

**IN THE COURT OF PRL., CIVIL JUDGE AND JMFC., HIRIYUR**

**:-Present:-**

Smt. Nisarabhanu Babasaheb shaikh,  
B.A.LLB.(Spl).  
Prl.Civil Judge & JMFC.,  
Hiriyur.

**Dated this day of 6<sup>th</sup> July 2017**

**ORIGINAL SUIT NO.48/2017**

**PLANTIFF/S:-**

1] Vasanthkumar

S/o Rangaswamy

**V/s**

**DEFENDANT/S:**

2] Rathnamma W/o late

Thippeswamy and others

**ORDER ON APPLICATION FILED BY THE PLAINTIFF UNDER  
ORDER 39 RULE 1 AND 2 R/W SEC 151 CPC**

The plaintiff filed this application under order 39 Rule 1 and 2 R/W sec 151 of C.P.C. for the relief of temporary Injunction, restraining the defendant no 1 to 3, 4 to 5 and 6 their men, agents, GPA holders etc, from constricting any structure over B and E, C and D schedule properties respectively, by encroaching A schedule property, pending disposal of this suit.

2] Brief facts of the plaintiff case is as under :

It is the case of the plaintiff that plaintiff is an absolute owner and in possession of the suit schedule property. Originally the suit schedule property is belonging to one S. Narayanshetty. The S. Narayanshetty erstwhile owner of the suit schedule property acquired said property under a grant certificate dated 25.09.1951 and he also paid a revenue fixed to that to the Government . Since from the date of grant certificate the S. Narayansheety is peaceful possession and enjoyment of the suit schedule property and his name is also mutated in all the revenue records of the suit schedule property. After the death of S. Narayanshetty his son Govindsheety is succeeded the suit schedule property and he is in peaceful possession and enjoyment of the same till his death. After the death of Govindshetty his son P.G. Rangnathshetty succeeded the suit schedule property. The said P.G. Rangnathshetty sold the suit schedule property for valuable consideration of Rs 25000/- in favour of the plaintiff under a register sale deed dated 06.2.1995. Since from the date of sale deed the plaintiff became absolute owner and in possession of the suit schedule property.

The defendants are not having any type of right, title interest over the suit schedule property. The plaintiff vent to in search of job for his livelihood to the Bangalore about 10 years back. The defendant no 1 to 6 put up sheds in suit schedule "A" property. The plaintiff requested to vacate the suit schedule property to the

defendant no 1 to 6, at that time the defendant no 1 to 6 stated that mistakenly they have put up sheds in a different place other than the granted sites of the panchayat and asked for some time to vacate the same. Thereafter near about 6 months back when plaintiff came back to his native village he came to know that on the North Western side of the suit schedule property constructed a houses encroaching "A" suit schedule property. The defendant no 1 to 6 are claiming that the said portions of the suit schedule properties are granted in their names by the panchayat authorities. The defendant no 1 to 3 have encroached about 30 feet X 30 feet which is described as "B" suit schedule property. The defendant no 4 and 5 have encroached about 20 X 25 feet which is more described in "C" schedule property . The defendant no 6 encroached about 30 X 30 feet which is more fully described in "D" schedule property. The defendant no 1 to 3 once gain has trespassed "A" suit schedule property and lead a foundation encroaching about 30 x 30 feet which is described at "E" suit schedule property. The Grampanchayt is not having any authority or right, title and interest over the suit schedule "A" property to grant sites in favour of any other persons. The plaintiff given a several requisition to the defendant no 7 and 8 to take a action against to the defendant no 1 to 6. But the defendant no 7 and 8 colluding with defendant no 1 to 6 created some bogus documents and claiming the right over the property. Looking to all these acts of the defendants the plaintiff approached to the Imangala police station and lodged a complaint against to the

defendants. The police have showed an inability stating that it is civil dispute. The defendant no 7 and 8 also not taken any steps against to the defendant no 1 to 6. Therefore plaintiff filed this suit and application and prayed for allowing the application.

3] The defendant no 1 to 6 appeared through their counsel and filed written statement and objections to the application.

4] Brief facts of the case of Defendant no 1 to 6 is as under :

The defendant denied the all the averments of plaint and application in toto. These defendants contended that, the suit of the plaintiff is barred by law of limitation. The defendant disputed the identification of the suit schedule properties and boundaries. Further the defendants are contended that the suit schedule property is not inexistence. The defendant in their defence contended that the vendor of the plaintiff himself not having any type of right, title interest over the suit schedule property. As because there was no boundary and property numbers mentioned in the Hakku Patra dated 31.05.1952. Which was issued by the Tashildar in favour of Narayansheety. The said Hakku Patra is created one further the defendant also contended that the suit is suffering from non-joinder of necessary parties. The defendants are constructed the house in the area which are granted to them by the Mandal Panchayat Yarballi. The defendants have constructed the houses as per the rules and regulation and license issued by the authorities on the south

western corner of the suit schedule property. The defendants are denying the sale deed dated 06.02.1995 and contended that same is created one. Further the defendants have contended that the defendant's vendor's father Govindshetty was have two sons by name Ranganathshetty and Sampath. The said Ranganathshetty is not having any right to execute sale deed in favour of the plaintiff in respect of the suit schedule property. The defendant no 1 to 3 further contended that they are absolute owner of the property bearing khata no 108 measuring E-W 30 feet and N-S 30 feet situated at Yarbali village. The said properties granted to the defendant no 1 by the Mandal Panchayat Yarbali on 04.02.1992. Therefore the defendants are absolute owner and in possession of the above said property, for these reasons prayed for dismissal of the application.

