

IN THE COURT OF PRL. CIVIL JUDGE, & JMFC., AT
CHAMARAJANAGARA

Dated this 23rd day of January 2024

: **PRESENT:**

SRI. VENKATESHA.N., B.A.LL.B, LL.M.,
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA

O.S.290/2022

PLAINTIFF/s : Rangaswamy

V/s

DEFENDANT/s: Papamma & Another

I.A.No.II

APPLICANT/s : Rangaswamy,
S/o Late Karibasavaiah,
Aged about 72 years,
R/at Sappaiahnapura Village,
Kasaba Hobli,
Chamarajanagar Tq & District.

(By Sri. B.N.R., Advocate)

V/s

OPPONENTS/s: 1. Papamma,
D/o C.Chandraiah,
Aged about 40 years,
R/at, Bhogapura Village,
Chamarajanagar Tq & District.

2. Panchayath Development Officer,

Bhogapura Grama Panchayathi,
Bhogapura,
Chamarajanagar Tq & District.

(D1 by Sri. U.M.B., Advocate)
(D2 by Exparte)

i.	<i>Provision under which the application is filed</i>	<i>XXXIX Rule 1 & 2 of CPC</i>
ii.	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii.	<i>The date on which the application is filed</i>	<i>12.10.2022</i>
iv.	<i>Number of the application</i>	<i>IA.No. II</i>
v.	<i>The date on which the objections are filed by different opponents</i>	<i>23.03.2023</i>
vi.	<i>The date on which the orders were passed on the said application</i>	<i>23.01.2024</i>

ORDER ON I.A. II

The Applicant/Plaintiff has filed I.A.No.II under Order 39 Rule 1 & 2 R/w Sec.151 of CPC., seeking an order of Temporary injunction restraining the Defendants from interfering with the peaceful possession of the Plaintiff over the the schedule property till disposal of the suit.

2. In the Affidavit annexed to IA it is stated that, the plaint averments may kindly be read as part and parcel of this

affidavit. The Plaintiff has filed this suit for Permanent Injunction against the Defendants in respect to the suit schedule property, i.e., Vacant Site, bearing Junger No.517, property No.395, measuring to an extent of 30X40 feet situated at Bhogapura Village, Kasaba Hobli, Chamarajanagar Taluk, bounded on East by Road, West by House of Ramanna, North by House of Madaiah, South by House of Siddaiah. The suit schedule property originally belongs to C.Chandraiah who is the Senor uncle of the Plaintiff. The said Chandraiah executed a Gift deed in favour of the Plaintiff on 01.05.1997. The said C.Chandraiah is no more. After the Execution of the said Gift deed the Plaintiff got changed the katha of suit schedule property and he is in peaceful possession and enjoyment of the suit schedule property. Katha also stand in the name Plaintiff.

3. The Defendant No.1 has no right over the suit schedule property. The 1st Defendant by colluding with the 2nd Defendant has created a false document with respect to suit

schedule property. The 1st Defendant is trying to interfere with the peaceful possession of the Plaintiff. Hence the Plaintiff has filed the suit. The Plaintiff has made out a prima-facie case. The balance of convenience is also in his favour. If the Temporary Injunction order is not granted, it will cause irreparable loss and injury to the Plaintiff. Hence prays to allow the IA.

4. The Defendant No.1 has filed Written Statement. The Defendant No.2 is placed Exparte. According to the 1st Defendant the suit is not maintainable either in law or facts. The 1st Defendant denies all the allegations made by the Plaintiff. The 1st Defendant admits that, the suit schedule property originally belongs to one C.Chandraiah. The said C.Chandraiah is the father of 1st Defendant. The Plaintiff has created alleged gift deed in his favour. The father of 1st Defendant never executed gift deed in favour of Plaintiff. After the death of C.Chandraiah, 1st Defendant and his family members became absolute owners and they are in peaceful

possession and enjoyment of the suit schedule property. The Plaintiff has no right, title or possession over the suit schedule property. Hence if temporary injunction order is granted, it will cause irreparable loss and injury to the 1st Defendant. Hence prays to reject the application.

