

**IN THE COURT OF III ADDITIONAL CIVIL JUDGE &
J.M.F.C. AT NELAMANGALA**

Present: Sri.Deepu M.T. B.A.L, LL.B.
III Addl. Civil Judge & J.M.F.C.,
Nelamangala.

Dated this the 15th day of April 2023

O.S.No.412/2021

Plaintiff: Sri M.Chandrashekara,
S/o Madaiah,
Aged about 72 years,
R/at Paramanna Layout,
Nelamangala Town,
Bengaluru Rural District.
(By Sri AS., Advocate)

V/s

Defendants: 1. Sri Raju,
S/o Late Girirajashetty,
Aged about 60 years,
R/at Kannika Jewellery,
Pete Beedi, Nelamangala Town,
Bengaluru Rural District.

2. Sirimane Properties,
No.480, 2nd Floor, 1st Block,
3rd Stage, Basaveshwara Nagara,
Bengaluru-71.

3. The secretary,
Shree Siddartha Education
Society, Siddartha Nagara,
Tumkur Taluk and District.

(D1 by Sri NRN., Advocate)

(D2 by Sri NHP., Advocate)

(D3 Exparte)

ORDERS ON I.A.NO.I

The plaintiff has filed this application Under Order 39 Rule 1 and 2 of Civil Procedure Code praying to restrain the defendant No.1 and 2 and their agents, servants, anybody claiming under them from trying to make a road in schedule property by disfiguring it, during the pendency of this suit.

Schedule Property

The agricultural property bearing Sy.No.35/4 measuring 4 guntas situated at Byadarahalli village, Kasaba Hobli, Nelamangala Taluk, Bengaluru Rural and bounded by:

East: Foot path
West: Others property
North: others property
South: Road

2. The plaintiff has sworn to an affidavit annexed to the application that the plaintiff has filed this for the relief of permanent injunction with respect of the plaintiff schedule property. The plaintiff averments may be read as part and parcel of this affidavit in order to avoid the repetition of facts. The plaintiff is the absolute owner of plaintiff schedule property by virtue of sale deed dated 20.04.2000 and accordingly, the plaintiff is in possession of the plaintiff schedule property. The katha of the plaintiff

schedule property has been mutated to the name of the plaintiff. Meanwhile the defendant No.3 alone fabricating acquisition proceedings over plaintiff's property behind back of the plaintiff. The same was quashed in W.P.No.40876/1995 dated 02.09.1998. The defendant No.1 and 2 who are the real estate agents illegally making arrangement to make a road in the schedule property so as to the get road to their property. It was tried by defendant prior to a week back on 07.10.2021. In view of that, they are making attempt to make the road in the agricultural land by disfiguring the schedule property is illegal. The defendant No.1 and 2 are the land grabbers. They can do anything so as to make a road in the schedule property, they were trying to make a road through the JCB and other machineries illegally. They threaten the plaintiff had not object to road activities. Accordingly, the plaintiff has issued notice to them also. In spite of that they are not yielding their act specifically. Hence, order of injunction is absolutely necessary one. The plaintiff is unable to restrain the activities of the defendant No.1 and 2. The plaintiff has made out prima-facie case and balance of convenience in favour of the plaintiff. If the application is not allowed, the plaintiff will be put into irreparable loss and the application is allowed no prejudice to caused to the defendants. Hence,

on all these grounds prayed to allow the application.

3. After service of summons, the defendant No.3 remained absent, hence, he placed ex parte. After service of summons, the defendant No.1 and 2 have appeared and filed their written statement along with memo praying to treat written statement as objection to I.A No.1. Accordingly, the written statement of defendant No.1 and 2 is treated as objection to I.A No.1. Though the defendant No.1 and 2 have filed separate written statements, they have taken common contention in their written statements. In the written statement the defendants No.1 and 2 have denied the entire plaint averments as false and frivolous. It is further submitted that the plaint schedule property was acquired by the government of Karnataka as per the notification dated 18.08.1995. Further the defendant No.3 herein has challenged the said notification in W.P.No. 40876/1996 and on 02.09.1998, the W.P. petition was allowed and quashed the entire notification leaving liberty to the government to make fresh order and fresh notification, if they are so advised but only after providing an opportunity of being heard, the defendant No.3 herein. As per the Judgment of Hon'ble High court of Karnataka in said Writ Petition, the Assistant Commissioner of

Doddaballapura Sub division as per the order dated 18.08.1999 passed an order vide No.LAQ/SR.03/87-88 after following the guideline issued by the Hon'ble High court Of Karnataka. The owner of the plaint schedule property had also received compensation awarded by the government in respect of plaint schedule property. Accordingly, plaint schedule property was vested in Government on 18.08.1999. Hence, the question of plaintiff purchase the plaint schedule property on 09.2.2000 does not arise. The plaintiff knowing the true facts with respect to the plaint schedule property being acquired by the government by colluding with influenced persons has challenged the katha of the plaint schedule property as per M.R.No.10.1999-2000, but the same was canceled and the name of defendant No.3 was entered in respect of the schedule property as MR.No.5/2001-02. Therefore, the plaintiff has not approached this court with clean hands. Hence, on all these grounds prayed to dismiss the application filed by the plaintiff.

