

IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,

AT:CHINTAMANI.

O.S.No.235/2019

**Present: Sri.Hanumanth Satwik.,
LL.M,
Prl. Civil Judge & JMFC. Chintamani.**

DATED : THIS THE 07TH DAY OF NOVEMBER 2019

PLAINTIFF:

Chand Pasha,
S/o. Imamsab,
Aged about 46 years,
R/at. Nandanahosahalli Village,
Chilakalanerpu Hobli,,
Chintamani Taluk.

(Sri. C.S.K. Advocate)

V/s

DEFENDANTS:

1. Narayanamma,
W/o. Late P.S. Ramaiah,
Aged about 65 years.
2. Lalithamma,
W/o. Late R. Seethramaiah,
Aged about 45 years.
3. Narasimhamurthy,
S/o. Late Lakshmipathy,
Aged about 65 years,
4. Ananthapadmanabha Rao,
S/o. Late Lakshmipathy,
Aged about 55 years.

All are R/at. Nandanahosahalli Village,
Chilakalanerpu Hobli,
Chintamani Taluk.

(Sri. K.S.H. Advocate for Defendant no.1)
(Sri.M.S.C. Advocate for Defendant no. 2)
(Sri. B.R.S. Advocate for Defendant no. 3 and 4)

ORDER ON IA NO.I

The present suit is for perpetual injunction.

2. The plaintiff filed the present application U/o.39 Rule 1 and 2 of C.P.C. praying this court to restrain the defendants from interfering in his possession over the suit schedule property. The plaintiff submits that he is the owner in possession of the suit schedule property. He purchased the suit schedule property from one Suresh s/o Venkatanarayanappa through registered sale deed, dated 23.04.2016. Subsequently, his name was entered in the panchayath records on the basis of the sale deed. The defendants have no right, title or possession over the suit schedule property. The defendants are attempting to dispossess him from the suit schedule property. Defendant No.1 and 2 are the neighbours of the suit schedule property from its eastern side. Defendant No.3 and 4 are the neighbours of the suit schedule property from its southern side. The defendants are trying to encroach the road and the suit schedule property. In this regard the plaintiff prays as above.

3. Defendant No.2 filed objections and the same was adopted by defendant No.1. Defendant No.2 contended that defendant No.1 is her mother-in-law. Defendant No.1 is the owner of property bearing No.36. The plaintiff is not the adjoining owner of the said property. She and defendant No.2 are possessing the property bearing No.36. The plaintiff colluding with the panchayath officials created E.katha to file the present suit. False documents have been created. The plaintiff has no right, title or possession over the suit schedule property. In this regard, defendant No.2 prays to reject the application.

4. Defendant No.3 filed objections to the application and the same was adopted by defendant No.4. Defendant No.3 contended that the suit schedule property does not exist. Between his property and property of defendant No.1 and 2 no road exists. The plaintiff gave imaginary boundaries of the suit schedule property. The vendor of plaintiff had no right over the suit schedule property. As such, the plaintiff did not acquire any rights over the suit schedule property. He is the owner and possessor of property bearing E.katha No.52800301900300033. Towards north of the property there is no site. Towards north of his property, defendant No.1 and 2 have got garden. Towards north of the said garden there are residential houses. The plaintiff intends to knock off his property. The plaintiff showed wrong boundaries towards southern side showing

existence of road and his property. There is no road between his property and property of defendant No.1 and 2. In this regard defendant No.3 prays to reject the application.

5. Heard arguments of counsel.

6. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?

2. Whether balance of convenience is in favour of the plaintiff?

3. Whether plaintiff will incur irreparable injury if temporary injunction is not granted?

4. What order?

7. My findings for the above points are as follows.

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

POINT NO.1:-

8. It is the case of the plaintiff that he is the owner and possessor of the suit schedule property. He purchased the suit schedule property through registered sale deed, dated 23.04.2016. His name has been entered in the panchayath records. In this regard, I have perused the registered sale deed, dated 23.4.2016, from the same it is prima facie obvious that the plaintiff purchased the suit schedule property from one Suresh and his wife and children. Further on perusal of the documents issued by gramapanchayath Mittahalli it is prima facie clear that the plaintiff is the possessor of the suit schedule property. So also, the tax paid receipt, dated 29.7.2019 prima-facie show the possession of plaintiff over the suit schedule property as on the date of the institution of the suit.

