

KABR610115702023



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

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

Dated this 10th day of January, 2025

ORIGINAL SUIT NO.484/2023

Plaintiffs: 1. Sri. Venkataramaiah M,
S/o. Late Munigangaiah,
Aged about 68 years,
R/o Vaderahalli Village,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

(By Sri , A.S., Advocate]

V/s

Defendants: 1. Sri. V.G. Jayaramaiah,
S/o. Late Gangappa,
Aged about 48 years,

2. Sri. V. Harsha Jayaram,
S/o. V.G. Jayaramaiah,
Aged about 26 years,

3. Sri. V. Yatheen Jayaram,
S/o. V.G. Jayaramaiah,
Aged about 24 years,

All are R/o Vaderahalli Village,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

4. The development Officer,
Huskur Grama Panchayathi,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

**(By Sri Y.H.P., Advocate for D1 to D3
and D4 placed Exparte)**

ORDERS ON I.A.NO. 2

The plaintiffs have filed this application under order 39 rule 1 and 2 of Civil Procedure Code praying to grant interim order by restraining the defendants No.2 and 3, their agents or anybody in any manner not to interfering over schedule property during pendency of this suit. The description of schedule property is as here under.

Schedule property

The house property having old katha No.27/3, new katha No.53/53 totally measuring east to west 60 feet and

north to south 17.6 feet comprising Tamarind tree, Hittalu, Garbage pit, situated at Vaderahalli village, Dasanapura Hobli, Bangalore North Taluk, Bangalore Urban District bounded on as follows:

East by : Katha No.27/4 Venkataramaiah's house,
West by : Venkataramaiah's vacant place,
North by : Venkataramaiah's vacant place,
South : Govindaiah's children vacant place,

2. In the annexed affidavit to the application, the plaintiff No.1 has sworn that the plaintiff is the absolute owner of schedule property and is ancestral property of the plaintiff. The plaintiff is enjoying schedule property as per family arrangement. The schedule property is basically hay stock area/Hittalu and there is also a Garbage pit. The plaintiff has also raised Tamarind tree in the schedule property. In fact the schedule property was surrounded by Cactus(Kalli) plants, but the said Cactus plants are remaining only towards northern side. There was no objection or disturbance was there to the property of plaintiff from many decades. The defendant No.1 being a powerful man in the locality fabricated sale deed, gift deed from the unlawful vendors

over the property. There is no relation to the property of the plaintiff or their properties to alleged. The defendant No.2 and 3 on the guise of sale deed, gift deed interfering to the property of the plaintiff again and again. The defendants No.1 to 3 also lodged police complaint against the plaintiffs. The defendant No.4 being panchayath head, he is fabricated records on the influence of defendants No.1 to 3. The boundaries, extent as actual sought are now in schedule, but defendant No.4 maintained wrong boundaries in the records also. The plaintiff unable to protect the property from defendants No.1 to 3 and their henchmen. They are politically powerful persons in the area. The plaintiff is poor villager and required an order of injunction against defendants No.1 to 3. The police are also causing trouble to plaintiff on the strength of defendants No.1 to 3 influence. The balance of convenience and prima facie case lies in favour plaintiff. If an order is not granted, the plaintiff will be put to irreparable loss. Hence, on all these grounds prayed to allow the application.

3. On the other hand the defendant No.1 to 3 have appeared through their counsel and filed written statement

and memo praying to treat the written statement as objection to this application. In the written statement the defendants have denied the entire case of plaintiff as false and frivolous. It is further submitted that the defendant No.1 is the father of the defendant No.2 and 3 and defendant No.2 and 3 were jointly got registered gift deed dated 05.03.2020 from defendant No.1 with respect to gramatana property janjer No.43 and Serial No.43 measuring to an extent of east to west 100 feet and north to south 50 feet. The said property was mutated E-khata in favor of defendant No.2 and 3 and they also got the gift deed in another property from defendant No.1 i.e., granatana property janjer No.108/108 measuring to an extant of east to west 85 feet and north to south 40 feet and also got mutated the E-khata in the office of the defendant No.4. Further the defendant No.2 and 3 were got the gift deed from the defendant No.1 on the same day and they were in peaceful possession and enjoyment of the said properties and the said two properties are vacant properties. The defendant No.2 and 3 were fixed the stone pillar with respect to the above said properties boundary without any disturbance but the above said plaintiffs were trying to grab the defendants valuable properties without any right, title,

interest or possession over the said properties. The present plaintiffs are no way connected with the defendants family and they are strangers to the defendants family and also above said properties.

4. It is further submitted that the above mentioned properties were purchased by the defendant No.1 with respect to gramatana property No.43/43 measuring to an extent of east to west 100 feet and north to south 50 feet was purchased from V.N Nagaraju @ V.N Naganna and others through sale deed dated, 25-02-2009. The defendant No.1 was purchased another property bearing No.108/108 measuring to an extent of east to west 85 feet and north to south 40 feet from Narasimhaiah through registered sale deed dated 13-08-2009. According to the sale deed the said properties were mutated to the name of the defendant No.1 by the defendant No.4. The above said properties are self-acquired properties of the defendant No.1 and subsequently the defendant No.1 was executed the gift deed in favor of the defendant No.2 and 3 and accordingly khata of said properties mutated to the defendant No.2 and 3 and they are in possession of said properties. The defendant No.2 and 3

are the absolute owners in possession of the said properties by virtue of gift deed. But as per the plaint schedule and contention taken by them they were narrated in Schedule property old khata No 27/3 and new No.53/53 is their property and they were mentioned the measurement east to west 60 feet and north to south 17.6 feet, further there is no document to show the ownership of the plaintiff as per measurement mentioned by them in their plaint. There is no single piece of document to show the ownership of the plaintiff. But the plaintiffs were simply filed the false suit against these defendants for wrongful gain and also they were trying to interfere with the possession of defendants over the above mentioned properties. The plaintiffs have no legal right to file this suit against the defendants and they don't have such kind of documents to show their measurement, hence the claim of the plaintiff is not maintainable. The schedule properties valued more than Rs.15,00,000/-, but the plaintiff was wrongly assessed the valuation and they are not paid the correct court fee as per that ground the present suit is not come up with jurisdiction. Hence on all these grounds prayed to dismiss the application.

5. Heard both sides and perused the materials on record. the following points arise for consideration of this court:

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the plaintiffs prove that the balance of convenience lies in their favour?
3. Whether the plaintiffs establishes that they would be put to 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

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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 final order for the following: |

REASONS

6. **POINT No.1:-** 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 debita

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.

7. 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.

8. I have perused the pleadings of both parties, application, annexed affidavit, objection and arguments of both parties. The plaintiff has filed this suit for the relief of declaration and permanent injunction against the defendants in respect of schedule property. Through the instant application the plaintiff has sought for temporary injunction against the defendant No.2 and 3 from by restraining the defendant No.2 and 3 from interfering to the possession of

plaintiff over schedule property. It is the specific case of the plaintiff that the plaintiff has acquired the schedule property from their ancestors and they are the absolute owners and in possession of schedule property. The defendants have no manner of right title interest over schedule property. Despite of the same the defendants have got created sale deed and gift deed and trying to interfere to the possession of plaintiff over schedule property. In support of their application the plaintiff has furnished copies of documents i.e., photographs, CD, from No.9, tax paid receipt, gift deed dated 05.03.2020, sale deed dated 13.08.2009, encumbrance certificate, and E-katha form No.9.

