

KADG220025772023



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI

:- PRESENT :-

Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 9th Day of January 2024

O.S.No.287/2023

PLAINTIFFS : Sri. B.G.Chandrashekarappa and Another

V/s

DEFENDANTS : Sri. Veerabhadra Rao and Others

I.A. NO.I and III

Applicants/Plaintiffs : Sri. B.G.Chandrashekarappa and Another

V/s

Opponents/Defendants : Sri. Veerabhadra Rao and Others

1.	Provision under which the application is filed	1. Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC 2. Under Order 39 Rule 4 R/w Sec.151 of CPC
2.	Relief sought for	Ad Interim Temporary Injunction For vacation of exparte temporary injunction
3	Date on which the application is	16.11.2023

	filed	
4.	Number of the application	I.A.No.I and III
5.	Date on which the objections are filed by different opponents	06.12.2023
6.	The date on which the orders is passed	09.01.2024

ORDER ON I.A.No.I and III

I.A.No.1 filed under Order 39 Rule 1 & 2 R/w Sec.151 of the Code of Civil Procedure is praying for an *ad interim* ex-parte temporary injunction against the defendants and it is filed by the plaintiffs along with plaint.

2. I.A.No.III filed under Order 39 Rule 4 R/w Sec.151 of the Code of Civil Procedure praying to vacate the *ad interim* ex-parte temporary injunction order as against defendant No.3. It is filed by the defendant No.3, with written statement.

3. SOME AND SUBSTANCE OF THE AFFIDAVIT FILED IN SUPPORT OF IA NO.1 AS UNDER:

First plaintiff has sworn the affidavit for himself and on behalf of second plaintiff. The deponent stated that, one Tukku Bai was the owner in possession of suit schedule property and her name was appearing in the panchayath records. Upon her death, her son T.Ramappa succeeded the same. Said T.Ramappa and his son Nagaraja executed sale deed in favour of Chandrashekarappa and Jayadevappa B.G. in the year 1999. Thereafter, khatha of the property was maintained in the names of plaintiff No.1 and Jayadevappa. Said Jayadevappa is no more and his son Avinash is in

joint possession and enjoyment of the property. The said purchaser used the suit property for storing fire wood, hay stock, cow dung pit. Their possession is continuous, open, notorious to the knowledge of adjacent owners and society at large. The names of Chandrashekarappa and Jayadevappa B.G. were continued in the revenue records upto 2002-2003, by the Kamsagara Panchayath. Subsequently, Sagarapete Village included during the limits of Mandal Panchayath Basavapattana. Due to mistake and due to misplacement of records maintained in the names of Chandrashekarappa and Jayadevappa, Basavapattana Grama Panchayath might have stopped the records in the names of Chandrashekarappa and Jayadevappa. The authorities have not made any efforts to trace out the records and it is their own negligence. The Chandrashekarappa and Jayadevappa are bonafide purchasers and continued their joint possession and enjoyment in the suit schedule property without any interruption.

4. It is stated on oath that, Mandala Panchayath authorities of Basavapattana had no right title or interest in and over the suit schedule property. The authority having knowledge of right, status in respect of suit schedule property, fraudulently created some documents and issued hakkupathra in favour of first and second defendant, mentioning the properties with the boundaries purchased by the plaintiffs. Thereby, the panchayath authority recorded the names of defendant No.1 and 2 ignoring the ownership of plaintiffs. The said resolution and documents are illegal. On the basis of such documents the defendants No.1 and 2 could not get any title over the

suit schedule property. The Mandala Panchaayth Basavapattana not made any efforts to visit the spot, identify the possession of previous owners. In collusion with the defendant No.1 and 2 got created all the records. In furtherance of such deeds, the defendant No.2 transferred the properties to third defendant and first defendant. They are managed to get khatha of the properties by providing false information without any authority of law and possession thereon. The third defendant is also indulging in creation of sale deeds in favour of third parties/strangers. The defendant No.1 to 3 are powerful persons and they have men and money at their command. The defendant No.1 to 3 have made conspiracy to take forcible possession from the plaintiffs and to change the nature of the suit schedule property.

5. In addition to this, the defendants along with some bad elements with JCB machine came near to suit property at first week of September 2023 and tried to excavate land intending to lay foundation by removing the cow dung fit and other materials. The plaintiffs resisted the said illegal and high handed acts of defendant and their supporters. In such situation, the defendants in collusion openly stated that, Koushalyamma sold the suit property to third defendant in the year 2002 and first defendant is also managing to sell the portion of the same to third defendant. Apprehending such threat, the plaintiffs filed this suit and also placed the application on record for interim arrangement. The plaintiffs have got prima facie case, the balance of convenience is in their favor and if the order as prayed for is not granted they will be put to hardship, inconvenience

and irreparable injury. Thus, the plaintiffs prayed to allow the application.

6. STATEMENT OF OBJECTIONS FILED BY THE DEFENDANT NO.3 AS UNDER:

The defendant No.3, apart from placing statement of objections on record, has also filed I.A.No.III under Order 39 Rule 4 R/w Sec.151 of C.P.C., seeking vacation of the ex-parte temporary injunction order.

7. The defendant No.3 denied the entire grounds narrated under the affidavit filed in support of I.A.No.I and called for strict proof thereof. The defendant No.3 contended that, the plaintiffs are not in possession of the suit schedule property. The defendant No.3 is in possession of the property bearing K. No.138/1 and 2, each measuring 30X25 feet, in all total 60 X 25 feet. The plaintiffs have come up with the false suit based on the created sale deed of the year 1999 with wrong boundaries. In order to substantiate the same, the defendant No.3 has produced the documents. The defendant No.3 has also contended that, the contents of the written statement be read as part and parcel of the statement of objections. By these such other contention, the defendant No.3 prayed to reject the application.

8. CONTENTS OF THE AFFIDAVIT FILED IN SUPPORT OF I.A.NO.3

The defendant No.3 affirmed that, the plaintiffs filed false suit by suppressing the true facts based on created sale deed of the year

1999. The same was purchased by the defendant No.3 from one Smt.Koushlyamma and Sri.Veerabhadra Rao, through registered sale deeds. Accordingly, khatha has been changed in the name of defendant No.3 at the Kamsagara Grama Panchayath records. The defendant No.3 had paid kadayam to the panchayath. Thus, the plaintiffs have not entitled the ex-parte temporary injunction. The plaintiffs are not in possession of the suit schedule property. The boundaries are mentioned in the sale deed are all false. Based on the same the plaintiffs got ex-parte ad interim temporary injunction order by suppressing material facts. The plaintiffs are with the help of men and money, they may evict/kick out from the schedule property. Thus, the order ex-parte ad interim temporary injunction needs to be vacated. If the application is allowed no hardship would be caused to the other side, as otherwise the defendant No.3 will be put to irreparable loss and legal injury. Hence, prays to allow the application.

9. The plaintiffs have not filed the objections to this application. Moreover, the application is in the nature of objections to I.A No.1.

10. The controversial statements of affidavit and the statement of objections of both plaintiffs and defendants rises the following points for consideration;

POINTS

1. Whether the plaintiffs have made out prima facie case?

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

3. Whether the plaintiffs will be put to irreparable loss, if the order as prayed for is not granted?

4. Whether the defendant No.3 has made out grounds to vacate the ex-parte ad interim temporary injunction order?

5. What order?

11. Heard the learned counsels appearing for the plaintiffs and defendants. Perused the records and on perusal of the same, my findings to above said points are as under :

POINTS

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : In the Affirmative

Point No.5 : As per final order,
for the following ;

