and enjoyment of said land by mutating the katha in his favour. Further he has contended that the plaintiff and the vendor of the plaintiff colluded and committed fraud on the purchasers of sites in Sy.No.39 of Nelamangala Village. He has also contended that the plaintiff cannot seek the prayer to cancel Sale Deed executed between defendants as the property purchased by the plaintiff is entirely different in extent, boundaries and the name of the village. He has also contended that the suit of the plaintiff is barred by

limitation. Hence, he has prayed to dismiss the applications.

12. The plaintiff in support of his contention has produced GPA, the copies of Sale Deeds dated 22.10.1998 and 23.10.1998, Encumbrance certificates, the copy of conversion order, the certified copy of Judgment and Decreed passed in O.S.No.268/2009, the certified copy of plaint filed in O.S.No.268/2009, the copy of Sale Deed dated 27.01.2006. On the other hand, the defendant No.1 has produced the copy of Sale agreement dated 27.09.2004, the copy of development cum General Power of Attorney deed dated 16.01.2005, the copy of registered sale deed dated 27.01.2006.

13. It is relevant to note that the plaintiff in his plaint has sought relief of mandatory injunction directing defendant No.2 and 3 to execute cancellation deed in favor of defendant No.1 canceling Sale Deed dated 27.01.2006. Further he has sought the relief that in case the defendant No.2 and 3 fails to execute then the court

may execute cancellation deed on behalf of defendant No.2 and 3 in favor of defendant No.1 canceling the said Sale Deed dated 27.01.2006 and the consequential relief of permanent injunction. It is relevant to note that the plaintiff in the present application has sought the relief of temporary injunction restraining the defendant No.1 from alienating or changing the nature of "Ga" schedule property in any manner till the pending disposal of the suit. It is further relevant to note that the plaintiff has not sought the cancellation of Sale Deed dated 27.01.2006 itself but sought for direction to the defendant No.2 and 3 to execute cancellation deed in favor of defendant No.1 canceling Sale Deed dated 27.01.2006 which is not permissible under the law. Had the plaintiff sought the relief of cancellation of Sale Deed dated 27.01.2006 then the matter would have been different. But the plaintiff has not sought the said relief for the reasons best known to them. It is relevant to note that the interim relief must be given to the party in aid of the main relief. Since, main relief sought by the plaintiff cannot be granted in his favour as he has not sought the

cancellation of Sale Deed dated 27.01.2006. Therefore, I am of the opinion that the plaintiff has failed to show prima-facie case and also fails to show balance of convenience lies in his favour. Therefore if temporary injunction is not granted it would not cause any hardship to the plaintiff. Accordingly, I answer to Point No.1 to 3 in the Negative.

14. **Point No.4**: For the aforesaid reasons, I proceed to pass the following;

ORDER

IA No.1 and IA.No.2 filed by the plaintiff under order 39 Rule 1 and 2 of Civil Procedure Code are hereby rejected.

No order as to cost.

(Dictated to Stenographer directly over computer typed by him, corrected, signed and then pronounced by me in the open court this the 28th day of August 2019)

Sd/-
Prl. Civil Judge & JMFC.,
Nelamangala.