4. Heard the arguments of both the parties. Perused the materials available on record and written argument filed by both the parties.

5. The following points would arise for consideration of this court:

1. Whether the plaintiff has made out prima-facie case?
 2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether the plaintiff suffers irreparable loss and injury, if temporary injunction is not granted?
 4. What order?
6. Findings of this court on 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 final order for the following:

REASONS

7. **Point No.1:** The plaintiff has filed this suit for the relief of permanent injunction against the defendants. Through the instant application the plaintiff has sought for temporary injunction, restraining the defendant No.1 and 2 from trying to make a road in plaintiff schedule property by disfiguring it, pending disposal of the suit. It is the specific case of the plaintiff that he is the absolute owner in possession and enjoyment of the plaintiff schedule property by virtue of sale deed dated 09.02.2000. In support of the application, the plaintiff has produced the documents i.e., copy of sale deed dated 09.02.2000 executed in favour of plaintiff, MR and RTC extracts,

copy of order passed in W.P.No. 20875/1995, legal notice dated 07.10.2021, RPAD receipt and postal acknowledgement.

8. On the other hand, the defendant No.1 and 2 have denied the case of the plaintiff and took the contention that the plaint schedule property has been acquired by the government as per order of Assistant Commissioner, Doddaballapura Sub division on 18.08.1999. therefore, the question of purchasing the plaint schedule property by the plaintiff on 09.02.2000 does not arise. In support of the case of the defendant No.1 and 2, they have furnished the documents i.e., copy of notification No.LAQ/SR.3/1987-88, copy of MR No.5/2001-02 and copy of Judgment passed in W.P.No.40876/1995.

9. I have perused the pleadings, application, objection and documents furnished by both the parties. It is the assertion of the plaintiff that the plaintiff has purchased the plaint schedule property through registered sale deed dated 09.02.2000 and accordingly the plaintiff is in possession and enjoyment of the plaint schedule property and katha, revenue entries mutated to the name of the plaintiff. On the other hand, the defendant No.1 and 2 have disputed the title and possession of plaintiff over the

plaint schedule property. The defendant No.1 and 2 have taken specific contention that on 18.08.1999, the Government has acquired the plaint schedule property and compensation amount has given to owner of the plaint schedule property. A perusal of copy of sale deed dated 09.02.2000, it depicts that one Basavaraju S/o Jnanamurthachar and Thimmadasappa S/o Doddabylappa have sold the plaint schedule property in favour of the plaintiff. A perusal of mutation register extract and RTC extract it depicts that the katha has been mutated to the name of the plaintiff. A perusal of award passed by Assistant Commissioner, Doddaballapura sub division in LAQ/SR.3/1987-88, it depicts that on 18.08.1999 the government has acquired some property along with plaint schedule property herein and award compensation amount to landlords. Accordingly, the MR entries mutated and recent RTC with respect to plaint schedule property stands in the name of defendant No.3. Therefore, at this stage, as per the documents available on records it appears that before executing sale deed dated 09.02.2000, the plaint schedule property has been acquired by virtue of LAQ/SR.3/1987-88 on 18.08.1999 itself. The said fact has been suppressed by plaintiff. When the plaintiff suppressed material fact, he is not entitled for discretionary relief. Hence on assessing the

materials on record, at this stage, the plaintiff has failed to make out prima-facie case in his favour. With these observations, this court has answered the point No.1 in the Negative.

10. **POINT NO.2 and 3:** These points are interlinked with each other. Hence, these points are taken up together for common discussion. As the plaintiff and defendants have failed to establish a prima-facie case in his favour these two points do not survive for consideration as Prima facie case is harbinger to other considerations. In this regard it would be relevant to refer to the decision rendered

Gowrishankar Swamigalu V/s. Siddhaganag Mutt & Ors reported in ILR 1989 KAR 1701, wherein the Hon'ble High Court of Karnataka held as follows:-

“...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself...”.

Accordingly, the Point No.2 and 3 are answered the 'Negative'.

11. **Point No.4:** In view of the reasons and discussion made on points No.1 to 3, this court proceed to pass the following ;

ORDER

The I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of Civil Procedure code is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer directly through computer, transcribed by him, the transcript corrected and pronounced by me in the open court on this the 15th day of April, 2023)

Sd/-

(Deepu.M.T)

III Addl. Civil Judge and JMFC.,
Nelamangala.