REASONS

12. Point No.1 to 3:- Since these points are interlinked with each and such I have taken them for common discussion.

13. The learned counsel for plaintiffs has submitted arguments that, the plaintiffs had purchased the property from T.Ramanna, who was the son of Tukku Bai. The purchase was in the year 1995. On

the basis of sale deed, the names of plaintiff no.1 and B.G.Jayadevappa were appearing in the records of suit property, until the property merges within the limits of Kamsagara Grama Panchayath. The documents were misplaced by the Bsavapattana Grama Panchayath authority and thereafter discontinued the records in the name of plaintiffs. Earlier panchayath records were disclosing the name of T.Ramappa as owner of property, till 1980-81. The boundaries of the sale deeds of plaintiffs and the hakkupathra are one and the same. The Mandala panchayath, without there being any right, title or interest in the suit property had illegally transferred the same in two bits to the defendant No.1 and 2. The DCB register extract of the year 1980-81 reveals the boundaries and measurement of the property. The learned counsel for plaintiffs further argued that, the earlier mutations to be considered. Long standing mutation entries are evidence of possession of the person. Thus, the plaintiffs prays to allow the application.

14. The learned counsel for defendant No.1 and 3 has submitted his arguments that, the plaintiffs claim is on the basis of revenue records and on the basis of revenue records, the alleged sale deed was created in the name of plaintiffs. Thus, the same is not having any sanctity in the eye of law. There were no records in the name of plaintiffs or their vendors for a period of 23 long years. Therefore the plaintiffs cannot question the sale deed or the title of defendants. The plaintiffs have not questioned the mutation entries in the name of defendants as per Sec.269 of Panchayath Raj Act and therefore they are not entitled to agitate their claim before this court.

As on the date of filing of the suit, no khatha and kandhaya records are existed in the name of plaintiffs. The allotment refers door number of property, measurement and the boundaries. The measurements are different than the allotment. The allotments were in the year 1987-88 and they are much prior to the alleged sale deed of plaintiffs. The rough sketch furnished by the defendants along with the written statement discloses the actual location of the properties and as per the same the plaintiffs are trying to encroach the property of two persons, which are in between property of plaintiffs and defendants. The plaintiffs in collusion with T.Ramappa had created the sale deed by mentioning the wrong boundaries including the property of Lakshmana Rao and Others. Thus, the plaintiffs are not entitled the relief of equitable in nature. There is no basis for the boundary, which has mentioned in the DCB of 1980-81. Grant certificate is older than the sale deed of plaintiffs. The family member of plaintiff was panchayath member for a period of 30 years and he did all mischievous acts in collusion with the officials of panchayath to create the records in the name of T.Ramappa and plaintiffs. By these set of submissions, the learned counsel for defendants No.1 and 3 prays to reject the application.

15. The learned counsel for defendants No.1 and 3 has also placed his reliance on the decision of the **Hon'ble High Court of Karnataka** reported in **ILR 1989 KAR 1701**, in the matter between **Sri.Gowrishankara Swamigalu v/s Sri.Siddhdhaganga Mutt**, **ILR 2014 KAR 4716** in the matter between **Vasudev and Others v/s Tukaram Bhimappa Naik and Others**, The decision of **Hon'ble**

Supreme Court of India, reported in **RLW 2010(2) RJ 741 (SC)** in the matter between **Narasamma and Others v/s State of Karnataka and Others**.

16. In order to establish the prima facie case, plaintiff has produced as many as 11 documents. The Sl.No.1 document is the assessment extract of junger No.24, for the period of 1958 to 1963. Wherein, the name of Tukku Bai is mentioned as the owner of the house and in the year 1962-63, the name of T.Ramappa added to said form. The second document is house land tax assessment list of the year 1980-81 and it is disclosing the name of T.Ramappa son of Balappa as a possessor of open site measuring 30 X 60 feet, comprised in property 95, junger No.47. The third document is the house land tax assessment of the year 1980-81 and is disclosing the name of T.Ramappa S/o Balappa as possessor of the site measuring 30 X 60 feet, comprised in junger No.47, property No.95. This document reveals the boundaries of the property. Fourth document is demand register extract for the period of 1980-1988. In all the records, the name of T.Ramappa S/o Balappa is mentioned as owner of the property no. 95, the assessment No.47, Sl.No.637, 625. The fifth document is similar assessment extract of the year 1987 to 1999 and is also disclosing the T.Ramappa as possessor of property No.95, comprised in junger No.47.

17. The plaintiffs produced the sale deed dt: 240.05.1999. I have carefully perused the said sale deed and it is disclosing the name of plaintiff No.1 and one G.B.Jayadevappa as purchasers and T.Ramappa S/o Balappa, T.R.Nagaraja S/o T.Ramappa as sellers.

The property referred in the said sale deed is junger No.25, assessment No.47, K.No.95, measuring East to West 60 feet, North to South 30 feet. The boundaries of said open site mentioned as, East - Panchayath Road and Siddalingallar Halappa's land, West - Panchayath Road, North - House of Hussainsab, South - Panchayath Road.

18. The learned counsel for plaintiffs much relied the boundaries mentioned in the assessment extract of the 1980-81. Whereunder, the boundaries are mentioned as, towards East – Land, towards West- Panchayath Road, towards North – House of Hussain Sab, towards South – open site of Lakshmana Rao S/o Ramanna. However, the sale deed referred above refers the southern boundary as panchayath road. On consolidated consideration of the assessment extracts of the year 1980-81 and the boundaries of sale deed, there is questionable description is appearing as to the Southern side of the alleged suit property. In the assessment extract, the Southern boundary is the property of Lakshmana Rao S/o Ramanna's open site and in the sale deed it is mentioned as South the road. In that regard, no explanation is appearing in the plaint and any other prima facie records are placed by the plaintiffs. It is also not the case of plaintiffs that, the road was formed later and therefore after the road the property of Lakshman Rao is situated.

19. Plaintiff has also produced the DCB register extract of the year 1999-2000 and it is disclosing the name of plaintiffs and B.G.Jayadevappa as joint owners. The said DCB register extract issued by the Kamsagara Grama Panchayath. The other document is

also produced and it is disclosing the property No.95, in the name of plaintiff No.1 and B.G.Jayadevappa and this is for the period of 2002-2003. The plaintiffs produced zerox copy of title letter issued to D.Veerabhdra Rao S/o Ranga Raja who is none other than the first defendant of the suit. This title letter discloses the grant of property No.138/2 by the Mandala Panchayath, Basavapattana by mentioning measurement and the boundaries. The MR 101/91-92 is produced and it is consequent to the title letter issued by the Mandala Panchayath, Basavapattana on 13.07.1988. The certificate issued by the Grama Panchayath, Kamsagara dt: 18.09.2023 is produced and according to it, the name of second defendant is appearing in the panchayath records for the period of 2001-02 and mentioned in it that title letter not available with the panchayath. The DCB register extract of Kamsagara Grama Panchayath dt: 01.06.2000 is produced and it is disclosing the name of Kousalya W/o T.Eshwarappa as a owner to property No.138. Similar DCB register extract is produced. The certified copy sale deed dt: 11.04.2002 is produced by the plaintiffs and as per the sale deed the third defendant purchased the property bearing K.No.138, measuring East to West 30 feet, South to North 25 feet. It is having reference of grant in favour of second defendant and it also depicting the boundaries of property transacted.

20. The DCB register extract of property No.138/1 produced and as per this, the name of third defendant came to be mutated in place of Kousalya W/o T.Eshwarappa. The similar DCB register extract for the period of 2022-23 is also produced and disclosing the

name of defendant No.3. Form No.9 of property No.138/2 is produced and it is disclosing the name of first defendant. The certificate issued by the Secretary of Grama Panchayath, Kamsagara dt: 12.09.2023 is produced by the plaintiffs. The said authority certified that, property No.95, junger No.24, Sl.No.25, assessment No.47 property was standing in the name of Tukku Bai since 1958 to 1963. After her death, the same was transferred in the name of T.Ramappa S/o Balappa and his name was mutated in the panchayath records since 1982 to 1999. After 1999, the name of plaintiff No.1 and B.G.Jayadevappa were mutated till 2000 to 2003 and thereafter no records are available in their names.

