

KABR610107222024



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

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

Dated this 19th day of November, 2024

ORIGINAL SUIT No.352/2024

Plaintiff:

Sri. Thimmaiah,
S/o late Venkatappa,
Aged about 73 yeas,
R/at Kerekathiganurupalya,
Sompura Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

(By Sri K.N.S., Advocate)

V/s

Defendant:

Sri. Chandrappa,
S/o Late. Naraharaiah,
Aged about 68 years,
R/at Kerekathiganuru palya,
Sompura Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

(By Sri.B.R.D., Advocate)

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 pass an interim order of temporary injunction and restraining the defendant from not to form the layout in the schedule property pending disposal of the suit in the interest of justice and equity. The description of schedule property is as hereunder.

Plaint/application Schedule Property

All the piece and parcel of land bearing old Sy.No.14 new Sy.No.14/5 measuring an extent of 0.21 guntas situated at Kerekathiganuru, Sompura Hobli, Nelamangala Taluk, Bengaluru Rural District bounded on:

East : Plaintiff Vendor's property,
West : Gangaiah's property,
North: Kempaiah's property,
South: Gangaiah S/o Lenkappa's property.

2. In the annexed affidavit the plaintiff has sworn that the plaintiff is the absolute owner in lawful possession and enjoyment of schedule property. The father of the plaintiff and brother of plaintiff had purchased the schedule property from Naraharaiah, Siddagangaiah S/o Gangaiah

through registered sale deed dated 05.05.1972. Since the date of purchase the said Thimmaiah and Venkatappa were in lawful possession and enjoyment of the schedule property and all the revenue records mutated to their names. Brother of father of the plaintiff by name Thimmappa has no issues and the plaintiff is the S/o Venkatappa. After demise of father of the plaintiff and his brother, the plaintiff got katha through MR No.T47/2023-24 and all the revenue records are transferred into name of the plaintiff and plaintiff is paying taxes to the concerned authority as absolute owner of the schedule property. The father of the plaintiff and his brother have purchased property bearing old Sy.No.14 and measuring 0-20 Guntas but as per Akarband the plaintiff is in possession and enjoyment of 0.21 guntas in old Sy.No.14 and new Sy.No.14/5 of Kerekathiganuru Village. The defendant has no manner of right, title or interest over the schedule property he is strangers to the schedule property and to the family of the plaintiff. The defendant's father Naraharaih and his brother have executed a registered sale deed in favor of father of the plaintiff and his brother but defendant is unnecessarily trying to form layout in the schedule property illegally. The same is resisted by the plaintiff with great

difficulty. The defendant being the powerful person in locality he is quite capable of doing anything. The plaintiff also lodged complaint before the jurisdiction police but they have not taken any action against the defendant. Hence without any alternative the plaintiff approached this court with this application. The plaintiff has made out a prima-facie case, balance of convinces lies in his favor. If injunction is not granted the plaintiff will be put to irreparable loss and which cannot be compensated by any means. Hence, on all these grounds prayed to allow the application.

3. On the other hand after service of summons the defendant has appeared through his counsel and filed objection to this application. In the objection the defendant has denied the entire affidavit averments as false and frivolous. It is further submitted that the plaintiff is suppressing the changed circumstances and came before this court with unclean hands and suppressed material facts. The plaintiff is not at all owner of schedule property and he is not having possession of schedule property as alleged by him. One Thimmappa and Venkatappa were jointly purchased the land bearing Sy.No.14 measuring 0.20 guntas of Kerekathiganuru Village, Sompura Hobli, Nelamangala Taluk

bounded on East by property belongs to Naraharaiah, West by Property belongs to Gangaiah, North by Property belongs to Kempaiah and South by Property belongs to Gangaiah and Lankappa through registered sale deed dated 05.05.1972 from the father of the this defendant namely Naraharaiah and Siddagangaiah. As per the Phodi, the property purchased by the Thimmappa and Venkatappa assigned to Sy.No.14/6 of Kerekathiganuru Village, Sompura Hobli, Nelamangala Taluk, Bengaluru Rural District. Only for knock of the valuable property of this defendant, the plaintiff herein is shown wrong boundaries to get favorable order as if he is in the possession of the landed property in Sy.No.14/5 of Kerekathiganuru Village, Sompura Hobli, Nelamangala Taluk. On 15.11.2011, the plaintiff had obtained a loan by mortgaging the landed immovable property bearing Sy.No.14/1 measuring 0-20 Guntas of Kerekathiganuru Village, Sompura Hobli, bounded on East by Property belongs to Naraharaiah, West by Property belongs to Gangaiah, North by Property belongs to Kempaiah and south by property belongs to Halla (Kariyappa) by showing this boundaries he had obtained a sum of Rs. 40,000/-. All this facts are well within the personal knowledge of the plaintiff

