

**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 17th day of December, 2020

O.S.No.125/2020

Plaintiff/s: Sri H.Nagamma
W/o N.Raveera,
aged about 43 years,
R/at. No.62/2, Ganganna Building,
1st 'C' Cross Road, Military Hotel,
1st Main Road, Kaveripura,
Kamakshipalya,
Magadi Main Road,
Bengaluru – 560 079.

-V/s-

Defendant/s: Sri Lakshminarayana
S/o not known,
Major in age,
R/at. No.3, 4th Cross, 4th Main,
Agrahara Dasarahalli,
Magadi Main Road,
Bengaluru – 560 079.

PARTIES IN IA.NO.1**Plaintiff/Applicant**

Sri H.Nagamma

/Vs/**Defendant/ Opponent**

Sri Lakshminarayana

ORDER ON IA NO.1

The plaintiff has filed this application seeking an order of Temporary Injunction to restrain the defendant or anybody under him from disturbing the possession of the plaintiff in any manner pending disposal of this suit in the interest of justice and equity.

2. In the affidavit annexed to the application, the plaintiff has stated that the property bearing katha No.127/128, Assessment No.127 and 128, Site No.75 and 82 measuring East West 30 feet and North South 70 feet is the suit schedule property and was originally granted in favour of Byralingaiah. The said Byralingaiah and his sons sold the suit

schedule property in favour of Puttashamaiah on 07.09.1992. The said Puttashamaiah on 02.12.1995 executed a notarized General Power of Attorney in favour of Boramma to look after the affairs of the schedule property and had also given sale permission to the Attorney holder. On the basis of the said GPA, Boramma was enjoying the property. On 16.12.1998 the said Boramma sold the schedule property in favour of Swarnamba. The said Swarnamba sold the suit schedule property to one Smt Rukmini. The plaintiff has purchased the suit schedule property from the said Rukmini on 03.11.2014. After the purchase of the property, the plaintiff has submitted application for transfer of katha before Dasanapura Grama Panchayathi and the same is pending consideration. Subsequent to the purchase of the suit schedule property by the plaintiff, the plaintiff has put up a compound wall around the suit schedule property. The plaintiff is planning to put up a house in the suit schedule property and accordingly obtained plan from the concerned authority. At that time, the defendant interfered with the cleaning work of the plaintiff and hence the plaintiff with no option lodged a complaint to the police station but the police have not taken the complaint. The defendant has no manner of right, title, interest and possession over the suit schedule property and is attempting to demolish the compound wall put up by the plaintiff. It is further stated that

the plaintiff has made out a prima facie case, balance of convenience lies in her favor 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 defendant has filed written statement and the same is adopted as objection to IA.No.1. The brief facts of the written statement averments is as follows:

It is stated that the plaintiff has not approached the court with clean hands and there is no existence of the alleged suit schedule property. The plaintiff has not derived any valid right, title, interest or possession over the unidentifiable alleged suit schedule property as her vendors have not derived any right, title, interest or possession over the same. The defendant along with his father are bonafide purchasers and they are in possession of their purchased property. The defendant denies the plaintiff and her predecessors' title. The plaintiff has produced the created documents along with the plaint for wrongful gain. It is submitted that Sy.No.127 of Machohalli Village belong to defendant and his father Hanumanthaiah. Smt Hombakka and her sons have alienated 13 guntas of land in Sy.No.127 of the said Village in favour of defendant and his father under a registered Sale Deed dated:01.12.2005. Since then, the defendant and his father are in peaceful possession

of the purchased land. Prior to the sale of the said 13 guntas of land in Sy.No.127 the mutation was standing in the name of Hombakka. After requisition of the said property the revenue documents are re-numbered as Sy.No.127(1). Post purchase of 13 guntas of land in Sy.No.127, the defendant has converted the same for non-agricultural purpose and had laid barbed wire with supporting stone pillars and also appointed a watchman. In February 2008 the defendant and his father received the legal notice claiming the defendant's property and the said persons initiated a suit against the defendant and his vendors before this court in O.S.No.460/2008, 461/2008, 462/2008 and 463/2008 seeking the Declaration and possession. The said suits ended in dismissal and the same is appealed before the Hon'ble Senior Civil Judge, Nelamangala. During the pendency of the aforementioned original suits, the plaintiff herein has purchased the alleged suit schedule property from her vendor. Thus, the defendant and his father are bonafide purchasers and thereby prays to dismiss the application with exemplary costs.