21. The defendant No.3 has produced the letter issued by the office of group panchayath, Basavapattana, Channagiri Taluk. As per the said document, the panchayath authority confirmed the extent of property of defendant No.3's father as East to West 65 feet, North to South 45 feet and also confirmed the boundary of the property. As per the said document, the boundary of defendant No.3's property is towards East – Government Land, towards West – Police Station Land, towards North – V.P. land, towards South – V.P.Land. The said document appears to be older one and as on this prima facie stage, it establishes that the boundaries as shown in the sale deed and the schedule of the property on the North side appears to be doubtful. The defendant No.3 produced resolution of Grama Panchayath, dt: 14.11.1987. The subject No.9 is pertaining to the grant of the property to D.Veerabhadra Rao S/o Ganga Raju of Sagarapete Village. The said document reveals the grant of open site

to said person, within the boundaries mentioned thereunder and the extent is also shown thereat as 30 X 25 feet. The letter of title of D.Veerabhadra Rao S/o D.Ganga Raju also produced and it is dt: 14.09.1988. The property number is shown thereunder as 138/1, extent mentioned as 30 X 25 feet and boundaries also shown in it. The MR 101/91-92 is also placed on record and as per this document, the letter of title granted to said person was came in effect in the panchayath records for the property No.138/2.

22. The notice dt: 23.09.2022, issued by the Executive Officer, Taluk Panchayath, Channagiri is produced and it prima facie discloses the grant of property No.138/2 to D.Veerabhadra Rao S/o Ganga Raju, not mutating his name in the panchayath records during the amalgamation of earlier panchayath to Kamsagara Grama Panchayath. The said authority has ordered to mention the name of said person into the records pertaining to property No.138/2, on the basis of spot mahazar, dt: 14.10.2022, resolution of Grama Panchayath, Kamsagara, dt: 14.10.2022. The notice of Executive Officer is dt: 23.09.2022 and consequent resolutions and spot mahazars are dated 14.10.2022. The MR No.23, dt: 14.10.2022, resolution No.4/1 and order of the Grama Panchayath are placed on record. As per the same, the name of defendant No.1 came to be mutated in respect of property No.138/2 of Kamsagara Grama Panchayath. The DCB register for the period of 2022-23 is discloses the name of first defendant as owner and the mode of mutation of his name is also appearing thereon.

23. The defendant No.3 produced form No.9 and 11(a) of the property No.138/2 and it discloses the boundaries as well as measurement. The defendant No.3 produced tax paid receipt of the said property dt: 07.01.2023. The original sale deed executed by first defendant in favour of third defendant is also produced and it is referring the property No.138/2 of Kamsagara Grama Panchayath and the boundaries are also appearing therein. The application forwarded by the third defendant on the basis of sale deed is also produced. The resolution dt: 06.02.1988 is produced and as per this resolution subject No.6 is pertaining to the grant of open site to second defendant. The measurement of the property is shown therein as 30 X 25 feet and also mentioned the boundaries.

24. The copy of letter of title dt: 02.06.1988 is produced and as per this letter of title the property comprised under khathe No.138/1, measuring 30 X 25 feet was allotted to second defendant and the boundaries of the said portion also demarcated in it. MR 68/91-92 is consequent mutation entry of letter of title referred above. The DCB register extract for the period of 1999-2000 is also disclosing the name of second defendant as owner of property No.138. DCB register extract for the period of 2000-2001, is again disclosing the name of second defendant as owner to property No.138. The certified copy of sale deed dt: 11.04.2002 is placed on record and as per this sale deed the second defendant alienated the property to the third defendant by mentioning exact extent and the boundaries and also reciting the mode of acquisition of title to the same. The form No.13 issued by the Grama Panchayath is also

placed on record and as per this document, the name of third defendant came to be mutated at panchayath records by virtue of sale deed dt: 11.04.2002. The DCB register extracts of the property No.138/1 for the period of 2022-23, 2023-2024 are produced and are disclosing the name of defendant No.3 as owner.

25. The general receipt dt: 26.03.2002 is produced and as per this document the second defendant paid taxes pertaining to property No.138 at relevant period. Tax paid receipts dt: 22.10.2021, 19.10.2023, 17.03.2005, 16.09.2002 are also placed on record and are revealing the name of third defendant as payee of tax and also the owner of property No.138. The defendant No.3 has produced the electricity bills. He also produced the certificate issued by the Panchayath Development Officer of Grama Panchayath, Kamsagara dt: 08.11.2023 and as per this document, no records are available as to the measurement, boundaries of the property No.95, which was allegedly standing in the name of T.Ramanna S/o Balappa. The defendant No.3 also placed the DCB register extract of property No.95 for the period 1987 to 1999.

26. Having referred all these prima facia documents, what it appears is, the plaintiffs are claiming the possession in and over the suit schedule property and within certain boundaries. To substantiate the same, have placed the sale deed and necessary DCB records pertaining to their property. The sale deed discloses the boundaries of the property as, Towards East – panchayath road and Siddalingallara Hallappa's land, towards West – panchayath road, towards North – property of Hussain Sab, towards South –

panchayath road. The alleged DCB of the year 1980-81, produced by the plaintiffs discloses the alleged boundaries as Towards East – land, towards West – panchayath road, towards North – the property of Hussain Sab and towards South – property of Lakshmana Rao. The said document is much against the Southern boundary as mentioned in sale deed as well as the suit schedule property. The plaintiffs claimed the title and possession basing upon the alleged title of his vendor namely, T.Ramappa S/o Balappa and as per the DCB register extract for the year 1980-81. The said property is having some other boundaries, more particularly on the Southern side. It is also interesting to note that, the Mandala Panchayath, Basavapattana had granted the properties comprised under K.No.138/1 and 2 to first and second defendants and the total extent of both the properties comes around 60 X 50 feet. The entire boundary discloses the situation of road on north side and not the property of plaintiff.

27. The alleged grant certificates issued much prior to the sale deed of plaintiffs and therefore the boundaries which are available in the said letter of title, the boundaries available under sale deeds are tallying with each other. In the case at hand, the plaintiffs based their claim over the property on the basis of sale deed boundaries and the boundaries mentioned in one of the DCB register extract of the year 1981. As is noted above, both the boundaries are not comparatively one and the same with reference to the Southern portion. In that regard, no explanation is offered by the plaintiffs in their plaint as well as in their affidavit filed in support of I.A.No.1.

More particularly, the sale transactions, that were taken place much prior to the sale deed of plaintiffs and thereafter the name of defendant No.1 and 2 came to be mutated in the panchayath records. After sometime later, in the year 2022, the Executive Officer of Taluk Panchayath, the body of the Grama Panchayath considered the application of second defendant, by making local inspection of the property mutated the name of defendant No.2 in panchayath records. On the basis of such records, the second defendant sold out the property to third defendant.

28. The second defendant sold out the property in the year 1999-2000 to the third defendant and since then the name of the defendant No.3 is consistently appearing in the panchayath records. If really, the plaintiffs are in possession and enjoyment of the suit schedule properties, then what made them to wait for almost 23 to 28 years to file this suit or claim their possession or title in the suit schedule properties. Even if, the plaintiffs have not at all attempted to rectify the mutation records through the Grama Panchayath and through the process known to law.

29. Under such circumstances, it is hasty case to conclude on the prima facie materials to grant the ad-interim temporary injunction without there being any trial. Thus, in my considered opinion, the plaintiffs have not made out prima facie case and in view of doubtful documents, they are not entitled the relief as claimed under this application. The plaintiffs have also failed to prove the succeeding parameters of granting the temporary

injunctions, like, irreparable injury and balance of convenience. Accordingly, the **point No.1 to 3** held in the **Negative**.

30. **Point No.4:-** The defendant No.3 has prayed for vacation of the exparte temporary injunction order and in view of the observations referred above at point No.1 to 3, their application is required to be allowed. Thus, the **point No.4** is held in the **Affirmative**.

31. **Point No.5:-** As a result, I proceed to pass the following:

ORDER

The IA No.I filed U/O. 39 Rule 1 and 2 R/w Sec.151 of CPC by the plaintiffs is hereby rejected.

The IA No.III filed U/O.39 Rule 4 R/w Sec.151 of CPC by the defendant No.3 is hereby allowed.

Consequently, ex-parte ad interim temporary injunction granted in favour of plaintiffs stands vacated.

No order as to cost.

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the **09th Day of January, 2024**)

Sd/-
(Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.