

IN THE COURT OF THE CIVIL JUDGE AND JMFC**AT:MOLKALMURU****PRESENT:SRI. SHRISHAIL.B.BAGADI****B.Com., LL.B.****CIVIL JUDGE AND JMFC,
MOLAKALMURU.****OS NO.117/2017****DATED THIS THE 8TH DAY OF AUGUST 2017****PLAINTIFF/S:****DEFENDANT/S****VS**

Sri. Hanumantha reddy

Sri. Eshwarappa & others

PARTIES TO I.A.NO.II**Applicant****Rank in suit**

Hanumantha reddy

Plaintiff**(By Sri. P.H.T., Advocate)****V/s.****Respondent**

Eshwarappa and Others

Defendants**(By Sri. V.G.P., Advocate)****PARTIES TO I.A.NO.III****Applicant****Rank in suit**

Eshwarappa and Others

Defendants

(By Sri. V.G.P., Advocate)

V/s.

Respondent

Plaintiff

Hanumantha reddy

(By Sri. P.H.T., Advocate)

ORDERS ON IA NO.II and III

The plaintiff has filed interim application no.II under order 39 rule 1 and 2 seeking ad-interim temporary injunction against the defendants restraining them from causing interference with peaceful enjoyment of the suit property by the plaintiff, on contrary the defendants have filed counter application no.III under order 39 rule 4 of CPC for vacating the ad-interim ex-parte temporary injunction granted in favour plaintiff.

2. The plaintiff in his affidavit accompanied with application stated that he has filed this suit against the defendants for the relief of declaration and permanent injunction. It is further stated by the plaintiff that he

become the absolute owner of the suit property. The plaintiff was acquired the suit property after the death of his father by virtue effecting IHC entry in the revenue records, the father of the plaintiff had been in the possession of the suit property, after his death the plaintiff has been enjoying the suit property without any obstruction and also paying taxes to the government regularly. Under such circumstances the defendants who are no way concern to the suit property trying to disturb the plaintiff's peaceful possession of the suit property, hence the plaintiff sought for interim relief by way of temporary injunction till disposal of the suit.

3. On the contrary the defendants have come up with an application for vacating the temporary injunction contending that Sy.No.196/2B land measuring 18 acres 23 guntas originally belongs to mother of Budde Katteppa and Eshwarappa by name Nagamma W/o Channa Basappa. The Channa Basappa had sold to the extent of 02 acres irrigated land and 03 acres barren land total 05 acres of land sold to the Grandfather of plaintiff by name Sanna

Hanumanthappa as per register sale deed dated 04-09-1957 for the sum of Rs.600/-. Thereafter on 16-11-1962 another son of Budde Kattappa by name Katte Basappa had executed the relinquishment deed to give up his share in the land sold to grandfather of plaintiff. On the same day the grandfather of plaintiff by name Sanna Hanumanthappa re-conveyed 03 acres of land to the Channa Basappa as per register sale deed dated 16-11-1962. It is further contended that the grandfather of plaintiff was retained only 02 acres irrigated land after selling 03 acres barren land to the Channa Basappa. The land sold out the Channa Basappa measuring 03 acres again mutated the name of Channa Basappa's wife by name Honnamma after the death of her husband Channa Basappa. The said Honnamma again sold out 03 acres of barren land to the plaintiff on 30-06-2006 for the sum of Rs.60,000/- through the register sale deed. Accordingly, the name of the plaintiff has been mutated to 02 acres irrigated land as per sale deed dated 04-09-1957 and 03 acres barren land as per sale deed dated 30-06-2006 as

such the plaintiffs having right title only to the extent of 05 acres of land but he has illegally colluding revenue authorities added 03 acres additional land apart from 05 acres what they have purchased from Channa Basappa. In this regard, defendants have approached to the revenue courts for setting aside the mutation taken place to the extent of 07 acres instead of 05 acres. Hence, on these grounds the defendants have taken the specific contention that the actual land sold out to the plaintiff is 05 acres as per register sale deed dated 04-09-1957 and 30-06-2006 but he has claiming 07 acres of land without their being any valid title deeds. Hence, the plaintiff has not come before the court with clean hands, therefore he is not entitle for any relief under I.A.no.2 and prayed to allow I.A.No.3 filed by them for the vacating the ad-interim exparte injunction granted in favour of plaintiff.

4. Heard arguments from both side.

5. The following points would arise for my consideration are as under:

POINTS

1. Whether plaintiff has made out a prima-facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. If the TI is not granted who will be put untold hardship and loss?
4. Whether the defendants have made out the grounds for vacating the ad-interim ex-parte order injunction as prayed in I.A.No.3 U/O.39 rule 4 of CPC?
5. What Order?
6. My answers to the above said points are as under:

Point No.1 – In the '**negative**'

Point No.2 – In the '**negative**'

Point No.3 - Does not arise for consideration

Point n.4 In the '**Affirmative**'

Point No.5 - Final order for the following;

REASONS

7. **Point No.1 to 4** : The point no.1 to 4 are interlinked with each other to avoid repetition of facts all the points taken together for common discussion.

8. The plaintiff filed this suit claiming the relief of declaration and permanent injunction in respect of suit property bearing Sy.no.196/2B measuring 07 acres situated at Siddapura Village of Devasamudra Hobli, Molakalmuru Taluk.

9. In order to establish his title over the suit property the plaintiff has produced RTC extract wherein his name is appeared as possessor of the land in question. The plaintiff also produced mutation registered extract wherein the plaintiff's name has been changed as per the order passed by revenue inspector regarding death entry of plaintiff's father Sanna Thimmanna died on 30-03-2013. The plaintiff also produced certain photographs to show actual nature of the suit property, further the plaintiff also produced non-encumbrance certificate from 1-4-2004 to 22-06-2017 and 01-4-2001 to 31-03-2004 all these documents shows that the name of the plaintiff has been mutated after the death of his father Sanna Thimmaiah except these documents the plaintiff has not produced any

title documents to show that his father and his grandfather have acquired the title through any registered documents.

10. In contrary the defendants have produced as many as 20 documents such as certified copy of sale deed dated 04-09-1957, On perusal of this document the grandfather of plaintiff by name Sanna Hanumanthappa was purchased 05 acres of land from Son of Budde Kattappa by name Channa Basappa. The defendants have also produced the certified copy of sale deed dated 16-11-1962 wherein the grandfather of plaintiff has sold 03 acres of land to the Channa Basappa, in order to substantiate this aspect the defendants have produced the hand written record of rights pertaining to Sy.no.196/2B wherein it has been clearly mentioned that the grandfather of plaintiff has purchased initially 05 acres of land thereafter he was sold 03 acres of land to the Channa Basappa. Further the defendants also produced the sale deed executed by the wife of Late Channa Basappa by name Honnamma in favour of plaintiff to the extent of 03 acres through registered sale deed dated 30-06-2006 measuring to the

extent of 03 acres pertaining to Sy.No.196/2BP3. Further on perusal of non-encumbrance certificate dated 18-10-2008 wherein it has been mentioned that on 04-09-1957 the grandfather of plaintiff was purchased 05 acres of land from Channa Basappa for the sum of Rs.600/-. Thereafter on 16-11-1962 the brother of Channa Basappa by name Katte Basappa had given up his share to the extent of 03 acres as per relinquishment deed. On the same day the grandfather of plaintiff has sold 03 acres of land to the Channa Basappa. All these documents clearly shows that the grandfather of plaintiff initially purchased 05 acres of land from Channa Basappa, thereafter he had re-conveyed 03 acres of land to the vendor by name Channa Basappa. After the death of Channa Basappa his wife by name Honnamma has sold 03 acres of land to the plaintiff as per registered sale deed dated 30-06-2006. But in the present case the plaintiff claiming declaration relief to the extent of 07 acres and he has not prima-facie convinced the court that how his father and grandfather were acquired additional 02 acres of land in order to establish clear title

over the suit property. In the present case there is a serious dispute with regard to title of the suit property, mere production of revenue records is not enough to prove valid title and possession over the suit property. More over the plaintiff in addition to declaratory relief also claiming permanent injunction based on his possession over the suit property as on the date of suit, under such circumstances without ascertaining the actual possession over the suit property by conducting the trail, it could not be possible to the court to grant temporary injunction. Although the documents produced by the plaintiff reveals the revenue entries standing in his name but as per the decisions given by the Hon'ble High Court of Karnataka in various cases held that mere revenue entries cannot be considered as document of title under such circumstances if this court granted the injunction in favour of the plaintiff it tentamounts decree before trial. Therefore, without there being full fledged trial at this stage it cannot be held that the plaintiff's has made out prima facie case, the balance of convince lies in his favour and without determining the

actual possession of the suit property it could not be possible to hold that irreparable loss and injury will be caused to the plaintiff, on contrary the defendants have made out a prima facie ground contending that in order to prove valid title and possession over the suit property the plaintiff has not produced any title documents, hence the defendants made out grounds to vacate the temporary injunction.

11. **POINT No.5 :-** For the above said reasons and discussion, I proceed to pass the following;

ORDER

IA. No.2 filed by the plaintiff u/o 39 rule 1 & 2 of CPC is hereby rejected.

Consequently, IA ono.3 u/o 39 rule 4 of CPC filed by the defendants is hereby allowed.

No order as to costs.

**Civil Judge & JMFC,
Molakalmuru.**

ORDER

IA. No.2 filed by the plaintiff u/o 39 rule 1 & 2 of CPC is hereby rejected.

Consequently, IA ono.3 u/o 39 rule 4 of CPC filed by the defendants is hereby allowed.

No order as to costs.

For written statement.

Call on 30-08-2017

Civil Judge & JMFC,

Molakalmuru.