4. Heard the learned counsels.

5. The following points arise for my consideration:

1. Whether the plaintiff has established prima facie case for grant of Temporary Injunction?
 2. Whether the plaintiff proves that the balance of convenience lies in her favor 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. Based on the materials placed on record and coupled with the arguments canvassed, my answer to the above points is as follows:

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| 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 has sought for an order of Temporary Injunction against the defendant to restrain him from disturbing her possession over the suit schedule property

which is the property bearing katha No.127/128, Assessment No.127 and 128, Site No.75 and 82, measuring East West 30 feet and North South 70 feet in total 2100 Sq. Feet situated at Machohalli Village, Dasanapura Hobli, Bengaluru North Taluk and the said property is bounded on East by: Site No.76 and 81, West by: A private property, North by: Road, and South by: Pipeline Road. The plaint and affidavit averments discloses that the said property has flown from one hand to many. It is submitted that the suit schedule property was granted to Byralingaiah and subsequently was purchased by Puttashamaiah by Sale Deed dated:07.09.1992. The said Puttashamaiah executed a notarized GPA dated:02.12.1995 in favour of Boramma and the said Boramma on the basis of the notarized GPA has executed a Sale Deed in favour of Swarnamba on 16.12.1998 and the said Swarnamba executed a Sale Deed in favour of Smt Rukmini vide Sale Deed dated:29.08.2002 and the said Rukmini further executed a registered Sale Deed in favour of the plaintiff Smt Nagamma on 03.11.2014. The plaintiff submits that since the date of the execution of the Sale Deed she is in possession and enjoyment of the suit schedule property. At the other end, the defendants categorically denies the very existence of the suit schedule property as claimed by the plaintiff. It is stated by the defendant that the so called suit schedule property of the

plaintiff does not exist nor the plaintiff's vendor have any title to the alleged suit schedule property.

8. The plaintiff at this stage has to make out a triable case before this court so as to make out a prima facie case. The plaintiff in support of her application has produced the copies of the RTCs, Survey Records, Sale Deeds, Encumbrance Certificates and police complaint. The RTCs given by the plaintiff are pertaining to Sy.No.127 and 128. The perusal of these RTCs does not tally with the extent mentioned in the schedule appended to the plaint. There is also no recital by the plaintiff as to how a larger extent mentioned in the RTCs pertaining to Sy.No.127 and 128 of Machohalli Village have reduced to the extent mentioned in the schedule appended to the plaint. Further, the recital in the Sale Deed executed by Boramma in favour of Swarnamba dated:16.12.1998 discloses the existence of a house but the said mention of the house is conspicuously not seen in the subsequent Sale Deeds dated:29.08.2002 and 03.11.2014.

9. Generally the possession is always followed by the title. In the instant case also the plaintiff claims her possession over the suit schedule property by virtue of the title deeds of her and her vendors. As the flow of title pertaining to the suit schedule property at this stage finds to be doubtful, this court

is hesitant to grant an order of Temporary Injunction at this stage. Further, no documents at this stage points out the plaintiff's possession over the suit schedule property. Hence, this court is of the opinion that a good amount of evidence is required to prove the possession of the plaintiff over the suit schedule property. The pleadings and the documents adduced by the plaintiff at this stage does not establish a prima facie case in favour of plaintiff and accordingly, this point is answered in the Negative.

Point No.2 & 3: The plaintiff has to prove that on weighing the balance of convenience, the court should be satisfied that the plaintiff would be put to untold hardship and irreparable injury when compared to that of the defendant. In the case on hand, as none of the documents apparently indicate the plaintiff's possession, this court is of the opinion that the balance of convenience does not tilt in favour of the plaintiff nor would the plaintiff be caused irreparable loss and injury 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 R/w 151
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 17th day of December, 2020**)

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

