

IN THE COURT OF THE ADDL., CIVIL JUDGE & JMFC.,

AT CHINTHAMANI

PRESENT: SRI. SHIVAKUMARA G.J, B.A.L.L.B.

**Addl. Civil Judge & J.M.F.C.,
Chinthamani.**

O.S. No.6/2019

Dated on this the 3rd day of June 2020

PLAINTIFF:-

Smt. Eswaramma,
W/o M. Ravi,
Aged about 35 years,
R/at Digava Mindigal,
Munganahalli Hobli,
Chintamani Taluk,
Chikkaballapura District.

(By Sri. S.R.B. Advocate)

V/s

DEFENDANTS:-

1. Smt. K.C. Geethamma,
W/o Late Sreerama. M.V.
Aged about 60 years,

2. M.S. Manjunath,
S/o Late Sreerama. M.V.
Aged about 38 years,

3. M.S. Mallappa,
S/o Late Sreerama. M.V.
Aged about 35 years,

All are residing at
Digava Mindigal,
Munganahalli Hobli,
Chintamani Taluk,
Chikkaballapura District.

(Sri. R.C.S. Advocate)

ORDERS ON IA.NO. I

The plaintiff has filed the application U/o. XXXIX Rule 1 & 2 of CPC seeking temporary injunction to restrain the defendants, their agents, servants or anybody through them from interfering with the plaintiff's peaceful possession and enjoyment over the suit property in any manner till disposal of the suit.

2. Brief case of the plaintiff is as under :

The plaintiff is the owner and in possession of the suit schedule property. The plaintiff has purchased the suit schedule property from one Smt. B.A. Roopa under registered sale deed dated 13.12.2017, after the said sale deed the panchayath authorities have entered the name of the plaintiff and the panchayath authority have also issued the E-katha in favour of the plaintiff and previously the E-katha was standing in the name of Smt. B.A. Roopa the vendor of the plaintiff. The plaintiff further pleaded that the plaintiff in order to build a new house, she has purchased the suit property from the said Smt. B.A. Roopa. The plaintiff has applied for house building license from Mindigal Gram Panchayath. The panchayath authorities have also issued building license in favour of

the plaintiff on 09.07.2018. When the plaintiff made an arrangements for construction of house in the suit schedule property. The defendants have obstructed the plaintiff from putting up the house construction. The defendants have no any manner of rights, title over the suit property. She also stated that, she has made out prima-facie case and balance of convenience lies in her favour and if Temporary Injunction order is not granted, she will be put to irreparable loss. Therefore, the plaintiff claimed to restrain the defendants from interfering the suit schedule property during the pendency of the suit.

3. The defendants are appeared through their counsel filed objections to IA No.I. In the objection defendant submitted that the application filed by the plaintiff is not maintainable either in law or on facts and the same is liable to be dismissed. The defendants are denied all averments made in the plaint and application stated by the plaintiff. It is submitted that the defendants having a revenue land bearing Sy. No. 50 measuring of 17 Guntas at Mindigal Village, the said revenue land is the ancestral property of the defendants, they are in physical possession and enjoyment of the land. These defendants further submitted that the measurement and

boundaries shown in the plaint schedule and the application are wrong. The extent shown in the plaint schedule is 22 X 22 feet. In the records the extents are manipulated by the plaintiff to grab the defendants property. It is stated that the vendor of the plaintiff by name D.A. Roopa has obtained a loan from the government authorities pertaining to Basava Vasathi Yojana for constructing the house in the plaint schedule for an extend of 10 X 22 feet the authorities have also issued the loan towards construction of house in the year of 2013, the vendor of the plaintiff has also enter into mortgage. The boundaries and extent shown in the mortgage deed by the vendor of the plaintiff is differs from the plaint schedule. The defendants further contended that the plaintiff has not made out the prima facie case and balance of convenience lies in her favour. Therefore the defendants seeks to dismissal of the application with cost.

4. Heard arguments. Perused the records.

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

POINTS

1. Whether the plaintiff has made out a prima-facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiff is entitled for the relief of Injunction as prayed for?
5. What order?

6. **My answer to the above points is as under:**

Points No.1 to 4 - **Affirmative**

Point No.5 - **As per final order**

for the following:-

REASONS

7. Points No.1 to 4 :- These points are interconnected to each other, hence to avoid repetition of facts these Issues are taken up for discussion together.

The plaintiff stated that the property is originally belongs to the namely Smt. Roopa D.A, She sold the properties in favour of the plaintiff on 13.12.2017 for a value of consideration amount of Rs.27,000/-. Since, the date of purchase the plaintiff is in possession and enjoyment of the suit schedule properties

without any disturbance. As per the title deeds dated: 13.12.2017 and E Swathu produced by the plaintiff, the plaintiff is peaceful possession and enjoyment over the suit property. On perusal of title deeds it is stated that the extent is subject to actual measurement in the spot'. In the said sale deed boundaries as towards East -Bovi Ravi's property, west Naryaynswamy property, North - Govt property, South - Malikarjun's property. In the plaint the plaintiff has furnished the boundaries as towards towards East - Bovi Ravi's property, west - Naryaynswamy property, North- Govt property, South - Malikarjun's property. In this suit it is the specific contention of the defendant that the plaintiff has shown wrong boundaries and wrong measurement to the suit schedule property.

8. The defendants have claimed that the defendants property is revenue land bearing Sy No.50 measuring 17 guntas. And the defendants further contended that the vendor of the plaintiff by Name D.A. Roopa has obtained a loan from the govt authorities pertaining to basava vasathi Yojana for construction of house in the property of the vendor of the plaintiff for an extant of 12 X 22 feet and authorities have also issued loan towards construction of house in the year 2013, the vendor of the plaintiff has also entered into

mortgage of the suit property. Hence the defendant has produced copy of said mortgage Deed which shows specific boundary to the defendant's property towards western side of the property of the vendor of the plaintiff. The boundaries given in the sale deed is towards west property of Naryaynswamy , towards East Road. Thus the western side property is belongs to the defendant. Thus it is clear that both the properties of the plaintiff and the defendant proerty i.e Sy.No. 50 is adjacent properties. The defendant has produced the mortgage of the property and availment of the loan. The defendants have also produced the photographs showing the erection of tiled house in in the plaintiff vendor property. The defendant has also produc one Endorsement issued by the Secretary, Mindigal Grampanchyat, it shows that the matter of dispute between the plaintiff and defendant is involves crucial question of law with respect to boundaries and encroachment of defendant property And even to decide prima facie possession all the documents shall be looked into. At this stage possession cannot be ascertained without leading any evidence. Therefore, at this prima-facie stage it creates a doubt regarding existence of suit schedule property within the boundaries stated in the plaint.

Therefore, at this stage it cannot be held that the plaintiff is in possession of the suit schedule property within the boundaries stated in the plaint.

09. As discussed above there is discrepancy in respect of the boundaries of the suit schedule property. When the existence of the suit schedule property within the specific boundary is doubtful, the court cannot grant discretionary order of temporary injunction as it will lead to confusion and it will become vague order. Therefore, at this stage the court holds that the plaintiff has failed to make the prima-facie case. When the plaintiff has failed to make the prima-facie case, the question of considering the aspects of irreparable loss or balance of convenience will not arise. Therefore, this court holds that the plaintiff is not entitled for the relief claimed in the application. Hence, I answer point No.1 to 4 in the **Negative.**

10. Point No.5:- In view of the answers to point No.1 to 4, I will proceed to pass the following:-

OS.No. 6/2019

ORDER

The application filed by the plaintiff U/o.XXXIX rule
1 & 2 of CPC are hereby rejected.

No order as to cost.

(Typed by me in my laptop and corrected and initialed by me and
then, pronounced in the open court on this **3rd day of June 2020**)

(SHIVAKUMARA.G.J)

Addl.Civil Judge & JMFC.,
Chinthamani.

Orders pronounced in the open court

(Vide separate Order)

ORDER

**The application filed by the plaintiff U/o. XXXIX rule 1 & 2
of CPC are hereby rejected.**

No order as to cost.

(SHIVAKUMARA.G.J)

**Addl.Civil Judge & JMFC.,
Chinthamani.**

For compliance U/Sec. 89 of CPC,
call on 04-08-2020.

**Addl.Civil Judge & JMFC.,
Chinthamani.**