

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

Present : Sri RAMAMURTHY N. B.A., LL.B.,
Addl. Civil Judge & JMFC. Tarikere.

O.S.No.416/2018

Dated:24th June 2019.

Plaintiff : G.C.Satishkumar
(Reptd. by : Sri Abdul Razak, Advocate)

-Vs-

Defendants : G.Ananda and others
(Reptd. By : Sri T.N.Mahadevaswamy,
Advocate)

I.A.No.1

Applicant in I.A/: G.C.Satishkumar
Plaintiff

-Vs-

Opponent in IA:
Defendants G.Ananda and others

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ORDERS ON I.A.No.1 U/O.39 Rule 1 and 2.

The plaintiff has filed this I.A. U/O.39 Rule 1
and 2 of C P C seeking to pass temporary injunction

order restraining the defendants, their men, servants, agents, etc., from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property.

2. In the annexed affidavit, the plaintiff has stated that, he was entered into the sale agreement for property bearing assessment No.3092/A :1031(A) measuring 74X87 situated at Galihalli village with one T.C.Vijaykumar S/o N.R. Chadappa On 09/12/2005 for consideration of Rs.8,60,000/- and paid Rs.1,00,000/- and 60,000/- on different dates as a earnest money. unfortunately prior to execution of sale agreement with plaintiff, said Vijaykumar was raised the loan from KSFC Chikkamagalur on 12/04/1989 by mortgaging the very same property. Subsequently Vijaykumar became a defaulter of said loan hence KSFC decided to auction sale of the property. In said auction the plaintiff has purchased

the property measuring 50X60 feet which bounded east by road, west and north by remaining land of Chandappa and south by place left for road and sites of NGO.

3. Upon purchase of the property by the KSFC the same was mutated in favour of plaintiff and remaining property is in the possession of plaintiff as per sale agreement executed by the T.C.Vijaykumar. Thereafter the plaintiff has established the firm under the name of Sri Veerabhadreshwara Agencies and running successful and there is space left by himself for movement of remaining property which he has purchased from very same T.C.Vijaykumar assessment No.1366 measuring 17 X 92 feet which was abutted to the main site from its western edge.

4. Further, though said T.C.Vijaykumar has executed sale agreement but subsequently not come forward to execute the sale deed. Thereafter the

plaintiff has filed the case against T.C.Vijaykumar and his minor children for the specific performance of contract. The said suit was partly decreed and directed to T.C.Vijaykumar to refund the earnest money with interest aggrieved by the said judgment. The plaintiff has prepared R.A. which was dismissed by confirming the trial court judgment.

5. Thereafter the plaintiff has preferred RSA No.1242/2016 before Hon'ble High Court of Karnataka which is pending for consideration. Though all proceedings are pending in respect of the property, but still suit schedule property is in plaintiff possession and enjoyment of the same.

6. During the year 2010-11 one Smt.Girijamma mother of 2nd defendant, her husband by name T.R.Nagaraj has made attempt to encroach the nearly 13X80 feet of property which part and parcel of the suit schedule property.

7. When the plaintiff has resisted the same, they have tried to incorporate the khatha of the said bit of the property into the name of Chandappa who is father of T.C.Vijaykumar. Then the plaintiff has given the complaint to jurisdictional police on 05/12/2010, the police have given endorsement by stating that, the dispute is civil nature.

8. Further the plaintiff has also filed the complaint before chief officer TMC Tarikere has not to incorporate khatha of property measuring 13 X 80 feet anybodies name including Chandappa or to his sons on 06/01/2011. Thereafter, the president of Municipality Smt.Girijamma who is mother of defendant No.2 under head of subject No.9 the application given by Chandappa for incorporate khata of property measuring 13X80 feet and objection of the plaintiff is discussed and finally resolve as agreed the subject. Aggrieved by the

resolution passed by the Municipality, plaintiff has preferred regular appeal before AC under MUNCR/4/2010-11 against Chandappa and chief officer Tarikere. Thereafter, T.R.Nagaraja and Girijamma were remained silent and dropped their illegal idea of incorporation of khatha, the said appeal is pending before the AC Court.

