

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

PRESENTS

Sri. Shivaraju H.S.

B.A.Law., L.L.B,

Prl.Civil Judge & JMFC, Hosdurga

O.S.No.165/2021

DATED THIS THE 17TH DAY OF NOVEMBER, 2021

Plaintiff : Muddanna @ Muddappa
S/o Late Basapa
Versus

Defendants : Shivanna
S/o Mallappa

IA No.I

**Plaintiff/
Applicant : Muddanna @ Muddappa**
S/o Late Basapa

(By Sri.T.R., Advocate)

Versus

**Defendants/
Opponents :**

Shivanna
S/o Mallappa

(By Sri.L.K.S, Advocate)

ORDERS ON IA No.I

The applicant/plaintiff has filed this application
U/o.39 Rule 1 and 2 of CPC, seeking relief of ad-interim
temporary injunction restraining the defendant from

causing any kind of interference in peaceful possession and enjoyment of suit property till disposal of the suit.

2. The suit property is a coconut garden land bearing Re.Sy.No.11/3P7 totally measuring 3 acres, bounded towards East- bullock cart road/track, West- defendant's garden land, North- land of Gopalashetru and South- Land of Aswath and Tolasamma situated at Hagalakere village of Hosadurga taluk.

3. The applicant/plaintiff has filed an affidavit along with the application and stated that, he has filed suit against the defendants for the relief of permanent injunction. That, suit property was originally purchased by his father namely Basappa S/o Ningappa under registered sale deed dated 29.06.1974 from one Mallappa S/o Kurudaa Ajjiganna. Since the date of purchase his father was in possession of suit property. His father died about 22 years back. Therefore, he succeeded to the suit property by way of inheritance. Hence, he is absolute owner and possessor of the same. After the death of his father he has filed application before revenue authorities and mutated his

name into records. It is also stated that, the defendant is stranger and no way concerned to the suit property, but illegally and high handedly trying to cause interference to the plaintiff in peaceful possession and enjoyment of suit property by denying his right, title, interest over the same. Therefore, plaintiff has filed present application seeking ad-interim temporary injunction restraining the defendant from causing any kind of interference in peaceful possession and enjoyment of suit property till disposal of the suit.

4. It is further stated that, he has got prima facie case, balance of convenience tilts in his favour and irreparable loss and injury will be cause to him, if injunction is not granted. On these grounds plaintiff sought for allowing the application.

5. The defendant has resisted the application by way of filing objection. In the objection, it is contended that, the application filed by the plaintiff is not maintainable in the eye of law. The plaintiff is not in possession and enjoyment of suit property within its boundaries. The boundaries of the suit property is false. The plaintiff had filed suit at O.S.

No.16/2002 in respect of survey No.11/3P8 measuring 7 acres 18 guntas, when plaintiff caused interference, said suit was came to be decreed, against which plaintiff preferred appeal at RA No.31/2004, same was came to be dismissed. In the said proceedings the defendant's possession over land bearing survey No.11/3P8 measuring 7 acre 18 gutnas was considered. That, the plaintiff had filed suit at O.S.No.2/2009 with respect to Sy.No.11/3P measuring 9 acres 0.5 guntas, same was dismissed, against which preferred RA No.9/2014 and same also came to be dismissed. The suit property and subject matter of O.S.No.2/2009 are one and the same. The plaintiff and his family members caused interference to the defendant in peaceful possession and enjoyment of his land and thereby violated the judgment and decree passed in O.S.No.16/2002. The defendant filed report before the Srirampura Police station on 12.12.2019, when the police have not received the same, he filed EP-86/2019 before Additional Civil Judge Hosadurga and same is pending. Therefore, the plaintiff is not in possession and enjoyment of the suit property, he has created false and bogus

documents, and boundaries, measurement etc., and filed this false suit just to harass the defendant. Hence, it is prayed to reject the application.

6. Heard the arguments on both side and perused the entire records.

7. Upon hearing the arguments and on perusal of materials placed on record the following points arises for consideration.

1. Whether the plaintiff has made out a prima-facie case in his favour?
 2. Whether the balance of convenience lies in favour of plaintiff?
 3. Whether irreparable loss or hardship will be cause to the plaintiff, if injunction is not granted?
 4. What order?
8. My findings 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

9. **Point Nos.1 to 3:-** Since these points are interlinked with each other to avoid repetition of facts they are taken together for common consideration.

10. The plaintiff has filed present suit against the defendant for the relief of permanent injunction restraining the defendant from causing any kind of interference to the plaintiff in peaceful possession and enjoyment of suit property.

11. It is specific case of the plaintiff's that, his father had purchased suit property from Mallappa S/o Kuruda Ajjiganna under registered sale deed dated 29.06.1974. From the date of purchase his father had been in possession and enjoyment of the same. His father died about 22 years back. After the death of his father he succeeded the suit property. The records of the suit property are standing in the name of plaintiff and paying tax to the Government. The defendant being no way concerned to the suit property illegally and high handedly causing interference to the plaintiff in peaceful possession and enjoyment of the same. Hence this suit.

12. On the other hand, the defendants have filed written statement and denied entire plaint averments. It is contended that, the plaintiff is not in peaceful possession and enjoyment of suit property within its boundaries. The plaintiff created false and bogus documents and filed this suit. Hence, it is prayed to dismiss the suit.

13. It is specific contention of the plaintiff that, suit property was purchased by his father under registered sale deed dated 29.06.1974 from Mallappa S/o Kuruda Annjiganna. Therefore, after the death of his father, the plaintiff inherited the suit property.

14. So far as concerned to the contention of the plaintiff, he has produced certified copy of sale deed dated 29.06.1974. From the perusal of the same, it is very clear that, father of the plaintiff purchased northern side 3 acre land in Sy.No.11 bounded towards east-Land of Sankappa, South-Land of Tulasamma W/o Muddaningappa (sold on the same day), West- Land of Hanumanthappa and Mallappa and North- Land of Bheemanna and Ananthappa. Whereas, the boundaries of the suit property mentioned in

the plaint as well as in the application is, towards East-Bullock cart road, West-Garden land of defendant, North-Land of Gopalashetru and South-Land of Aswath and Tholasamma.

15. It may important to note that, the boundaries mentioned towards east and north recited in the sale deed and shown in the plaint as well as application are not exactly tallying with each other on the contrary the said boundaries are totally appearing different to each other. Further, there is no sufficient explanation is assigned by plaintiff to that affect. When, he sought for ad-interim temporary injunction on the ground or on the strength of his possession and enjoyment over the suit property, it is for him to show atleast prima-facia case in his favour by placing minimum document before the court. No doubt, admittedly the plaintiff has produced the sale deed as noted herein before. But, as noted herein earlier the boundaries itself are appearing different from the pleadings and documents.

16. Therefore, this court is of the opinion that, the plaintiff has filed to establish prima-facia case in his favour. Hence,

since the boundaries of the suit property itself are not clear absolutely plaintiff has no prima-facie case at all to sustain this application.

17. Therefore, this court is of the opinion that, there is no prima-facie case in favour of the plaintiff, when the plaintiff failed to make out prima-facie case itself consideration of balance of convenience and irreparable loss is nothing but metamathematical process. ***Hence, this court answered the point Nos.1 to 3 are in the negative.***

18. **Point No.4.** For the reason assigned above, this court proceeds to pass the following

ORDER

IA No.I filed by the Applicant/Plaintiff U/o. 39 Rule 1 and 2 of the Civil Procedure Code is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on the computer typed by her, corrected and pronounced by me in the open court on this the 17th day of November 2021).

**(Shivaraju H.S.)
Prl.Civil Judge & JMFC.,
Hosadurga.**