5. Heard both side arguments.

6. The following points arise for my consideration:

1. Whether the Plaintiff has got prim-facie case to grant TI Order ?

2. Whether the balance of convenience lies in favour of Plaintiff ?

3. Whether the Plaintiff will be put to irreparable loss and injury, if the order of T.I. is not granted?

4. What order?

7. My answers to the above points are as follows:

Point No.1 : in the **AFFIRMATIVE**

Point No.2 : in the **AFFIRMATIVE**

Point No.3 : in the **AFFIRMATIVE**

Point No.4 : As per the final order,

for the following: -

REASONS

8. Point No.1 to 3 :- The facts involved in Point No.1 to 3 are same. Hence they are taken up together for common discussion to avoid repetition.

The Applicant/Plaintiff has filed this suit against the Defendants for the relief of Permanent Injunction in respect of suit schedule property. It is the case of the Plaintiff that, the suit schedule property originally belongs to one C.Chandraiah. The said C.Chandraiah has executed Release Deed in his favour. From the date of Release deed, he is in possession and enjoyment of the suit schedule property as absolute owner. It is the contention of the 1st Defendant that, the said Chandraiah never executed Release deed in favour of Plaintiff. The 1st Defendant and his family members are in peaceful possession and enjoyment of the suit schedule property.

9. The Plaintiff has produced Certified copy of the Assessment Register in respect of suit schedule property. The said document prima facie proves that, the katha of the suit

schedule property stands in the name of Plaintiff. The Plaintiff also produced Four Tax paid receipts in respect of suit schedule property. The Plaintiff also produced copy of Release Deed in respect of suit schedule property. The 1st Defendant contend that, the said Chandraiah is his father and he never executed the Release deed in favour of Plaintiff and the said Release deed is un-registered. This issue requires full fledged trial. On the other hand the 1st Defendant has not produced any document in support of his case. The Assessment Register produced by the Plaintiff prima facie proves that, the katha of the suit schedule property stands in his name. He also produced Four Tax paid receipts. Hence the primis facie case is in favour of Plaintiff. The contention of the Defendant No.1 that, the Plaintiff has created said document etc., cannot be decided at this stage. It is settled Law that, while deciding the application for Temporary Injunction it is not proper to go into the merits of the case.

10. I have referred the Judgments of **Hon'ble High Court of Karnataka in Nagaraju V/s Krishna reported in 1996 (5) KLJ 421 and L.I.C V/s Bengaluru Life Insurance Corporation Employees housing Co-operative Society Ltd., reported in 1988 (2) KLJ 455.** In the said Judgments the Hon'ble High Court of Karnataka held that, while deciding the question of prima facie case, it is generally not desirable and open for the court to record a decision on the merits of the pleas taken in the suit. It is also held that, there should not be a mini trial while deciding the application for Temporary Injunction. Hence the Plaintiff has made out a prima facie case.

11. The 1st Defendant has admitted that, the suit schedule property originally belongs to one Chandraiah. Hence it is clear that, originally suit schedule property belongs to said Chandraiah. The Plaintiff has produced Assessment Register and Tax paid Receipts. The 1st Defendant has not produced any documents to show that he is the son of

C.Chandraiah and katha stands in his name. Hence at this stage the balance of convenience lies in favour of Plaintiff. The Revenue document prima facie proves that, the katha of the suit schedule property stands in the name of Plaintiff. At this stage, if Temporary Injunction is not granted, if the Plaintiff is dispossessed from the suit schedule property, it will cause irreparable loss and injury to the Plaintiff and also lead to multiplicity of proceedings. The purpose of granting Temporary Injunction Order is to preserve the suit schedule property intact till the disposal of suit. Hence the Plaintiff has proved that, if the Temporary injunction order is not granted, it will cause irreparable loss and injury to him. Hence **Point No.1 to 3** are answered in **AFFIRMATIVE**.

12. Point No.4:- For the aforesaid reason and discussion, I proceed to pass the following: -

O R D E R

**I.A.No.II filed by the Plaintiff/
Applicant under Order 39 Rule 1 & 2
R/w Sec.151 of CPC is hereby Allowed.**

In the result the Defendants, their agents or anybody claiming under them are hereby restrained by way of Temporary Injunction from interfering with the Plaintiff's peaceful possession and enjoyment of the suit schedule property till the disposal of suit.

Parties to bear their own costs.

(Dictated to the Stenographer on computer and computerized by her, corrected by me and then pronounced in the open court on this the **23rd day of January 2024.**)

(VENKATESHA.N)
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA