

**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 250 /2017

Dated on this the 3rd day of July 2020.

ORDERS ON IA NO. I

PLAINTIFF:- : Sri A. Ramachandra
S/o Late Anjinappa
aged about 38 years
R/o Allapalli Village,
Bhoommishettyhalli Hobli,
Chintamnai Taluk.

(By Sri. RC.S. Advocate)

DEFENDANTS: **V/s**
Sri.Earappa
S/o Late Chinnayappa
Aged about 60 years

2. Sri. Vankataramana
S/o Earappa
Aged about 45 years

3. Sri. Venkatesh
S/o Earappa
Aged about 40 years

4. Sri. Srinivasa
S/o Earappa

Aged about 32 years
All are resident at
Allapalli Village,
Bhommishettyhalli
Grama Panchayath,
Muragamalla Hobli,
Chintamani Taluk.

(By Sri. G.S. Advocate)

ORDERS

The plaintiff has filed this application U/o.XXXIX rule 1 & 2 of CPC praying this court to grant temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

2. Brief case of the plaintiff is as under:

The filed suit against the defendants for relief of temporary injunction the plaintiff submitted that, the plaintiff is absolute owner and in peaceful possession and enjoyment of the suit property it is fully described in the schedule. The plaintiff has acquired the suit schedule property under the sale deed dated: 15.02.2012 from its previous owner Smt. Davamma W/o late Talari Seenappa and his children, since then the plaintiff is in peaceful possession and enjoyment over the suit

property. The plaintiff further pleaded that the suit property was originally belongs to sri. B. Reddappa S/o Balabasappa. Sri. B. Reddappa has sold the said property his family legally necessity in favour of one sri. Chikka Venkatappa through sale deed dated: 12.08.1974 the same was registered and he become the owner of the suit property, Chikkavenkatappa was died leaving behind his son Talari Seenappa wife Dayvamma and his 2nd son Sri. Talari Shankarappa. The said Smt. Dyavamma and Shankarappa have succeeded the suit property as his legal heirs and they got changed the khata from Gramapanchyath authorities, after the katha on 15.02.2012 smt.Dayamma and her children are jointly sold the suit property for legally necessity in favour of the plaintiff, hence, as per the sale deed the plaintiff got right and mutated khatha in his name and he got E-swathu katha thus he is in peacefully possession and enjoyment over the suit schedule property. The plaintiff further pleaded that, the plaintiff is absolute owner in possession and enjoyment of the suit property. The defendants are utter stranger to the suit property and they are attempted to interfere with plaintiff peaceful possession and enjoyment of the suit property and also threatened to disposes the plaintiff from the suit

property. He also stated that, he has made out prima-facie case and balance of convenience lies in his favour and if Temporary Injunction order is not granted, he 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 and filed objection to IA No.I the defendants submitted that, the suit of the plaintiff is not maintainable either in law or facts of the case. The defendants are denied the entire plaint allegation made in the plaint. The defendants submitted that the 1st defendant is the owner and in possession over the property bearing 142 Khata No 142, space in Alapalli village 1st defendant is acquired the property from earlier owner Chikkavenkatarayappa son of Nagappa on 26.09.2011. The vendor of the 1st defendant put the plaintiff into actual possession of the properties. And further submitted that, the OS. no. 281/2017 is pending before the Prl. Civil judge and JMFC Chintamani. The present suit was filed against the plaintiff by this defendant. The defendant submitted that in OS No. 281/2017 this defendant shown the schedule property as under:

1. Property bearing Assessment /Demand Register Extract Sl.No. 142, Janjar No. 142, Property No. 142, house and space measuring 1st thaku 24 feets X 25 feets, and bounded on:

East by: Property of L.Ramappa,

West by: Properties of Akula Anjappa and
Narayanawamy,

North by: Property of Earappa,

South by : 2nd thaku property,

2. Property bearing Assessment/Demand Register Extrct Sl.No.142, Janjar No.142, Property No.142, and space measuring 2nd thaku 9 ½ feets X 17 ½ feets, and bounded on;

East by : Property of L.Ramappa,

West by : Properties of Akula Anjappa,

North by : 1st thaku property,

south by : Road,

4. The defendants further submitted that the plaintiff misleading the court and shown the wrong boundaries and wrong katha number to grab the valuable property of the defendants. The defendant further denied that, the

documents produced by the plaintiff concocted and created. The plaintiff intentionally knowingly has not stated the correct and clear picture of the case. The identity of the property is in dispute. Thus the defendant prays to reject the application.

5. Heard arguments of the plaintiff's counsel. Perused the records.

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

P O I N T S

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?

7. My answer to the above points is as under

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

Point No.5 - As per final order
for the following:-

R E A S O N S

8. Points No.1 to 4:- Since, all these points are being inter connected to each other, to avoid repetition of facts taken for discussion together.