9. Recently the plaintiff has noticed that, the defaulters inactive collusion with, then Municipal staffs from somehow inserted the name 3rd defendant in the book arrived from Bettadahalli Gram Panchayath wherein above the name of one khatha holder by name T.H.Satyanarayana S/o Hanumantappa, though there is no pond is in existence in near by the suit schedule property or no such property of Lokesh S/o Rajappa is situated nearby suit schedule property.

10. Now the plaintiff suspect that, under the guise of said insertion in his name in the municipal records 3rd defendant has created one document under name and style sale deed on 28/08/2014 under vide S.R.No.2483/2014-15.

11. Further despite the same, the defendants who are no way concerned the suit schedule property but again 24/11/2018 at about 4-30 p.m. tried to encroach the suit schedule property and right to mark 13X80 feet property at suit schedule property, In order to prove their created document dated 28/04/2018. then great difficulty and with the help of his friends and labour of the plaintiff resisted the illegal activity of the defendants and send them back.

12. While returning defendants have shouted to the effect that, defendant No.1 is and wife of 2nd defendant is the sitting member of municipality

Tarikere. Hence, they can do anything and take over the possession of the property mentioned in alleged sale deed dated 28/08/2014. Therefore the plaintiff have given the complaint to police on 25/11/2018 and police have given endorsement as the dispute is in civil in nature. Hence for present suit and this application to pass the order of temporary injunction in his favor against defendants till disposal of suit.

13. The defendants are contested the application by filing written statement and adopted written statement as objection to I.A.No.1 they have denied the contention of the plaintiff and stated that, the defendant No.3 was the owner and in possession of the property measuring 13X80 feet situated at Galihalli area it was his ancestral property and it was the part of the Bettadahlli Gram Panchayath.

14. Later as per the Govt. order by areas near by to the Tarikere Municipality was transferred to TMC

Tarikere. Accordingly, the new number was given to the property as 7915/1331/2. Further 3rd defendant sold the same in favor of 1st defendant on 28/08/2014 under S.R.No.2483/2014-15. Upon said document the khatha of the property bearing above said assessment number mutated into the name of defendant No.1 and from that date onwards, defendant No.1 is in peaceful possession and enjoyment of the same and he is paying tax for the same.

15. Further recently prior to filing of this suit, plaintiff has tried to encroach the property of defendant No.1 when defendant No.1 questioned the same the plaintiff has stopped his such activity of encroachment and filed present suit. Thereafter defendants have made inquiry regarding the plaintiff false plaint over the suit schedule property on said enquiry, the documents reveals that, the said

T.C.Vijaykumar has not delivered the possession of the property which is made agreement of sale and for the first time plaintiff gained possession of the property through the sale deed executed by KSFC Chikkamagaluru, but now the plaintiff in order to grab the property belongs to the defendant No.1 by giving false boundary and wrong extent. Hence, suit itself is not maintainable. Accordingly, prayed for dismiss the I.A.

16. Heard counsel for plaintiff and defendants and Perused the materials in hand.

17. The following points arises for consideration:-

-:POINTS:-

- 1. Whether the plaintiff is made out prima-facie case ?**
- 2. Whether the plaintiff is made out balance of convenience in his favour?**
- 3. Whether the plaintiff is made out that irreparable loss to him**

if temporary injunction refused?

4. What order?

18. My findings 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 final order for the following

-::REASONS:-

19. **Point No.1 to 3:-** These points are interrelated each other, to avoid repetition of facts, these are taken up together for common discussion. The suit of the plaintiff is for declaration and permanent injunction against the defendants.

20. According to plaintiff he is in peaceful possession of the suit schedule property since agreement of sale dated 09/12/2005 entered with

one T.C.Vijaykumar. Thereafter, he has purchased the property measuring 50X60 feet from suit schedule property by KSFC as the T.C.Vijaykumar defaulter of loan of the KSFC prior to agreement of sale.

21. Therefore, the KSFC made auction of the property measuring 50X60 feet the same was purchased by him and till today he is in peaceful possession and enjoyment of the suit schedule property by establishing hardware Veerabhadreshwara Agency and running successfully. According to plaintiff there is no any bit of land measuring 13X80 feet which is taken contention of the defendants to adjacent to his property.

