

IN THE COURT OF PRL. CIVIL JUDGE AND
JMFC., AT KOLLEGALA

O.S.No.28/2013

PRESENT: Smt. **GEETHANJALI.G.** B.A., LL.B.,
Prl. Civil Judge and J.M.F.C.

Dated: This the **22nd** day of **November 2014**

Plaintiff : R.Madesha S/o Rachashetty,
39 years, R/o Lokkanahalli
village, Kollegala taluk,
Chamarajanagar District.

(Represented by : Sri.S.Rudraradhya, Advt.)

V/s

Defendant : K.Sathish Kumar
S/o late K.Krishnan
25 years, R/o Lokkanahalli
village, Kollegala taluk,
Chamarajanagar District.

(Represented by Sri. Pradeep R. Advt.)

Orders on IA No.14

1. The applicant/plaintiff filed IA No.14, U/O 39
Rule 1 and 2 r/w Sec.151 of CPC seeking temporary
injunction against the defendants/opponents
restraining them from interfering with the peaceful
possession and enjoyment over the suit property, till

P.T.O.

adjudication of the matter for the reasons stated in the accompanied affidavit.

2. In the annexed affidavit it has been submitted by the applicant that, the applicant is the absolute owner in possession of the suit property and he conferred title through registered sale deed and had grown onion and Corn crop over the suit property and opponent by forming unlawful assembly he is trying to interfering with his peaceful possession and enjoyment of the suit property and if this application is not allowed. He will put to hardship hence, prays to allow the application.

3. The opponent/defendant filed his objection and denied all the allegation and contended that and his grand father namely Nanjundegowda owned the land bg.Sy.No.441/1 measuring 50 cents, the land bg.Sy.No.441/2 measuring 2.25 cents, the land bg.Sy.No.441/3 measuring 2.72 cents and the land

bg.Sy.No.514/1 measuring 4.20 cents, which are ancestral properties of them and he died instate and his wife Karupamma and Two daughters succeed his estate and they continued their possession by cultivating the same. And after contesting this suit by the opponent by filing his written statement along with IA No.12, the applicant by mentioning wrong boundary he started interference with his possession by suppressing real fact and his Aunt namely Vathsala had executed right relinquishment deed in his favour and bequeathed her share in Sy.No.441/2 and 441/3 and at present he has cultivating the said properties and grown maize crop and applicant/plaintiff even having no right over the same, he is trying to interfere with his peaceful possession and enjoyment, for which he approached the concerned police and they advised the plaintiff/applicant, even after the applicant has not stopped his illegal and if this application is allowed, he

will put to hardship. Hence, prays to reject the same with cost.

5. Heard both sides.

6. **Points for consideration of IA No.14.**

1. Whether the plaintiff has prima-facie case?
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What order?

7. **My findings:**

Point No.1 : in the “Negative”.

Point No.2 and 3 : in the “Not considered.”.

Point No.4 : as per the final order.

Reasons

8. **Point No.I** This is the suit for Permanent Injunction brought by the plaintiff/applicant and the subject matter of the suit is immovable property bg.Sy.No.441/1 measuring 50 cents and the land bg.Sy.No.514/1 measuring 4.20 cents and boundary of the same mentioned as in the plaint i.e., to the East : the land of the government, to the West : the land of Appuswamy, North by : Channel, South by : land of Madegownder.

9. The applicant/plaintiff in order to establish the prima-facie case he relied upon documents in respect of **suit schedule properties** which are loan clearance certificate issued by Prathamika Shahakara and Krushi and Grameena Abhivrudhi Bank, the cultivator certificate, boundary certificate, tax paid certificate, encumbrance certificate and RTC are on which stands in the name of applicant, the FIR copy and complaint

registered against the opponent, the RTC pertaining to **suit schedule properties** for the year 2012-13, 2013-14 stands in the name of applicant, the copy of the registered sale deed in which the grand mother of opponent sold out the **suit schedule properties** in favour of applicant also furnished.

10. The defendant/opponent also relied upon Adangal Vahi in respect of schedule "A" of IA No.12, which stands in the name of Karuppagounda, the copy of family tree of their family branch, in which the opponent shown as grand son of one Nanjundegowda and Karupamma. The RTC pertaining to schedule "A" of IA No.12 for the year 1976-79, 1986-89, 1991 to 94, 1996-99, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, furnished and the same are stands in the name of grand father of the opponent.

11. He further relied upon the RTC pertaining to schedule "A" of IA No.12 for the year 2011-12, 2013-14, which are stands in the name of opponent. The opponent also relied upon the RTC pertaining to schedule "B" of IA No.12 for the year 2002-03, 2003-04, 2004-05, 2005-6, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, which are stands in the name of grand father of opponent. And the RTC pertaining to schedule "B" of IA No.12 for the year 2011-12, 2013-14 which stands in the name of the opponent and his father.

12. The mutation register extract, Crop certificate, cultivator certificate, the certificate issued by Revenue Department, the copy of right relinquishment deed, the copy of the complaint and NCR submitted before the SHO of Hanur police station by the opponent, the FIR which numbered as 67/2013 and registered against the applicant, the Encumbrance

Certificate with photo copies and CD pertaining to schedule A and B property of IA No.7 were furnished.

13. After going through the documents relied by both parties it noticed that, the applicant in his plaint he has mentioned the boundaries as described above by giving same boundary to the both Sy.No.441/1 measuring 50 cents and Sy.No.514/1 measuring 4.20 cents, wherein in the schedule of IA No. 12 he has shown the boundary to the Sy.No.514/1 as East by : land Bg.Sy.No.442, West by : land Bg.Sy.No.440, North by :land Bg.Sy.No.441, South by : land Bg.Sy.No.431.

14. Therefore, the boundaries shown in the IA No.12 totally differs from the boundaries described in plaint and the applicant rather than curing such defect in his application he relied upon decision reported in ILR 1988 KAR 556 and request to consider the boundaries as per the sale deed dated 18.06.1997 as

such a strong suspicion raise in the case of the plaintiff.

15. Further the applicant in order to support his case he also filed written argument dated 16.01.2014 in which he taken new plea that his vendor Karupamma had executed an agreement dated 18.06.1997 and stated that the Sy.No.441/2, 441/3 are the government lands and further stated the said lands are situated in between the suit schedule property and his vendor through the Darkhasth agreement dated 18.06.1997 she hand over the possession in favour of applicant, and now applicant is in possession of the suit properties along with Sy.No.441/2, 441/3 of Lokkanahalli village. And in support of the same he also relied upon additional documents which are copies of Darakhasth land agreement dated 18.06.1997, electricity bills, unregistered Pathway tittle deed, FMB Sketch etc.

16. It is crucial to note that, the above said facts are not whispered by the plaintiff/applicant in his plaint and the same are disclosed when IA No.12 has been filed by the opponent and this is the settled law that no case can be decided on the grounds or facts out side the pleading and in a reported decision it has been held that the court can not grant relief to the plaintiff for which there is no foundation on the pleadings (AIR 1951 SC 177). Further, it is also held in a decision reported in AIR 1964 SC 24 that no kind of evidence can be looked in to on a plea which was never put forward. Therefore, the contents of IA No.12 are new to the existing pleading which cannot be considered at this stage, moreover there is a strong suspicion in the case of the plaintiff as there is a deference in the boundary mentioned in the IA No.12 and plaint as such I am of the opinion that the plaintiff

fails to made out prima-facie case. Hence, I answer Point No.1 in the “Negative”.

17. **Point No.2 and 3** : in view of answering Point No.1 in the negative the question of balance of convenience and irreparable injury will not arisen for consideration.

18. **Point No.4**: In view of aforesaid discussion, I pass the following;

ORDER

IA No.14, U/O 39 Rule 1 and 2 r/w Sec.151 of CPC filed by the applicant/plaintiff is hereby **rejected**. No order as to cost.

For Settlement and Issues.

Call on : 02.01.2015

(Dictated to the Typist directly on the system, corrected and then pronounced by me in the open court on this **22nd** day of **November 2014**.)

(Geethanjali.G.)
Prl. Civil Judge and JMFC.,
Kollegala.

~~*