

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 28th day of June 2016.

O.S.No.29/2016

Plaintiff: K.C. Naganna s/o Chikkakunnanaika, 53 years,
R/o Kannegala village, Santhemarahalli Hobli,
Chamarajanagar taluk and District.
(Rep. By Sri Shivaswamy, Advocate)

V/s

Defendant: Siddanayaka s/o late Seekliputtanayaka, 65 years,
R/o Kannegala village, Santhemarahalli Hobli,
Chamarajanagar taluk and District.
(Rep. By Sri A.S.Vijayakumar, 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 ad-interim temporary injunction to restrain the Defendant from interfering with the Plaintiff's peaceful possession enjoyment over Sy.No.244/7 measuring 1 acre having 50 Coconut

trees situated at Kannegala village. The above property is referred as suit schedule property.

2. In support of his I.A.No.1, the Plaintiff has filed his affidavit by deposing to that, he is in possession and enjoyment of the suit schedule property and on the Western side of the suit schedule property, the Sy.No.244/6 is situated and the same is standing in the name of the Defendant. The Defendant is not having any manner of right, title and interest over the suit schedule property, but he has tried to interfere with the Plaintiff's possession and enjoyment and when the Plaintiff has started to erect fence around his suit schedule property, the Defendant has obstructed the Plaintiff. Therefore, the Plaintiff's mother had lodged a police complaint but the Police have not taken any action against the Defendant.

3. On 30.03.2016 the Defendant has illegally removed the fence erected by the Plaintiff around his suit schedule property

and therefore, he has filed the above suit and asked for Temporary injunction as per I.A.No.I.

4. The Defendant has appeared and filed his objections to the I.A.No.1. The Defendant has totally denied the case of the Plaintiff as false. The Defendant has stated that, it is false to state that, his property is situated on the Western side of the suit schedule property and he has submitted that, the land bearing Sy.No.244/1 is totally measuring 2 acre 28 guntas, which was originally belonged to the mother of the Defendant by name Madamma.

5. The said Madamma and her son Subbanaika have sold 1 acre of land towards Eastern side of entire extent and retained remaining 1 acre 28 guntas. The Defendant has got 16 guntas out of 1 acre 28 guntas in the family partition dated 08.05.1975 between his brothers and mother.

6. The Defendant's property is bounded on East by Chikkakunnanaika's land, West by Mahadevanaika's land, South by

Chikkakunnanaika's land and North by Veerabasavanaika's land. The Plaintiff has given wrong boundaries to the suit schedule property and the Plaintiff has colluded with the Revenue Department and caused the Officials to make several phodes to Sy.No.244/1 with an intention to grab the property of the Defendant, as such, the Defendant has prayed for dismissal of the I.A.No.I.

7. Both Counsels have addressed their arguments and relied on their respective documents. The Plaintiff has relied on Registered sale deed, Mutation Register, RTCs, Pakka Book and Photographs in support of his case. The Defendant has relied on RTCs, tax paid receipts, photo copy of the registered Mortgage Deed.

8. After hearing the arguments, 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?

9. 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

10. Point No.1: The Plaintiff has produced the original Sale deed dated 11.12.1967 for having purchased the property of 1 acre in Sy.No.244/1 from Madamma and her son, who are the Mother and brothers of the Defendant. Originally the Plaintiff has purchased the property in Sy.No.244/1 and now the said survey number is re-numbered as Sy.No.244/7, which is depicted in the RTCs produced by the Plaintiff.

11. The Plaintiff has stated that, towards the Western side of his property, the property of the Defendant in Sy.No.244/6 is situated. But the said contention is denied by the Defendant in his

objections and the Defendant has contended that, his property is bounded as follows:

Towards East: Chikkakunnanaika's land,

West: Mahadevanaika's land,

South: Chikkakunnakaika's land

North: Veerabasavanaika's land.

12. According to the Plaintiff towards Western side of his property, the property of the Defendant is situated and the Defendant has stated that, towards Western side of his property Chikkakunnanaika's land is situated. If the Registered sale deed of the Plaintiff is believed, the Sy.No.244/1 measuring 1 acre was purchased by the Chikkakunnanaika who appears to be the father of the Plaintiff and the Defendant has admitted that, the property of Chikkakunnanaika is situated towards Eastern side of his property and therefore, the contention of the Plaintiff about existence of Defendant's property on the Western side of the suit schedule property is proved.

13. But it appears that, Sy.No.244/1 is phoded and given phode numbers 1 to 7 and there is no material to show that, after the purchase of the suit schedule property, the Plaintiff has got measured his property and Haddubasthu and boundaries are fixed by the Authorities.

14. Since the Plaintiff has purchased the property from the mother of the Defendant and since the Defendant is vehemently opposing the case of the Plaintiff about furnishing wrong boundaries and therefore, even if the Plaintiff has proved that the property of the Defendant is situated towards his Western side, the Plaintiff cannot put the fence around his property without the proper measurement of his extent and therefore, the Plaintiff has not made out any prima facie case at this stage of the case.

15. Moreover, the Plaintiff has sought for the Ad-interim injunction to restrain the Defendant from obstructing the Plaintiff to put the fence around his suit schedule property. The Plaintiff has not put any fence from the date of purchase of the

suit schedule property from the year 1967, but he has started to fence his property only before filing of the suit. Therefore, unless the correct extent and measurement of the property is proved by the Plaintiff, giving the relief of Temporary injunction would have the effect of giving the main relief. Since the interim relief is in the nature of main relief for which the suit is filed and therefore, if the Temporary injunction is granted in favour of the Plaintiff, it has got the effect to giving main relief under the I.A.No.I and same is not permissible under law and therefore, the Plaintiff has not made out any prima facie case and hence, **the Point No.1 is answered in the Negative.**

16. Point No.2 and 3: Since the Plaintiff has failed to prove the prima-facie case, there is no opportunity for discussing these two points and therefore, they are not arisen for my consideration. Therefore, **they are answered accordingly.**

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

O R D E R

**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
28th day of June 2016.)

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

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