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**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Civil Judge & Addl. JMFC, Tarikere.

Dated: 27th Day of May 2024

ORIGINAL SUIT NO.183/2023

PLAINTIFF/s :

Smt. Sowmya.G.R. W/o. Sri. H.S.
Kumarswamy, Aged about 37 years,
Agriculturist, R/o. Hunasaghatta village,
Amruthapura Hobli, Tarikere Taluk
(Reptd. By : Sri.K.L.L., Advocate.)

Vs.

DEFENDANT/s:

- 1) Smt. M.Chandramma W/o Late. Sri.
Karibasappa, Aged about 75 years,
- 2) Smt. Dakshyanamma W/o. Late Sri. H.K.
Marulasiddappa, Aged about 51 years,
- 3) Sri. Kirthikumar S/o. Late. Sri. H.K.
Marulasiddappa, Aged about 26 years,

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4) Sri. H.K. Nagaraja, S/o. Late Sri. Karibasappa, Aged about 51 years,

5) Smt. Gayithri.M.P. W/o. Sri. H.K. Nagaraj, Aged about 43 years,

All are agriculturist, R/o. Hadikere Village, Amruthapura Hobli, Tarikere Taluk,

(By Sri. S.V.A., Advocate)

PARTIES TO I.A.NO.I

Applicant : Smt. Sowmya.G.R

Vs.

Opponent : Smt. M. Chandramma and others

ORDER ON I.A.NO.I

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendants, their agents, supporters, henchmen, agents, etc., from trespassing upon or interfering with the suit schedule property of the plaintiff in any manner pending disposal of the suit.

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2. The I.A., supported with the affidavit of the plaintiff. It is stated in the affidavit that, she is the lawful owner in possession of the suit schedule properties, she is paying kadayam to the suit schedule properties. It is further stated that, she has purchased the suit schedule property under registered sale deed dated 03.09.2020 from the defendants and accordingly khatha of the suit schedule properties are mutated in her name as per M.R.No.H9/2020-21. It is further stated that, after purchase of the suit schedule properties, she has constructed a shed with an intention to storage the agricultural equipment. It is further stated that, she has got prima facie case in her favour and balance of convenience lies in her favour. In spite of these hard facts, the defendants are making attempts to disturb her peaceful possession over the suit property on 25.05.2023. With great difficulty she resisted the same. If the defendants do so, or they are allowed to do so, she will be put to great loss and injury. The defendants have absolutely no manner of right or possession of any kind to or in the suit property. The defendants are openly saying that they will continue their illegal acts in future also come what may. If the application is not allowed she will be put to great loss and injury. Hence, this I.A.

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3. After service of suit summons, the defendants have appeared through their counsels and defendant No.3 filed detailed written statement and the defendant No.1, 2, 4 and 5 have filed memo adopting the written statement averments filed by the defendant No.3 and defendants have filed memo adopting the written statement as objections to I.A.No.I. The defendants in their written statement they have totally denied the plaint averments and inter alia contended that, originally the suit schedule properties are the joint family properties of defendants and they are in joint possession and enjoyment of the same till today. It is further contended that, the defendants have constructed the house in the extent 30 x 70 feet and they are residing therein. It is further contended that, the defendants have constructed the shed for nourishing the ships and also constructed the small scale industry for production of areca plates in the suit schedule properties.

4. It is further contended that, the defendants have approached the husband of the plaintiff for financial assistance. At that time, the husband of the plaintiff has asked the defendants to execute the deed for the security of the loan amount. Believing the words of the husband of the plaintiff namely Kumarswamy, the defendants have executed

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the nominal registered sale deed dated 03.09.2020 in favour of the plaintiff. But, the said sale deed is not a actual sale deed, but it is nominal document. It is further contended that, the defendants are in possession of the suit schedule properties. It is further contended that, on the basis of the nominal alleged sale deed, the plaintiff has filed this frivolous suit against the defendants in order to knock of the suit schedule properties, which are belongs to the defendants. It is further contended that, the defendants are ready to pay the entire principal amount along with interest amount to the plaintiff. Hence, the plaintiff is not entitle an relief as sought in the pliant. For all these grounds, the defendants prays for to reject the I.A., filed by the plaintiff with exemplary cost.

5. Heard arguments on both sides. Perused the materials available on record.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1)** Whether the plaintiff/applicant has made out a prima facie case?
- 2)** Whether the balance of convenience lies in favour of the plaintiff/applicant?

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3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?

4) What order?

7. My answer to the above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per the Order,

for the following:

REASONS

8. **POINT NO.1** : On perusal of the materials available on record, admittedly, the plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of suit schedule properties. I have already narrated in brief what is the case of the plaintiff and what is the defence of defendants is. It is the urge of the plaintiff that, she is the owner and in possession and enjoyment of suit schedule properties, having acquired the same through the registered sale deed dated 03.09.2020 from the defendants. In pursuance of the registered document, the khata of the suit schedule properties were mutated in the name of plaintiff.