9. The defendants contend that the plaintiff showed wrong boundaries of the suit schedule property. Defendant no.3 contends that between his property and property of defendant no.1 and 2 there does not exist road. Be it noted, the correctness of the boundaries of the suit schedule property can be determined by taking evidences and in a full fledged trial. At this stage of the case, this contention of the defendants cannot be determined.

10. That apart, the documents produced by the defendants do not show anything to show that the plaintiff is not in possession of the suit schedule

property. Defendant No.3 contends that towards southern side of the suit schedule property existence of road and property of defendant no.3 has been shown wrongly. Be it noted, the registered sale deed, dated 23.04.2016 prima-facie reflects that at the southern side of the suit schedule property their exist road. Further, the map issued by Mitthalli gram panchyat prima facie show that there is exist road and the property of defendant no.3 at the southern side of the suit schedule property. So also, the demand register and tax assessment register issued by gramapanchayath, Mittahalli prima-facie shows that towards south of the suit schedule property road and the property of defendant No.3 exists. These documents are also supported by E.katha. The defendants contend that the above said documents are created for filing the present suit. It is germane to note that the genuineness of the documents produced by the plaintiffs can be ascertained by taking the evidence and at this stage of the trial, the genuineness of the documents cannot be decided. In these circumstances this contention of the defendants merits no consideration.

11. Further more, defendant No.1 and 2 contend that they are not neighbours to the suit schedule property and hence, the question of alleged interference does not arise. It is necessary to note that whether there is any alleged interference by the defendants is a question of trial and can be

determined by taking evidences and this stage of the case this contention of the defendants cannot be decided.

12. In the case at hand, regard being had to the registered sale deed, the panchayath records of Mittahalli gramapanchayath and the tax paid receipt it is prima facie clear that the plaintiff is in possession of the suit schedule property as on the date of the institution of the suit. Further the present suit being one for permanent injunction, the question of possession of plaintiff over the suit schedule property as on the date of the institution of the suit and alleged interference by the defendants are the questions which require consideration. For the reasons stated above it is prima facie ostentatious that the plaintiff is in prima-facie possession of the suit schedule property as on the date of the institution of the suit. Such being the case, considering the questions that need to be answered in the present suit, I am of the view that there is a prima-facie case for trial. As such, the plaintiff made out prima-facie case. Accordingly, I answer point no.1 in the affirmative.

POINT No.2:-

13. In the case on hand from the documents produced, it is prim facie clear that the plaintiff is in prima facie possession of the suit schedule property as on the date of the institution of the suit. So also, in the case on hand it is necessary to decide the question of possession and alleged interference by the defendants. In these circumstances if temporary

injunction is not granted and if defendants start interfering in the suit property as alleged by the plaintiff, the inconvenience which will be suffered by the plaintiff is more than the inconvenience which may be caused to the defendants if the temporary injunction is granted. Further, during the pendency of the suit if the defendants interfere as alleged by the plaintiff the very purpose of the suit will be frustrated. Since defendants have an opportunity to contest the matter and get the matter decided on merits, I am of the view that, balance of convenience is in favour of the plaintiff. As such, I answer point No.2 in the affirmative.

POINT No.3:-

14. In the case at hand, for the reasons stated above it is prima facie clear that the plaintiff is in possession of the suit schedule property. In these circumstances considering the relief sought by the plaintiff, I am of the view that for the reasons stated above if any interference is committed by the defendants as alleged by the plaintiff, the plaintiff will definitely suffer irreparable injury as the very purpose of the suit will be frustrated and such injury cannot be compensated. On the other hand if temporary injunction is granted no harm will be caused to the defendants as the defendants can contest the matter and get the same decided on merits. Such, being the case I am of the view that the plaintiff will suffer irreparable injury if temporary injunction is not granted. Resultantly, I answer point No.3 in the affirmative.

POINT NO.4:

15. In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.I U/o.39 Rule 1 & 2 of CPC filed by the plaintiff is hereby allowed.

Defendants are hereby temporarily restrained from interfering in the suit schedule property till disposal of this suit.

Parties to bear their own cost.

(Dictated to the Stenographer, directly on the computer typed by her corrected by me and then pronounced in the open court on this the 7th day of November, 2019)

**(Hanumanth Satwik)
Prl. Civil Judge & JMFC
Chintamani.**