and he intentionally suppressed all these facts. The plaintiff has not made this defendant as party to the R.A No.(N) No.09/2022 before the assistant commissioner Doddaballapura and get favorable order behind the back of this defendant. As per the sale deed dated 05.05.1972, the Thimmappa and Venkatappa had purchased the 0-20 Guntas in Sy.No.14 of Kerekathiganuru Village, Sompura Hobli, Nelamangala Taluk and how can he plead that, he had 21 Guntas without any documentary proof. The said order passed in R.A No.(N) No.09/2022 before the assistant commissioner of Doddaballapura is not at all binding on this defendant. The boundaries mentioned in the sale deed and aforesaid order are not at all tallied with each other either surveyor not any authorities ADLR had not at all issued any notice to the defendant and visited the spot without verifying the physical possession and enjoyment of landed property bearing Sy.No.14/5 measuring 20 guntas.

4. It is further submitted that the grandfather of the defendant namely Gangaiah had purchased the landed property bearing Sy.No.14 measuring 0.20 guntas of Kerekattiganur Village Sompura Hobli, Nelamangala Taluk bounded on East by property belongs to Doddavenkatappa,

West by by property belongs to Thimmappa, North by Property belongs to Kempaiah and South by remaining property in same survey Number, Gangaboyi. The said property was purchased through registered sale deed dated 14.04.1955 from Kariyappa S/o Thirumalagiri. Since the date of purchase till date defendant's and family members are in possession and enjoyment of said property. In the year 1960 there was a new phodi made in respect of Sy.No.14 of Kerekattiganuru Village and assigned new survey number as Sy.No.14/1 Doddavenkatappa S/o Thirumalagieri, Sy.No.14/2 Mariyappa S/o Linganna, Sy.No.14/3 Gangaiah S/o Thimmaiah, Sy.No.14/4 Doddavenkatappa, Sy.No.14/5 Gangaiah S/o Lingappa, Sy.No.14/6 Peddaiah S/o Thimmappa and said facts are within the knowledge of the plaintiff and same has been intentionally suppressed. The son of the plaintiff herein namely V.T. Raghavendra had mutated the mutation entries in respect of the Sy.No.14/6 measuring 0-17 Guntas by virtue of registered Gift Deed executed by the plaintiff in favour of his son and said facts are suppressed by the plaintiff before this Court. One Smt.Venkatamma had filed O.S. No.995/2022 before the Hon'ble Senior Civil Judge at Nelamangala by seeking relief of partition in respect of the

schedule property and she had obtained a interim order of temporary injunction against the plaintiff herein on 06.11.2023. The plaintiff herein has filed established prima facie case balance of convenience lies in his favor. If the application is rejected no harm will be caused to the plaintiff. The defendant is having very good and prima facie case, balance of convenience lies in his favor. If the application is allowed the defendant will be put to great loss and hardship. Hence, on all these grounds prayed to dismiss the application.

5. Heard the arguments of the learned counsel for the plaintiff and defendant. Perused the materials available on record.

6. 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 ?

7. Findings of this court on the above 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 final order for the following:

REASONS

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

9. In order to consider the application under Order XXXIX Rule 1 & 2, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the plaintiff if injunction is not granted. The existence of a prima facie goes in the matter of granting injunction is really the harbinger or the all 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. But if there was a prima facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiffs directly to an injunction without crossing the other hurdles in between. Even granting that the plaintiff has an invincible prima facie case, he will not be entitled *ex debito justitiae*, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case. Keeping these principles I would like to discuss the facts of the present case on hand.

10. The plaintiff in order to succeed in this application has to prove prima facie case in his favour and balance of convenience which has to be in favour of the plaintiff and also he is called upon to prove the irreparable loss and injury, which would be caused to him if this application is rejected. With this basic principles in mind, now let me analyze the factual matrix on the basis of materials placed on record.

11. The plaintiff has filed this suit for the relief of permanent injunction and such other reliefs. Through the instant application, the plaintiff has sought for temporary injunction by restraining the defendants from not form Layout in the schedule property pending disposal of the suit.

12. It is the contention of the plaintiff that the father of plaintiff and his brother have purchased the schedule property from Naraharaiah, Siddagangaiah S/o. Gangaiah through registered sale deed dated 05.05.1972 and the brother of the plaintiff father by name Thimmappa had no issues and the plaintiff is son of Venkatappa. After demise of father of the plaintiff Venkatappa and his brother Thimmappa the plaintiff succeeded the plaint schedule property. As per the sale deed the father of the plaintiff and his brother have purchased 20 guntas in Sy.No.14, but as per akarband plaintiff is in possession and enjoyment of 21 gunta and same has been mutated in the name of the plaintiff and plaintiff is in possession of the plaint schedule property. On the other hand the defendant has denied the case of the plaintiff and took contention that the father of plaintiff and his brother were purchased only 20 guntas in Sy.No.14 and plaintiff is claiming 21 gunta which is more than measurement

mentioned in the sale deed. Hence plaintiff is not entitled for the relief as sought for.

13. I have perused the pleadings, interim application, annexed affidavit, objection, documents available on record and arguments canvassed by the both sides. It is the case of the plaintiff that the father of plaintiff by name Venkatappa and his brother Thimmappa had purchased property bearing Sy.No.14 measuring 20 guntas and after their demise the plaintiff succeeded said property and as per akarband the plaintiff is in possession of property measuring 21 gunta and accordingly khatha of 21 gunta mutated in the name of the plaintiff and plaintiff is in possession of plaint schedule property. Defendant has no manner of right, title, over the schedule property. Despite of the same of the defendant trying to formed the layout over the schedule property. At this stage on perusal of sale deed dated 05.05.1972 depicts that the father of the plaintiff by name Venkatappa and Thimmappa have purchased property bearing Sy.No.14 measuring 20 gunta from the father of the defendant and his brother Siddagangaiah. As per mutation register extract the property bearing Sy.No.14 measuring 20 gunta has been mutated to the name of the father of plaintiff and his brother

Thimmappa. On perusal of RA (N)09/2022 depicts that Assistant Commissioner Doddaballapura ordered to mutate the khatha of property bearing Sy.No.14 new Sy.No.14/5 measuring 21 gunta in favour of the plaintiff. As per the RTC extract the Sy.No.14/5 stands in the name of the plaintiff. At this stage as per the spot verification report depicts that the plaintiff is in possession property measuring 21 guntas in Sy.No.14/5.

14. On the other hand the defendant has denied the case of the plaintiff and took contention that the father of plaintiff and his brother had purchased only 20 gunta in Sy.No.14 and now claiming property measuring 21 gunta which is excess measurement mentioned in the sale deed. On perusal of sale deed dated 14.04.1955 depicts that Gangaiah S/o Linganna who is the father of the Naraharaiah (father of Defendant No.1) had purchased property bearing Sy.No.14 measuring 20 gunta. Therefore at this stage it appears that the grand father of the defendant No.1 had purchased property bearing Sy.No.14 measuring 20 gunta through sale deed dated 14.04.1955 and father of the defendant No.1 and his brother have sold the said property in favour of the father of the plaintiff and his brother Thimmappa. Ofcourse the

measurement mentioned in the sale deed and mentioned in the RTC are not tallied, according to the sale deed 20 guntas of property had been purchased, but as per the order passed by the Assistant Commissioner Doddaballapura the khatha of property measuring 21 gunta had been mutated to the name of the plaintiff after spot verification. Accordingly at this stage it appears that the khatha of schedule property stands in the name of the plaintiff and he is in possession schedule property. Therefore this court is of the opinion that there is arguable case in favour of the plaintiff. Under such circumstances the plaintiff has made out prima facie case and balance of convenience lies in his favour. If the application is not allowed the plaintiff will be put to irreparable loss than the defendant. With these observation this court has answered Point No.1 to 3 in the Affirmative.

15. **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

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code is hereby allowed.

The defendant or his agents or anybody claiming under him are hereby temporarily restrained not to form the layout in the plaint schedule property in any manner till pending disposal of the suit.

In view of facts and circumstances of the case, no order as to costs.

(Dictated to the stenographer directly through computer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 19th day of November, 2024)

(Deepu.M.T)
Prl. Civil Judge and JMFC.,
Nelamangala.