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When such being the case, the defendants have no manner of right, title over the suit schedule properties and tried to interfere with the possession of the plaintiff. In order to substantiate the case of the plaintiff, at this stage the plaintiff has produced original copy of the registered sale deed dated 03.09.2020, RTC extracts and mutation extract.

9. Per contra, it is the urge of the defendants that, the defendants that the suit schedule properties are the joint family properties of defendants herein. The defendants never intended to sold the suit schedule properties in favour of plaintiff, the defendants are in possession of the same. It is further urge of the defendants that, at the time of borrowing the loan amount from the husband of the plaintiff, they are executed the nominal registered sale deed on 03.09.2020 in favour of plaintiff as a security of the loan amount, which was borrowed by the defendants from the husband of the plaintiff. Hence, the said alleged sale deed is not a out and out sale, but it is a nominal sale deed. It is further urge of the defendants that, they will ready to pay the principle alongwith interest amount to the plaintiff. To substantiate the contention of the defendants at this stage, the defendants have produced the photographs and CD.

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10. At this stage, without going through the merits of the case and conducting mini trial, this court is considering the aspect of prima-facie, at this stage it makes very clear that this court is looking towards prima-facie case and not for prima-facie title. In the instant suit, the plaintiff is claiming the possession of the suit schedule properties. In order to prove the prima facie case, the plaintiff has produced the original copy of the registered sale deed dated 03.09.2020. On perusal of the same, at this stage, it discloses that, the plaintiff has purchased the suit schedule properties from the defendants for a valuable sale consideration and further discloses that, the possession of the suit schedule properties was handed over to the plaintiff. The plaintiff has produced the mutation extract and RTC extract in respect of suit schedule properties. On perusal of the same, it discloses that, in pursuance of the registered sale deed the concerned revenue authorities have mutated the khata in the name of plaintiff in respect of the suit schedule properties. Accordingly, her name came to be entered in the relevant columns of the revenue records. It is very pertinent to note that, the defendants have contended that, they have borrowed loan amount from the husband of the plaintiff, for repayment of the loan amount, they have executed the nominal

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registered sale deed in favour of plaintiff. Under these facts and circumstances, the plaintiff has no right and possession over the suits schedule properties. Admittedly, the sale deed dated 03.09.2020 relied by the plaintiff is a registered document.

11. It is very pertinent to note that, the sale deed dated 03.09.2020 is a registered document. Hence, the said document has got initiate presumptive value under the provision of the Registration Act and also Indian Evidence Act. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in the case of **Prem Singh and others Vs. Birbal and others**, the same is reported in **AIR 2006 SC 3608**, wherein Their Lordship held that:

Presumption that a registered document is a validly executed. A registered document, therefore prima facie would be valid. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

12. It is very relevant to note that, at this stage, the rights of the parties cannot be adjudicated, it needs full fledged trial. Moreover, the evidentiary value of the documents produced by the defendants it cannot be

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considered at this stage. Hence, looking into the pleadings and documents produced by the plaintiff, at this stage the plaintiff has made out a prima-facie case. For considering all these reasons, I answer Point No.1 in the '**Affirmative**'.

13. POINT NO.2 : The term balance of convenience is to see the comparative hardship and mischief of inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it. I have arrived at the conclusion that the plaintiff has made out a prima facie case. It is the urge of the plaintiff that the defendants are trying to trespass and interfere with the possession of the plaintiff over the suit schedule properties. If at all the defendants have succeed to interfere with the suit schedule properties as alleged by the plaintiff, it appears that, greater inconvenience will be caused to the plaintiff. The documents produced by the plaintiff at this stage discloses that, the balance of convenience lies in favour of the plaintiff and this court is inclined to protect the possession until conclusion on the merits. Accordingly, I answer Point No.2 in the '**Affirmative**'.

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14. POINT NO.3 : Needless to say that the irreparable injury need not always mean measurable in terms of money or need not be physical damage. If the injunction is not granted and the apprehension of the plaintiff turns into reality and the defendants have succeeded to interfere with the possession of the plaintiff over the suit schedule property, the amount of damage would certainly be substantial and not mere tangential. The plaintiff might have to be subjected to another round of litigation to revive the status of the property. This is certainly against the principles of the grant of injunction. Therefore, this court opined that the plaintiff has made out all requirements for grant of injunction. Hence, I answer Point No.3 in the '**Affirmative**'.

15. POINT NO.4 : In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

I.A.No.I filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC is hereby allowed.

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Consequently, the defendants are hereby temporarily restrained from interfering and trespassing with the possession of plaintiff over the suit schedule property till disposal of this suit.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by him, corrected by me and then pronounced in the open Court, on this the day of **27th day of May 2024**)

Sd/-

(SHIVAKUMAR.R)
CIVIL JUDGE & ADDL. J.M.F.C.,
TARIKERE.

SAR