

IN THE COURT OF THE CIVIL JUDGE AND JMFC

AT YELANDUR

Present : SRI MADHUSUDHANA D.K. B.A., LL.B.,
Civil Judge and J.M.F.C, Yelandur

Dated : This 29th day of February 2016.

O.S.No.117/2015

Plaintiff: K. Mahadevappa s/o late Kempananjappa. 76 years,
R/o Kesthur village, Yelandur taluk,
Chamarajanagar District.
(Rep. By Sri C.R. Nagaraju, Advocate)

V/s

Defendant: Basavanna s/o Doddananjedevaru, 57 years,
R/o Kesthur village, Yelandur taluk,
Chamarajanagar District.
(Rep. By Sri A.S.Siddaraju, Advocate)

ORDERS ON I.A.No.I

The Plaintiff has filed I.A.No.I Under Order 39 Rule 1 and 2 of CPC, seeking an ad-interim temporary injunction against the Defendant from interfering with the Plaintiff's peaceful possession over 7 guntas in Sy.No.846/2 and 3 guntas in Sy.No.846/6.

2. The Plaintiff has filed his affidavit along with I.A.No.1 and submitted that, he is in possession of total 10 guntas of agriculture property as stated in the above two survey numbers. The said land was purchased by him, from the father of the Defendant on 04.03.1968 under a registered sale deed. Since the date of sale, he is in possession and cultivation of the said land and the sale deed was executed by the father of the Defendant along with his minor sons including the Defendant. The said land is bounded as per the sale deed, by East: Land of Patel Puttaswamaiah, West: Land of Shivappa, North: Land of K.C. Puttananjappa in the same survey number and South: Canal.

3. In the sale deed, the father of the Defendant has stated the boundaries as correct, but the survey number is wrongly mentioned as 10 guntas in Sy.No.846/2 instead of 7 guntas in the Southern portion of Sy.No.846/2 and 3 guntas in Sy.No.846/6. However, at the time of sale of suit schedule property made by the

father of the Defendant, he was the owner of 10 guntas in Sy.No.846/2, 3 guntas in Sy.No.846/6. After the sale till filing of the suit, none of the family members of Vendor have interfered with the Plaintiff's possession.

4. However, the Defendant has started interference and to trespass from the past one week without having any right and therefore, the Plaintiff has filed the I.A.No.1. He has also stated that, he is having the prima-facie case and balance of convenience and hence, prayed for allowing the I.A.No.1.

5. The Defendant has filed his memo to treat the written statement filed by him as the objections. In the written statement, the Defendant has denied the entire case of the Plaintiff and he has submitted that, both survey numbers 846/2 and 846/6 are his ancestral properties and his father had sold 10 guntas in Sy.No.846/2 in favour of the Plaintiff and accordingly, the Plaintiff has changed the khatha in his name and the Plaintiff

is not in possession of the any extent of land in Sy.No.846/6. The khatha of the Sy.No.846/6 is standing in the name of the Defendant even today and therefore, the Plaintiff is trying to knock off the said land and therefore, the Defendant has prayed for rejecting the I.A.No.1.

6. I have heard the arguments of both sides and parties have relied on their documents

7. After appreciating the circumstances and documents of both the parties, the following points are arisen for my consideration.

- 1. Whether the Plaintiff proves the prima-facie case?**
- 2. Whether the balance of convenience rests with the Plaintiff?**
- 3. Whether the Plaintiff would suffer irreparable loss and injury, if the injunction is refused?**
- 4. What Order?**

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

Point No.1: In the Negative,

Point No.2 & 3: Does not survive for consideration.

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

R E A S O N S

9. **Point No.1**: The Plaintiff has produced the sale deed dated 04.03.1968, RTCs., of Sy.No.846/2 and 846/6, Patta book and Akarband pertaining to his case. Similarly, the Defendant has relied on Sketch of Sy.No.846/1, 6, 3 and 5 and Sy.No.846/2. He has also relied on the RTCs. of same survey numbers and Mutation Register. The Plaintiff has produced the photographs, C.D., and Mahazar drawn by the Surveyor in the month of October 2015.

10. It is the specific case of the Plaintiff that, he has purchased the 7 guntas in Sy.No.846/2 and 3 guntas in Sy.No.846/6 from the father of the Defendant and minor sons of Defendant's father. The Plaintiff has stated that, he had purchased the 7 guntas in Sy.No.846/2 and 3 guntas in

Sy.No.846/6 under the registered sale deed and in the said sale deed, the father of the Defendant had furnished the correct boundaries, but he has wrongly mentioned that, he has sold the 10 guntas only in Sy.No.846/2, but actually out of 10 guntas, in Sy.No.846/6, 3 guntas was also sold by the father of the Defendant.

11. The date of sale is 04.03.1968 and the RTC produced by the Plaintiff pertaining to the Sy.No.846/2 shows that, the Plaintiff has purchased 10 guntas in Sy.No.846/2 and 3 guntas of Sy.No.846/6 is standing in the name of the Defendant.

12. The Defendant has also relied on the documents like RTCs., and Mutation register which also show that, 3 guntas in Sy.No.846/6 was changed in the name of Defendant from his father, as per the family division in the year 2003-04. The Plaintiff has not explained why he has not got rectified the sale deed from the father of the Defendant after coming to know that,

the Vendor has wrongly stated about selling 10 guntas only in Sy.No.846/2. The Plaintiff has not produced any documents to show that, he is in possession of 3 guntas in Sy. No.846/6 as alleged by him and for the purpose of proving his possession also over said 3 guntas in Sy.No.846/6, the oral and documentary evidence of both sides is required. The photographs are not the proof of showing the possession, because of the reason that, on the basis of photographs, the Court cannot identify the exact location of the disputed land. Therefore, on the strength of entries in the Revenue documents, at this juncture, I hold that, the Plaintiff has failed to make out prima-facie case and therefore, **the Point No.1 is answered in the Negative.**

13. Point No.2 and 3: Since the Plaintiff is not able to prove the prima-facie case, the Point No.2 and 3 does not survive for my consideration. Therefore, **they are answered accordingly.**

14. Point No.4: For the above discussion made on Point No.1, I proceed to pass the following:

ORDER

**I.A.No.I filed by the Plaintiff Under Order 39 Rule
1 and 2 of CPC is hereby rejected.**

(Dictated to the Stenographer and transcribed by him, revised,
corrected and then pronounced by me in the open Court on this the
29th day of February 2016.)

(MADHUSUDHANA D.K.)
Civil Judge & JMFC.,
Yelandur.

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