

**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT KADUR**

***Present : Sri.C.N.Chandan, B.Sc., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Kadur.***

Dated this 1st day of July 2019

ORIGINAL SUIT NO.07/2018

Plaintiff:

1. T.R. Eshwar S/o D.H. Ramachandrappa, Aged about 63 years, Agriculturist, R/o Vidyanagara, Behind Venkateshwara Temple, Kadur town, Kadur taluk, Chikkamagaluru District.

[By Sri K.G.Annappa, Adv.]

V/s

Defendant:

1. K.S. Manjunatha S/o Somaiah, Aged about 46 years, Agriculturist,

2. Smt. J. Uma W/o K.S. Manjunath, Aged about 40 years, Housewife,

Both are R/o Ramadevaragudi Beedhi, Kalidasa Nagara, Kadur

2

O.S.No.07/2018

Town, Chikkamagaluru
District.

**[By Sri C.V. Subramanya,
Adv.]**

PARTIES TO I.A.NO.II

Applicant/s: T.R. Eshwar

V/s

Respondent/s: K.S. Manjunatha and
others.

ORDERS ON I.A.NO.II

The plaintiff has filed I.A No.II under Order XXXIX Rules 1 and 2 of CPC seeking to restrain the defendants from trespassing into the suit schedule property and encroaching the suit schedule property towards the northern side and to restrain from putting up ready box shops on the suit property by causing damages to the suit schedule property, either by themselves, their agents, or anybody on their behalf, pending disposal of the suit in the ends of justice and equity.

2. In support of the application the plaintiff has sworn to an affidavit, and it is averred that the plaintiff has purchased the suit property from the defendants in the year 2009, and from the date of

purchase he is in possession over the suit property as a lawful owner. It is alleged that towards the north of the suit property, Kadur Malleshwara road is situated and the plaintiff is entering to his land through the said road. Further it is averred that it is the only accessibility to approach his land. when this being the fact the defendants even though they do not have any sort of right over the suit property are interfering to his peaceful possession and making attempts to put ready box on the northern side of suit property. It is averred that the plaintiff is not in a position to restrain the high handed acts of the defendant. Hence sought to grant adintrem injunction restraining the defendants from interfering to his peaceful possession.

3. The defendant No.2 has resisted the application inter-alia contending that the application filed by the plaintiff is not maintainable. It is contended that the defendant has sold the suit property in favour of the plaintiff, wherein in the sale deed executed by them the boundary is wrongly mentioned. The boundary mentioned in the sale deed is contrary to 11E sketch annexed to the sale deed at the time of its

registration. By taking the undue advantage of the boundary mentioned in the sale deed, the plaintiff with an intention to make a wrongful gain, has filed this suit. Further it is contended that the defendant on several occasion requested the plaintiff to rectify the boundaries in the sale deed, the plaintiff did not heed to the request made by the defendants. On these grounds sought to dismiss the application.

4. Heard arguments of both side and perused materials on record.

5. The points that would arise for my consideration are:

1. Whether the plaintiff has made out prima facie case?
 2. Whether the plaintiff proves that balance of convenience lies in his favour?
 3. Whether the plaintiff proves that he will going to suffer irreparable loss and injury in case the application is rejected?
 4. What order?
6. My answer to the above points are as

under

Point No.1 : In Affirmative.

Point No.2 : In Affirmative.

Point No.3 : In Affirmative.

Point No.4 : As per final order
for the following

REASONS

7. **Point No.1**:- On going through the materials on record, wherein it can be seen that the present suit is filed against the defendants for the relief of perpetual injunction. It is the case of the plaintiff that earlier the defendants are the owners of the suit property. Wherein through the registered sale deed dated 4-5-2009 they have sold the property in favour of the plaintiff and the plaintiff is in possession over the property that is within the boundaries mentioned in the sale deed.

8. It is alleged that the defendants are making an attempt to block the northern side of suit property by placing the ready box. It is alleged that on the northern side of suit property the road is running between Malleshwara and Kadur town and through the said road the plaintiff is entering to his land and this is the only accessibility to his land.

When this being the case, the defendants without any sort of right in order to trouble the plaintiff, are interfering to his peaceful possession and trying to block the northern side of the suit property.

9. The counsel for the defendant vehemently argued that the boundaries mentioned in the sale deed dated 4/5/2009 is wrong and the same is against to the 11E sketch.

10. The plaintiff in order to corroborate his claim he has furnished the sale deed through which he acquired the title over the suit property. On perusal of sale deed wherein it can be noticed that in the sale deed towards the northern side it is shown as Malleshwara road. It is pertinent to note that the defendant has not denied the execution of the registered sale deed dated 4/5/2009. Wherein it is his case that the boundaries mentioned in the sale deed is wrong. In spite of repeated request to rectify the sale deed, the plaintiff has failed to comply the request of the defendant.

11. Here on going through the sale deed

dated 4/5/2009 as stated supra towards the northern side it is shown that there is a road running between Kadur and Malleshwara. It is pertinent to note that the said sale deed came to be executed on 4/5/2009. Already one decade is passed from the date of execution of said sale deed. If at all according to contention of the defendant if the boundary mentioned in the sale deed is wrong then there is no hurdle for him to initiate appropriate action, but wherein the defendant has kept quiet for one decade and thereafter that too after filing of this suit he is raising contention that the boundaries mentioned in the sale deed is not correct.

12. The issue whether the boundary mentioned in the sale deed is correct or not cannot be adjudicated at this stage. In order to adjudicate the said issue a full fledged trial is necessary. Even though it is the contention of the defendant that the boundaries mentioned in the sale deed is against to 11E sketch. But the defendant has not furnished the 11E sketch. He has furnished one sketch which is Pakka book, wherein in the said sketch the entire extent of Sy.

No. 58/1 is shown. Wherein at the time of the execution of the sale deed 11E sketch will be prepared only with respect to the property intending to be sold. Here the Pakka book produced by the defendant is showing the sketch of entire 4 acres 4 guntas of land in Sy. No.58/1. Further in the said sketch no particular boundary is mentioned. However on going through the material on record, it appears that the plaintiff is in possession over the suit property and he has shown that there is a triable case before the court. Hence, the plaintiff has made a prima facie case in his favour. Therefore, I answer Point No.1 in Affirmative.

13. **Points No.2 and 3** :- These two points are taken up together for common discussion in order to avoid the repetition of facts and evidence. As stated in Point No.1 the plaintiff has shown that he is in possession over the suit property. On the other hand, his possession is not denied by the other side. It is the specific case of the plaintiff that he is entering to this land from northern side that is from Kadur Malleshwara road. Even though the defendant has contended that the boundaries

entered in the sale deed is wrong wherein he has not stated anything about that the plaintiff can enter his land on the other side. In other words, the defendant has not denied that the only accessibility to the plaintiff land is from his northern side. Under these circumstances if Ad-interim Temporary Injunction is not granted much inconvenience will be caused to the plaintiff. Because of the reason that as per his apprehension if defendant blocks his accessibility on the northern side of the suit property, then he cannot enter his own land, which will cause much inconvenience to him. At the same time if the defendant succeeds in his alleged acts as alleged by the plaintiff then irreparable loss will be caused to the plaintiff than that of defendant. However if the defendant succeeds his claim he can enjoy his property according to his whims and fancies.

14. However it is a well settled principle of law that till the rights of the parties are adjudicated in respect of the disputed property the same needs to be kept intact. If the same is not kept intact i.e. in as is where is basis conditions then at the time of concluding trial then there may

be change in the of nature of the property. For the reasons assigned above the plaintiff has made out a ground that he will suffer much inconvenience and loss if an order of Ad-interim Temporary Injunction is not granted in his favour. Hence, I answer Point Nos. 2 and 3 in Affirmative.

15. **Point No.4:-** For the reasons assigned in Points No. 1 to 3, I proceed to pass the following

ORDER

I.A.No.II filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC is hereby allowed.

The defendant his men or anybody claiming under him are hereby temporarily restrained from interfering and trespassing, encroaching the suit schedule property towards northern side of the suit property till the disposal of the suit.

(Dictated to the stenographer, transcribed by her, the transcript corrected and then pronounced by me in the open court on this the 1st day of July 2019.)

(C. N. Chandan)
Prl.Civil Judge & JMFC.,
Kadur.