9. The plaintiff has claimed that he is the owner of the suit schedule property and he is in possession of the same. He has produced the sale deed dated 15-02-2012, and further produced produced the the sale deed of his vendor and also the khata extract, Resolution latter. All these documents produced by the plaintiff prima-facie shows the possession of the plaintiff over the suit schedule property. The defendants are utter stranger to the suit

property. During the course of arguments the defendant has submitted that they are the owners and in persons in lawful possession of possession of the property No. 142/142. The 1st defendant is in continues possession of the said property, As per the Khtha Number concern, Admittedly, both the properties are different. The defendant has stated that the boundaries stated in the plaint relating to the suit property is wrongly shown by the plaintiff. On perusal of the same both the boundaries stated in the plaint and the written statement of the defendant are quit different. On perusal of the same both the boundaries stated in the plaint and sale deed of the plaintiff are one and the same. As discussed above the plaintiff is produced sale deed dated: 12.08.1974 with respect to House No.16 executed by the B Redappa, in this sale deed the B.Reddppa has sold portion of the property to the father of the vendor of the plaintiff.

10. As per the sale Deed recital made by the plaintiff vendor that,

" ಕ್ರಯ ಸ್ವತ್ತಿವ ವಿವರ ಇದೇ ಆಲಪ್ಪಲ್ಲಿ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ
HCNo.16 ನಂಬರ್ ವುಳ್ಳ 10 ಅಂಕಣ ಕಲ್ಲು ಮಾಳಿಗೆಯಲ್ಲಿ ವಿ.
ವೆಂಕಟಸ್ವಾಮಿ ಆಚಾರಿ ರವರಿಗೆ ದಕ್ಷಿಣದ ಕಡೆ ಪಶ್ಚಿಮ ಭಾಗಕ್ಕೆ 4
ಅಂಕಣ ಕಲ್ಲು ಮಾಳಿಗೆಯನ್ನು ಬಿಟ್ಟು ಜಾತಾ 6 ಅಂಕಣ ಕಲ್ಲು
ಮಾಳಿಗೆ ಮತ್ತು ಉತ್ತರದ ಕಡೆ ಇರುವ ಖಾಲಿ ಜಾಗ ಪೂರ್ತ
ನಿಮಗೆ ಶುಧ್ಧ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ "

thus it appears that the plaintiffs vendor sold the property to the plaintiff as per the sale deed 12.08.1974 executed on 22.11.1974. As per the sale deed dated 15.02.2012 prima-facie appears that plaintiff purchased the property from Dyavamma and others, as per the sale deed the plaintiff got physical possession from his previous vendors, the plaintiff is in possession over the property shown within the boundaries mentioned in the sale deed. When the vendors of the plaintiff is in possession of the property as per the sale deed dated:12.08.1974 the plaintiff is also better position

than his vendors. Thus, in the prima facie appears that the plaintiff is in physical possession and enjoyment over the suit property, The defendants are contended that the plaintiff mentioned the wrong boundaries of suit schedule property. But, to substantiate all these pleadings of the defendants, he has not produced any documents. He has not produced the relevant document to show the wrong measurement and boundaries given by the plaintiff as per the contention of the written statement schedule. In the absence of any such documents only on the mere denial by the defendants, it cannot be held that the plaintiff shown the wrong boundaries of suit schedule property. As per the pleadings and documents produced by the plaintiff at this prima-facie stage the plaintiff has made out prima-facie case to protect his possession. Hence, I answer the point No.1 in the **Affirmative**.

11. Now, considering the aspect of balance of convenience and loss that may be suffered by the parties. If order of injunction is not granted he will put to great hardship and the

defendants may interfering the plaintiff possession over the suit schedule property. Under the said circumstances the plaintiff will suffer huge loss and hardship and it will lead the multiplicity of proceedings. Hence, this court holds that balance of convenience is in favour of the plaintiff and if injunction is not granted the plaintiff will suffer irreparable loss and injury. Hence, the plaintiff is entitled for the relief claimed in the application. Hence, I answer point No.2 to 4 in the **Affirmative.**

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

ORDER

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

The defendants their men, agents, henchmen, employees and anybody claiming under them are hereby restrained from interfering in the plaintiff peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

No order as to cost.

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

(SHIVAKUMARA.G.J)

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

**ORDER PRONOUNCED IN THE OPEN COURT
(Vide Separate Order)**

ORDER

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

The defendants their men, agents, henchmen, employees and anybody claiming under them are hereby restrained from interfering in the plaintiff peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

No order as to cost.

For compliance under section 89 of CPC

R/by dated: **13.07.2020.**

OS 250/2017

**(SHIVAKUMARA G.J)
Addl. Civil Judge & JMFC.,
Chinthamani.**