9. On the other hand the defendants have denied the case of the plaintiff as false and frivolous. It is further contended that the defendant No.1 has purchased two properties i.e., property bearing No.43/43 measuring east-west 100 feet and north-south 50 feet and property bearing No.108/108 measuring east-west 85 feet and north-south 40 feet through register sale deeds and thereafter the defendant No.1 had gifted said properties in favor of defendant No.2 and 3 through register gift deed. Accordingly katha of said

properties stands in the name of defendant No.2 and 3. The plaintiffs have no manner of right over said properties. Further the plaintiffs have no documents show that they are the absolute owners in possession of property measurement shown in the schedule property. Despite of the same the plaintiffs are trying to interfere to the possession of defendants over said two properties. In support of the objection of the defendants No.2 and 3, they have furnished copies of documents i.e., sale deed dated 25.02.2009 executed in favor of defendant No.1 in respect of property bearing junger No.43 serial No.43 east-west 100 feet and north-south 50 feet, sale deed dated 13.08.2009 executed in favor of defendant No.1 in respect of property bearing junger No.108 serial No.108 measuring east-west 85 feet and north-south 40 feet, gift deed dated 05.03.2020 executed by defendant No.1 in favor of defendant No.2 and 3 in respect of property junger No.43 serial No.43 measuring east-west 100 feet and north-south 50 feet and property junger No.108 measuring east-west 10 feet and north-south 40 feet and another one property. Form No.9, E-katha stands in the name of defendant No.1 in respect of property junger No.43/43 and 108/108.

10. I have perused the materials available on record and arguments of both side. It is specific case of the plaintiff that he is the absolute owner and in possession of schedule property and same has been acquired by his ancestors. The defendants have no manner right title over schedule property. At this stage on perusal of form No.9 furnished by the plaintiff depicts that the father of plaintiff had acquired property bearing No.27/3 measuring 25X30. But in the present schedule of the plaint and application the property bearing old katha No.27/3 and new katha No.53/53 measuring east-west 60 feet and north-south 17.6 feet. Which is against to the said document. According to the pleading of the plaintiff itself he has acquired the schedule property from his ancestors and relied on said form No.9 document. Therefore based on what document the plaintiff has mentioned the measurement of schedule property is not explained by the plaintiff. Moreover the boundaries mentioned in the plaint/application schedule property and boundaries mentioned in the form No.9 are totally different. Except said document other documents furnished by the plaintiff belongs to the defendants. Moreover the plaintiff

relied on photographs and CD to prove his possession of schedule property. By considering the said photographs and CD could not find out the possession of plaintiff over schedule property.

11. On the other hand the defendants have denied the measurement of schedule property belongs to the plaintiff and denied the title of the plaintiff over measurement mentioned in the schedule property. Though the plaintiff contented that he is in possession and enjoyment of schedule property, the plaintiff at this stage has not furnished cogent documents to establish his possession over schedule property as measurement mentioned in the schedule property. Further except pleadings the plaintiff has not furnished any documents to show that he is in possession of schedule property as measurement shown in the schedule at this stage. In the absence of the same at this stage this court cannot come to conclusion that the plaintiff is in possession of schedule property as narrated in the plaint schedule. Therefore this court is of the opinion that the full fledged trial is required to find out the possession of plaintiff over schedule property. Accordingly, at this stage the plaintiff has not furnished documents to show that he is in possession of

schedule property as mentioned in the plaint/application schedule. Under these circumstances this court is of the opinion that the plaintiff has failed to establish prima facie case lies in his favour. Accordingly, with these observations this court has answered point No.1 in the Negative.

12. **Points No.2 and 3:** These points are taken up together for common discussion to avoid repetition of facts. As the plaintiff has 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 by **Hon'ble High Court Of Karnataka In 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, with all these observations, this court has answered point No.2 and 3 in the 'Negative'.

13. **Point No.4:** In view of the reasons and discussions made in Points No.1 to 3 , I proceed to pass the following :-

ORDER

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

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

(Dictated to the Stenographer directly on computer, transcribed by her on computer, same is corrected and then pronounced by me in the open court on this the 10th Day of January, 2025).

(Deepu.M.T.)
Prl. Civil Judge & JMFC
Nelamangala.