22. In this aspect he has filed documents which shows there is a agreement of sale between the plaintiff and Vijaykumar for property bearing

No.1392:A:1031(A) measuring 74X87 feet, absolute sale deed shows that, there is a sale transaction between plaintiff and KSFC for land and building under bearing M.A.No.1392/A, 1031/A(old Panchayath khatha No.570) situated at Galihalli extension measuring 50X60 feet bounded by east road, west and north remaining land of Chandappa, south place left for road.

23. The plaintiff has filed certified copy of the RSA No.1242/2016 according to him it was still pending for consideration as the trial court has refused to grant the order of specific relief in plaintiff favor and in regular appeal also confirmed the order of trial court order. On perusal of certified copy of the above said RSA the controversy between the plaintiff and one Vijaykumar on the basis of agreement to sale still is pending for consideration in the High Court of Karnataka. The plaintiff has placed endorsement of

the police dated 09/12/2010 which shows there is a complaint against defendant No.3 with regard to said dispute.

24. The plaintiff has placed another two documents dated 05/12/2010 and 06/01/2011 which are shows that, the plaintiff has given the complaint and application to Tarikere police station and Chief Officer Municipality Tarikere, with regard to take auction against defendants. Xerox copy of the resolution passed by the Municipality Tarikere dated 07/02/2011 which shows there is a discussion made with regard to property measuring 13X80 feet situated in survey numbers of Bettadahalli Gram Panchayath.

25. The plaintiff has placed another copy of complaint which is given to the Tarikere police against defendant No.1 and 2 dated 25/11/2018 with acknowledgement. The plaintiff has filed certified

copy of the C.R.No.4/2010-11 the appeal which is filed before Assistant Commissioner Tarikere. The plaintiff has filed certified copy of the Galihalli Gram Panchayath pertaining to Sy.No.1 page 168-169 and filed certified copy of the partition deed dated 09/01/2000.

26. On other hand, the defendants have placed certified copy of the Galihalli Gram Panchayath pertaining to Sy.No.1 page 168-169. According to defendants, the defendant No.3 is a absolute owner of the site measuring 13X80 situated at Galihalli area, it was his ancestral property, in this regard the defendants have placed certified copy of the assessment extract for the year 1999-2000 pertaining to Galihalli area of Bettadahalli Gram Panchayath.

27. On perusal of said assessment extract, the name of the defendant No.3 is mentioned as a owner of site measuring 13X80 with boundaries east road,

west site No.80, north site No.90, south property of Chandappa and assessment number is 7915/1331/2.

28. According to plaintiff The boundaries of suit schedule property is east Lingadahalli road, west line man Thimmaiah's house, north roads leads to vacant sites, south site belongs to NGO and the assessment number is 1392/A/1031-A measuring 78X87 feet and municipal assessment No.1366/1366 measuring 17X92 feet.

29. The counsel for the plaintiff is argued that, the defendants no right, interest, title over the suit schedule property willfully interfering in the peaceful possession of plaintiff's over suit schedule property as plaintiff is in possession and enjoyment of the same by virtue of sale deed of the KSFC and agreement to sale with one T.C.Vijaykumar who is original owner of suit schedule property and there is

no any existence of site measuring 13X80 which contention taken by the defendant.

30. The counsel for the defendants has argued that, the site assessment No.7915/1331/2 measuring 13X80 situated in Galihalli area which is adjacent to the Chandappa's property and plaintiff is not in possession of property which taken contention by the plaintiff as per agreement to sale. Further the plaintiff is in possession only on property measuring 50X60 which was purchased by the KSFC and there is no any contention in the agreement to sale with regard to delivery of possession of the property by the Vijaykumar in favour of plaintiff. Therefore, the defendants having possession in the site measuring 13X80 and enjoyment of the same. for illegal gain the plaintiff has filed this false suit against defendants.

31. Further the counsel for defendant has coated one decision of the **Hon'ble High Court of**

Karnataka in 2004(1) KCCR 662 between K.Gopalreddy by Lrs. V/s. Satyanarayana and others. According to above decision, the Hon'ble High Court observed as follows:-

B.PLEADINGS AND PROOF-Whenever a party approaches the Court for a relief, based on the pleadings and issues, he has to prove his case. A suit has to be decided based on merits and demerits of the party who approaches the Court. Weakness of the defendant cannot be considered as a trump card for the plaintiff.

