

**IN THE COURT OF SENIOR CIVIL JUDGE &
JMFC., CHINTAMANI**

Dated this the 4th day of July 2020.

:: PRESENT ::

**Sri.K.M.Rajendra Kumar, *L.L.M, M.Phil*
Senior Civil Judge & JMFC.,
Chintamani.**

OS No.14/2013

PLAINTIFF/S: 1. **Chennappa.**
 S/o.Late Narayanappa,
 aged about 54 years,
 and 3 others.

V/s

DEFENDANT/S: 1. **Munivenkatappa**
 S/o.Late Chowdappa,
 aged about 75 years,
 and 22 others.

I.A.No.11

APPLICANT/S: Sri.Chanppa and 3 others.

V/s

OPPONENT/S: Sri.Munivenkatappa and 22 others.

** ** *

ORDERS ON IA NO.11

The plaintiffs have filed IA No.11, under Order 39 rule 1 and 2 of CPC, praying this court to grant ad interim exparte temporary injunction to restrain the 1st defendant, his agent and PA holder or any person authorized by him from not to interfere and not to construct the building in item no.1, Sy.No.4/4A measuring **17guntas** out of **1acre 4 guntas** which is in their lawful and peaceful possession and enjoyment over the said suit schedule property until the disposal of the suit, for the reasons stated in the accompanying affidavit.

2. The said application is supported with an affidavit sworn to by the 1st plaintiff. **In the affidavit it is averred that, the plaintiffs are the absolute owners and persons in possession of the suit properties.** They acquired the suit properties through their grand father by name Late Chennappa, S/o.Thimmaiah who had purchased the suit properties under the registered sale deed vide registration No.1127/1947-48 dated 26.12.1947 from its earlier lawful owner by name Narayanamma, W/o.Late Hanumappa after the purchase of the same the said Chennappa was in continuous

possession over the suit properties till his death. That after the death of their father by name Narayanappa, S/o.Late Chennappa they are in continuous possession and enjoyment of the suit properties till today. They are also paying tax to the Government regularly without fail and they have lost the original sale deed No.1127/1947-48 dated 26.12.1947 at the time of demolishing their old house, hence they are furnishing certified copies of the same along with G tree and these documents clearly goes to show the ownership and relationship over the suit properties. That, after the death of said Chennappa they have become the absolute owners and enjoyment of the suit properties, and have become absolute owners and person in possession of the suit properties without anybodies disturbances.

3. It is further averred that after the death of said Chennappa the defendants are colluded with revenue authorities and got changed their names in to the RTCs. In the suit item no.1, Sy.No.4/4A of Koganahalli village, the defendants no.2 and 3 have changed their names into the RTC extract in the fraudulent method in 2nd item of the suit property Sy.No.4/10 of Koganahalli village,

defendant no.4 to 6 and 9 have changed their names by fraudulent method in item no.3 of the suit property old Sy.No.4/8, new Sy.No.4/14, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/24, 4/25, 4/26 of Koganahalli village. The defendants no.7, 8, 10, 11, 12, 13, 14 to 23 have changed their names in the fraudulent method, in 4th item of the suit property Sy.No.24/1B of Banahalli village, the defendant no.1 to 3 have entered into their names by fraudulent method, in item no.5 of the suit property Sy.No.45/2 of Banahalli village, the defendant no.14 has entered his name into the RTC extract by fraudulent method, in 6th item of the suit property Sy.No.45/4 of Banahalli village, the defendant no.14 has entered his name in to the RTC extract by fraudulent method. All the defendants are colluded with the revenue authorities have done this so, but they do not have any rights, title, possession or interest in the said properties.

4. That the defendants do not have right, title, interest or possession of the suit properties but they are trying to take advantage of their names in the RTC extract and they are trying to dispossess and trying to

obstruct the agricultural operation of the plaintiffs over the suit property. The defendants are politically very influential persons and economically very strong persons. If this court has not restrained them by suitable order of injunction, otherwise the defendants succeed their action into threats and dispossess them from their lawful possession over the suit properties and they do not have any right to do so. That the plaintiffs are very poor persons and are unable to resist the illegal acts of the defendants and the defendants are trying to obstruct and dispossess them from their lawful possession over the suit properties by denying their title over the suit properties, hence they filed this suit for declaration of title as well as permanent injunction to protect their lawful right over the suit properties.

5. That the plaintiffs have made out a prima facie case. The balance of convenience is in their favour by granting an order as prayed for in the application. If the IA is allowed no prejudice will be caused to the other side. If this IA is not allowed they will be put to great hardship and legal injury which cannot be compensated

at any means. By contending so, the plaintiffs pray to allow the application.

6. On the other hand the defendant no.1 to 3 have filed objections to the said application contending that the application is not maintainable either in law or on facts of the case and same is liable to be dismissed in limine. The application is highly misconceived. The present suit along with application filed by the plaintiff with malafide intention and they have not approached with clean hands. The suit is filed by the plaintiffs for declaration and permanent injunction against the defendants to knock off the properties of these defendants and harass them by filing one or the other application.

7. It is contended that the suit is filed in the year 2013 and now they are in 2020. The plaintiffs have not at all interest to proceed with the case on merits. The plaintiffs have not filed any application to seek injunction order when other defendants have constructed the building in the suit properties after filing the suit. The plaintiffs have filed an appeal before the Assistant

Commissioner in RA 287/2015-16 against the mutation order No.123-9 of the year 1991-92 passed by the Tahsildar, Chintamani in favour of defendants with regard to the suit properties and same was dismissed.

8. It is further contended that the plaintiffs have not preferred any appeal against the order passed by the Asst. Commissioner. In the said appeal the plaintiffs are claiming 1acre 8 guntas but now they are claiming 1acre 4 guntas of which only 17 guntas. There is inconsistent pleas taken by the plaintiffs. The plaintiffs have not challenged the registered sale deed dated 20.06.1957 with regard to item no.1 of the property which is standing in the name of Chowdappa who is the father of first defendant. Under the registered sale deed dated 19.08.1955 the plaintiffs father and other members have transferred their right, title interest over the property item no.1 in favour of B.Venkataravanappa, S/o.Sonnegowda. In turn said B.Venkataravanappa sold the item no.1 of the property in favour Chowdappa who is the father of these defendants. Under the registered partition deed of the year 2002 the defendants were partitioned the item no.1 and other joint family

properties. Since from 1957-58 the defendants were/are in lawful possession of the item no.1 along with other properties and all the revenue documents are standing in their names.

9. That, the defendants have got prima facie case and balance of convenience lies in their favour. If the application is not allowed no loss or injury caused to the plaintiffs on the other hand if the application is allowed the defendants will be put to great hardship and injury. By contending so, the defendant no.1 to 3 prays to dismiss the application with costs.

10. Heard and perused the record.

11. The following points arise for my consideration:

POINTS

1. Whether the plaintiffs have made out a prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to hardship and irreparable loss if application is rejected?
4. What order?

12. My answer to 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

POINT NO.1 TO 3:

13. Since the above points are inextricably mixed up with each other, they are taken up together for discussion to avoid repetition.

14. Before going into the merits of the case, I would like to bestow my attention to the well settled principle of law which has to be considered by the trial courts while entertaining an application under Order 39 Rule 1 and 2 of CPC.

15. In Dalpat Kumar Vs. Prahalad Singh **AIR 1993 SC 276**, Hon'ble Apex Court has laid down guidelines to the trial court while granting order of temporary injunction which reads as follows:

a) Temporary injunction order can be granted when there is a serious disputed question to be tried in the court, there is probability of his being entitled to the relief asked for by the parties.

b) The courts interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at the trial.

c) That the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

16. Keeping in mind the above well settled principle of law and facts of this case, I have bestowed my attention to the application, objection and the documents placed by the plaintiffs and defendants. In the present case on hand the plaintiffs are claiming their right over the suit item no.1 bearing Sy.No.4/4A through a registered sale deed dated 26.12.1947. I have carefully gone through the said document wherein it appears the grand father of the present plaintiffs namely Chennappa S/o.Thimmaiah got purchased the suit item no.1 land from one Narayanamma wife of Late Hanumappa. However, in the year 1955 the father of present plaintiffs namely Narayanappa, S/o.Chennappa along with his other brothers sold the suit item no.1 property in favour of one B.Venkataravanappa, S/o.Sonnegowda vide registered sale deed dated 19.08.1955. On careful perusal of the said registered sale deed of the year 1955 it appears the plaintiffs father has already sold the suit item no.1 property and he has got no right over the said property as per the provisions of law.

17. As per the case of the defendants the said B.Venkataravanappa, S/o.Sonnegowda has alienated the

suit item no.1 bearing Sy.No.4/4A property in favour of the father of the defendant no.1 namely Chowdappa, S/o.Chowdappa. I have carefully perused both the sale deeds pertaining to the year 1955 and 1957 wherein it is crystal clear that the father of defendant no.1 independently has purchased the suit item no.1 property in his name exclusively. Therefore, I am of the opinion that the plaintiffs herein atleast at this stage cannot claim any right over suit item no.1 property.

18. It is well settled principle of law that the parties to the suit can claim their right over the properties on the strength of their possession or on their title. In the present case on hand in order to prove that the plaintiffs are in possession over the suit item no.1 property they have not even produced a single piece of paper or record such as RTC extracts. If the plaintiffs are in lawful possession over suit item no.1 property they would have produced atleast tax paid receipts or any other documents to show that they have carried out agricultural operations in the suit property. When the plaintiffs have failed to produce any document to prove their possession over suit item no.1, I am of the opinion

that they are not at all in actual physical possession over the said property. If at all the plaintiffs have got any right over the suit property on the basis of the title deeds then it can be decided by this court only after a full fledged trial. At this initial stage, the plaintiffs have got no prima facie case and balance of convenience also do not lean towards them.

19. On the other hand the defendants have produced material documents to show that they have got title and possession over suit item no.1 property. If an order of temporary injunction as prayed by the plaintiffs is granted then much injury will be caused to the defendants which cannot be compensated in terms of money. Hence, I answer above point no.1 to 3 in the negative.

POINT NO.4:

20. In view of the reasons on Point No.1 to 3, I proceed to pass the following:-

ORDER

The I.A No.11 filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby rejected.

No order as to costs.

(Directly dictated to the stenographer on computer, corrected and then pronounced by me in the open court on 4th day of July 2020.)

(RAJENDRA KUMAR K.M)
Senior Civil Judge & JMFC.,
Chintamani.