5] Heard the learned counsel for the plaintiff and defendants and perused the material placed on record.

6] The points that arise for my consideration is as follows:

Point no 1] whether the plaintiff has made out prima-facie case?

Point no 2] whether plaintiff proves balance of convenience lies in their favour?

Point no 3] Whether plaintiff proves that he will sustain irreparable loss or injury if temporary injunction is not granted ?

Point no 4] What order?

7] My findings to the above points are as follows. :-

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**

8] **Point no 1 :**

It is the case of the plaintiff that plaintiff is an absolute owner and in possession of the suit schedule property. Originally the suit schedule property is belonging to one S. Narayansheety. The suit schedule property is granted to the S Narayansheety under grant certificate dated 25.09.1951. Thereafter the said property is succeeded by his son by name Govindashetty. After the death of the Govindsheety his sons P.G Ranganathsheety succeeded the suit schedule property. The said P.G Rangnathsheety sold the suit schedule property to the plaintiff for the valuable consideration of Rs 45000/- under registered sale deed dated 06.02.1995. Since from the date of purchase the plaintiff is in possession and enjoyment of the "A" suit schedule property. The defendant no 1 to 6 without having any type of right, interest and title over the "A" suit schedule property encroached portion of the "A" suit schedule property which are more fully described at B to E suit schedule properties . Whereas

defendants contended that the suit schedule property bearing Khata no 108 measuring E-W 30 N- S 30 feet is granted by the Mandal Panchayt Yaraballi in favour of 1<sup>st</sup> defendant on 04.02.1992. The defendants are having absolute right, title and interest over the said property from the date of grant of the land and they are possession and enjoyment of the same as a absolute owners. The defendants are also contended that the Hakku Patra dated 31.05.1952 granted in favour of the original owner i.e S Narayansheety is bogus one, since in that bounders and property number is not mentioned. The plaintiff produced original grant certificate dated 31.05.1952 and registered sale deed dated 06.02.1995. The plaintiff also produced some tax paid receipt and revenue records pertaining to the suit schedule "A" property in which the plaintiff name is appeared as absolute owner and in possession of the suit schedule "A" property . The plaintiff also produced some tax paid receipt under which the erstwhile owners of the plaintiffs paid tax to the Government in-respect of "A" suit schedule property. The plaintiff also produced nil encumbrance certificate. The defendants also produced some revenue documents and tax paid receipts and RTS extracts and photographs and a grant certificates under which land are granted to them by the Panchayat authority. The said photographs are reviles that the defendants are already constructed the houses. Whereas the plaintiff is claiming the relief of declaration in respect of "A" schedule property to declare that he is absolute owner of the same and in the ancillary relief the

plaintiff is claiming a relief of recovery of possession of suit schedule B to E properties from the defendants. Further the plaintiff also claiming a relief of permanent injunction against to the defendants . The plaintiff also calming a relief of permanent injunction against to the defendants not to put up further construction in the suit schedule property. The plaintiff is also calming a mandatory injunction against to the defendant no 1 to 6 to remove the encroachment and structures made over suit schedule A property.

Looking to the relief of the plaintiff itself celery shows that the defendants are already constructed their houses. The main reliefs are contrary to each other. The plaintiff also claiming the recovery of possession which shows that the plaintiff is not in possession of entire suit schedule property. The plaintiff is claiming a mandatory injunction, it goes to show that the defendants are constructed their houses. Therefore looking to facts and circumstances of the case at this juncture the plaintiff is not made a prima -facia case, for all these reasons point no1 holds in the **Negative**.

**10] Point no 2 and 3 :**

The relief's claimed by the plaintiff itself are goes to show that the defendants have constructed the houses and they are residing in that properties. At this jecture plaintiff not shows that he is in possession of the suit schedule property, looking to all

these facts and circumstances the balance of convenience leans in favour of the defendants rather than the plaintiff. Even if the injunction is granted the defendants will be put to more hardship rather than the plaintiff. In the interim application the plaintiff is seeking a relief to restrained the defendant no 1 to 6 from putting up any structure over the B to E schedule properties by encroaching a schedule properties. The plaintiff himself in his pleading admitted that the B to E schedule properties are encroached by the defendants no 1 to 6 and they have put up the construction over the suit schedule properties. The B to E schedule properties are part of the "A" suit schedule property as per the pleading of the plaintiff. The plaintiff is also claiming of possession in respect of B to E schedule properties. The pleading are contradictory to the relief claimed in the interim application filed by the plaintiff. Therefore for these reason point no 2 and 3 holds in the **Negative**.

**10] Point no 4:-**

In the result, this court proceeds to pass the following:-

**ORDER**

Application filed by the plaintiffs under order 39 Rule 1 and 2 R/W Sec 151 CPC is hereby dismissed .

(Directly typed by me on the Lap-top, the same is corrected by me and then pronounced by me in the open court on this the 6<sup>th</sup> day of July 2017)

(N.B.Shaikh)

Prl,Civil Judge & JMFC., Hiriyur.