E.CODE OF CIVIL PROCEDURE-Order 39, Rule 1 And 2-Grant of Injunction-suit for declaration of title and injunction-Where the plaintiff has failed to prove his title and to establish the identity of the property, question of granting injunction in favour of the plaintiff does not arise at all.

32. Upon perusal of the decision coated by the counsel for defendant, the facts of the case above coated and case above present suit are different.

Hence, this court do not find any reasons that, the above coted decision applicable to present suit.

33. On perusal of materials in hand, it is clear that, there is a dispute between plaintiff and defendants since several years respect of suit schedule property. The materials placed by the plaintiff, copy of the police complaint application to the Municipality, appeal before the Assistant Commissioner Tarikere, shows that,there is a dispute since several years. Admittedly the defendants have not disputing the possession of the plaintiff over property measuring 50X60 which is plaintiff purchased by the KSFC. According to defendants there is a site existence measuring 13X80 feet belongs to the defendant No.3. After purchase of the said site in favour of defendant No.3, the defendant No.3 is in possession.

34. On perusal of the material placed by the plaintiff, it is appeared that, the plaintiff has attempt several times to stop the act of the defendants by giving complaint to the police station and applications to the concerned authorities by stating he was in possession of the suit schedule property and defendants are interference in his possession.

35. According to defendants as per agreement to sale between the plaintiff and one Vijaykumar, there is no delivery of the possession of the property which was clearly mentioned in the agreement to sale. Therefore, except the property measuring 50X60 which is purchased by the KSFC, further defendants stated that, the plaintiff not in possession of rest of property, without possession, the plaintiff has falsely stating that, he is in possession of property measuring 74X87 and 17X92.

36. In this aspect, the defendants have taken their contention that, there is a land of defendant No.3 measuring 13X80 since 1988 and it was his ancestral property. In the year of 2014 defendant No.3 has sold the above said property in favour of defendant No.1. Since from the purchase defendant No.1 is in possession and enjoyment of the same.

37. Upon perusal of the entire materials placed by the plaintiff and defendants, it is appeared that, the assessment numbers which are shown in the assessment extract placed by the defendant and assessment number shown in the sale deed between the plaintiff and KSFC and agreement to sale are different.

38. On other side, on perusal of materials placed by the defendants it is appeared that, the boundaries mentioned in the certified copy of the sale deed between defendant No.1 and 3 as east Lingadahalli

road, west vacant site, north property of N.R.Chandappa, south site No.18 and 19 NGO site but in the certified copy of the assessment extract with respect to the same property boundaries shows as east road, west site No.18, north site No.19 and south property of N.R.Chandappa. These aspects shows, there is no clarity between the boundaries shown in the sale deed and assessment extract of the same property of the defendants.

39. The plaint of the plaintiff shows boundaries of suit schedule property as east Lingadahalli road, west lineman Thimmaiah's house, north road leads to vacant site, south sites belongs to NGO.

40. Look into the assessment numbers and boundaries of respective lands of plaintiff and defendants showing entirely different. According to defendants the plaintiff is trying to encroach the property of defendant No.1, when defendant No.1 has

questioned the same, then plaintiff has stopped his such activity of encroachment but filed present suit. In this regard, the defendants have not placed any such materials showing such act of the plaintiff on their property and there is no materials shows that, the defendants property measuring 13X80 situated adjacent to the suit schedule property.

41. By considering the above all aspects and nature of suit and the controversy between the plaintiff and Vijaykumar with respect to property of agreement to sale still is pending in the Hon'ble High Court of Karnataka and admittedly the plaintiff in possession of property measuring 50X60 which is out of property of the agreement to sale between the plaintiff and Vijaykumar and upon perusal of material placed by the plaintiff, the opinion of this court is that, the plaintiff has made out prima-facie case and balance of convenience in his favor and

there is a irreparable loss if T.I. refused. Accordingly, this court answered point No.1 to 3 in the affirmative.

42. Point No.4 :- For the above reasons, I proceed to pass the following:-

:- ORDER:-

The application filed by the plaintiff U/O.39 Rule 1 and 2 C.P.C. is hereby allowed.

The defendant No.1 to 3 are hereby restrained from interfering with the plaintiff's peaceful possession of suit schedule property till further orders.

Cost shall follow the event.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the day of 24th June 2019.)

Sd/-
(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.