

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 3rd day of March 2020

O.S.No.396/2017

Plaintiff/s: Sri Thimmarajamma
W/o Venkatesh,
Aged about 38 years,
R/at. Pete Beedi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

/Vs/

Defendant/s: Smt Manjamma
W/o late Ganganna,
aged about 60 years,
R/at. Agasara Beedhi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

PARTIES IN IA NO.1

Plaintiff/Applicant: Sri Thimmarajamma

/Vs/

Defendant/Opponent: Smt Manjamma

ORDERS ON IA.NO.1

The plaintiff has come up with this application against the defendant, her agents, or any other persons claiming under her from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

2. In the affidavit annexed to the application the plaintiff submits that she has filed this suit against the defendant for the relief of Permanent Injunction. The plaintiff is the owner in possession and enjoyment of the property bearing Assessment No.397/3 measuring East West 16 feet and North South 21 feet situated at Thyamagondlu Town which is the suit schedule property. The said property was purchased by the plaintiff from the family of Thirtha Prasad S/o Shivanandappa vide Sale Deed dated:06.11.2009 and

accordingly, katha was effected in the name of plaintiff. Since the date of purchase, the plaintiff is in peaceful possession and enjoyment of the suit schedule property. The defendant is a neighbour and has no right over the suit schedule property and is now interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. In this regard, the plaintiff has given complaint to the police but they have not taken any action and have instructed the plaintiff to approach the civil court. It is submitted that the plaintiff has made out a prima facie case, balance of convenience lies in favour of plaintiff and if an order of Temporary Injunction is not granted, the plaintiff would be put to irreparable loss and injury and thereby prays to allow the application.

3. The defendant has put her appearance through her counsel and filed written statement along with the counter claim and has adopted the same as objection to IA.No.1.

4. The brief facts of the written statement is as follows:

It is submitted that the suit schedule property includes free passage available to the defendant and her family members within the boundary of the suit schedule property towards southern side of the same measuring East West 17 feet and North South 3 feet for the ingress and egress to the

house of the defendant and the family members situated towards western side of the said passage. The plaintiff is barred to grab the passage existing behind the suit schedule property towards the southern side and said passage has been in existence from time immemorial and same has been used by the defendant and her family members since several decades and is the only access to reach the property of the defendant situated towards the western side of the suit schedule property bearing No.420/2A and 419. This defendant seriously disputes the plaintiff's title, ownership and possession of the suit schedule property and also the source of title. The plaintiff and her vendor in order to grab the written statement schedule property have given excess measurement and wrong boundaries. It is submitted that it is the plaintiff who is intending to grab the written statement schedule property which is a passage exclusively available to the defendant and her family members and the same is the only access to reach the defendant's property. The existence of the written statement schedule property is from time immemorial and is used by the defendant as the only access to reach their property bearing No.419 and 420/2A. On 25.12.2012 there was a partition among the defendant and her children and by way of panchayath parikath and in the said partition there is a reflection of existence of the written statement schedule

property in F & C schedule and thereby this defendant prays that the defendant has acquired a right to use the written statement schedule property existing towards eastern side of the written statement schedule property and also a portion of the schedule property by way of prescription and to restrain the plaintiff from interfering with the possession and enjoyment of the defendant and her family members over the written statement schedule property as a passage to reach their property and thereby prays to dismiss the application with costs.

5. Heard the learned counsels.
6. The following points arise for my consideration:
 1. Whether the plaintiff has made out a 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?

7. In view of the pleadings, counter claim, documents attached in support of the respective cases and coupled with 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 to 3: These points are taken up together as they involve common discussion and also for the sake of convenience.

9. The plaintiff claims her title and possession over the suit schedule property by virtue of the Sale Deed dated:06.11.2009 said to have executed by her vendor Theerthaprasad in favour of plaintiff. The suit schedule property is a Gramatana property bearing Assessment No.397/3 measuring East West 16 feet and North South 21 feet totally measuring 336 Sq. feet consisting of a house bounded on East by: Road, West by: House of Ganganna, North by: House of Bhagyamma, South by: House and Site of

T.R.Sundar Raj. By virtue of this Sale Deed the katha stands in the name of the plaintiff to the said extent and accordingly, the plaintiff has paid tax to the concerned authority. On the other hand, the defendant who is positioned at the western side of the suit schedule property denies the plaintiff's ownership and possession and also the source of title of the plaintiff's vendor. It is the claim and contention of this defendant that there is a free passage available to the defendant within the boundaries of the suit schedule property towards southern side of the same measuring East West 17 feet and North South 3 feet for the ingress and egress of the defendant's house by the defendant and her family members. In this regard, the defendant has also put forth her counter claim seeking that the defendant has acquired a right to use the written statement schedule property existing towards eastern side of the written statement schedule property and also a portion of the schedule property by way of prescription. On going through the pleadings it is patent that the dispute between the parties is towards the southern side of the suit schedule property in which the plaintiff claims her exclusive possession over that portion while the defendant claims her right of way to reach her property. It is also the contention of the defendant that it is the only access available to the

defendant and her family members to reach her property and there is no other way to reach her property.

10. The plaintiff has approached this court seeking the relief of Temporary Injunction to restrain the defendant from interfering with her peaceful possession and enjoyment of the suit schedule property. The very purpose and object of granting the interim relief is the preservation of property in dispute till the legal rights and conflicting claims of the parties before the court are adjudicated. In other words, it is to maintain and preserve status-quo at the time of institution of proceedings and to prevent any change in it until the final determination of the suit. While deciding an application for Temporary Injunction the court should guard itself against any mini trial. Applying these basic principle to the case on hand, the defendant herein claims her right of way to approach her property and further contends that the southern portion of the suit schedule property is the only way to reach the defendant's property. It is also to be borne in mind that the defendant has questioned the very root of the title and possession of the plaintiff over the suit schedule property alleging that the vendor of the plaintiff has wrongly mentioned the boundaries and extent to defraud the defendant. As the defendant has come up with the counter claim, claiming her right of way by

way of prescription this court is of the opinion that to adjudicate the matter, evidence both oral and documentary are necessary. Hence, this court is of the opinion that the property in question has to be preserved until adjudication of the rights of the parties herein.

11. It is also to be noted here that whether the written statement schedule property is the only way to reach the defendant's property, a full fledged trial has to be conducted and at this stage granting Temporary Injunction in favour of the plaintiff would lead to other consequences.

12. The balance of convenience does not tilt in favour of the plaintiff as the defendant herein is claiming her right by way of counter claim to reach her property through the written statement schedule property and till adjudication of the same the property should be kept intact. Further, this court does not foresee any irreparable loss and injury to the plaintiff but if an injunction is granted the defendant would be restrained from reaching her property. As the defendant has come up with the counter claim seeking right to use the written statement schedule property by way of prescription, I find no loss to the plaintiff but on the other hand if an order of injunction is granted the defendant would definitely be put to irreparable

loss and injury. In view of my above discussion, I answer all the above points in the Negative.

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

ORDER

The application filed by the plaintiff under Order 39 Rule 1 and 2 R/w 151 of 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 3rd day of March 2020)

(Chinmayee.R.H.)
I Addl. Civil Judge & JMFC.,
NELAMANGALA.

