

KADG220007262023



**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 February 2024

O.S.No.105/2023

PLAINTIFF : Sri. Vijayakumar B.N.

V/s

DEFENDANTS : Sri. Basavantha Kumar and Others

I.A. NO.I

Applicant/Plaintiff : Sri. Vijayakumar B.N.

V/s

Opponents/Defendants : Sri. Basavantha Kumar and Others

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC
2.	Relief sought for	Ad Interim Temporary Injunction
3.	Date on which the application is filed	10.03.2023

4.	Number of the application	I.A.No.I
5.	Date on which the objections are filed by different opponents	12.04.2023
6.	The date on which the orders is passed	09.02.2024

ORDER ON I.A.No.I

Plaintiff has filed the instant application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking for an *ad interim* temporary injunction against the defendants so so far as the suit schedule property is concerned. It is filed with the plaint.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The plaintiff has sworn the affidavit and has stated on affirmation that, he is the owner in possession of the suit property. He acquired the title as well as possession of the same through the Gift Deed dt: 01.02.2019 executed by his mother namely, Bhagyamma W/o Late B.T.Ningappa. By virtue of the said gift deed, the name of plaintiff came to be mutated in the revenue records, vide MRH13/2018-19. The plaintiff further asserted the genesis of title through one Kubendrappa and Sarojamma, who had executed sale deed bearing SRO 4620/2014-15 in favour of mother of plaintiff. The name of plaintiff's mother came to be mutated in the revenue records as per MRH3/2014-15. The plaintiff converted the land into areca garden in the year 2019. The defendants without there being any manner of right of whatsoever nature in the suit property are trying to interfere with the peaceful possession and enjoyment of the same.

That was in the 3rd week of February 2023 and the same was resisted by the plaintiff. The defendants are influential persons, they have money and muscle power and as such the plaintiff has no alternative than to file the suit and application on hand to protect his possession in and over the suit property. The plaintiff has got prima facie case, the balance of convenience is in his favour and if the order as prayed for is not granted, then the irreparable injury would be caused to him. Thus, he prays to allow the application.

3. STATEMENT OF OBJECTIONS FILED BY THE DEFENDANTS AS UNDER:

These defendants denied the entire contents of the affidavit filed in support of the application and also denied the possession of the plaintiff in suit schedule property. The defendants denied the alleged interference as alleged by the plaintiff and in that regard he submitted that, no such documentary evidence is available in the name of plaintiff. The defendants have made out allegations against the plaintiff that, the plaintiff himself conspired to take possession of land, which is in occupation of defendants by force. In that development, he has filed this suit. If the order as prayed for is granted, the defendants would be put to hardship, irreparable injury would cause to them. Plaintiff is not entitled the discretionary relief. There is no cause of action to file the suit and there is no balance of convenience in favour of plaintiff. The balance of convenience is in favour of defendants. By these and such other grounds, the defendants urged to rejection of the application.

4. Based on the rival contentions raised by the respective parties, the following points would emerge for my consideration;

POINTS

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable loss, if the order as prayed for is not granted?
4. What order?

5. Heard the learned counsels appearing for the plaintiff 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 Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order,
for the following ;

REASONS

6. POINT No.1:- Since these points are incumbent upon each other and as such the same are taken together for common discussion.

7. The learned counsel for plaintiff is vehemently argued that, the suit property was originally owned by one Kubendrappa and Sarojamma who had alienated the same in favour of mother of plaintiff. In turn, mother of plaintiff had transferred the same to the plaintiff through the Gift Deed dt: 01.02.2019. Consequently, the necessary mutations were held and all the revenue records including the RTC of suit property are standing in the name of plaintiff. The survey records are also disclosing the name of plaintiff and the extent of the property in which he is in possession.

8. The learned counsel for plaintiff further submitted that, the defendants have denied the possession including title of the suit property, even though, they have not put any specific claim over the title of it. This itself suffice to held the interference of defendants in peaceful possession and enjoyment of the suit property. Thus, he submitted that, by considering all the documentary prime facie evidence at this prima facie stage, the necessary orders needs to be passed until the disposal of the suit.

9. The learned counsel for defendants has vehemently argued that, the plaintiff has not produced the basic title deed of the suit property and no such records are available as to acquisition of the land by Sarojamma. The defendants are in possession of the property on the northern side of suit schedule property and the plaintiff willfully dislocated the same in schedule by showing as Government Forest Land. Thus, the learned counsel for defendants has prayed to

reject the application as there is no cause of action to file the suit on hand and the application is divide of merits.

10. In order to establish the prima facie case, the plaintiff has produced the RTC's of suit property for the period of 2022-23, 2019-20. The said RTC's are prima facie disclosing the name of plaintiff at column No.9 and the extent as against it as shown 4 Acres. The cultivator column No.12 is also disclosing the name of plaintiff and it is further disclosing the kind of crop as areca. The MRH13/2018-19 is also placed on and it prima facie discloses gifting away the suit property in favour of plaintiff by B.N.Bhagyamma W/o Late Ningappa vide Gift Deed bearing SRO No.CNG-1-04802-2018-2019. The plaintiff has produced the RTC of suit property for the period of 2018-19 and it is disclosing the name of plaintiff's mother at column No.9 as well as column No.12 and the extent as 4 Acres. The MRH3/2014-15 is also placed on record and it prima facie discloses the sale transaction between Kubendrappa S/o Bhadrappa and B.N.Bhagyamma W/o Late Ningappa through registered Sale Deed bearing SRO No.CNG-1-04620-2014-2015 dt: 13.02.2015.

11. The sale deed of the property dt: 13.02.2015 has also placed and it is in between the B.N.Bhagyamma, Kubendrappa and Sarojamma. It evinces the transaction of suit property in favour of Bhagyamma for a consideration of Rs.3,40,000/- and also handing over of the possession of it as on the date of such sale deed. The plaintiff has also produced the copy of Gift Deed dt: 01.02.2019 and it is in between plaintiff and his mother namely Bhagyamma. It also discloses the specification of the property which is gifted away

through the said document and it is nothing but the suit property. It also having reference of handing over of possession of the property as on the date of the document.

12. The plaintiff has produced hissatippan extract and the map of Sy.No.58. The same is disclosing the extent and the area of Sy.No.58. As on the date of preparation of such survey record the property was standing in the name of one Kubendrappa S/o Bhadrappa. The said document also reveals the grant in favour of said Kubendrappa by the Deputy Commissioner/ADLR/Assistant Commissioner/ Tahasildar under Order No.(3) 139/13-14, TE/LR/Number/178/66-67. The document also reveals at point No.3 that, the measurement was done as per actual possession of the person who was then holder of the said property. By this document, it is quite clear that, one Kubendrappa S/o Bhadrappa was grantee of the said property and was alienated the same to the mother of plaintiff gifted away the same to plaintiff. The plaintiff has produced akarband extract of the property bearing Sy.No.58 and 59. The MRNo.T9/2014-15 also placed on record and it prima facie reveals sub division proceedings in Sy.No.58, 59, 40.

13. Per contra, the defendants have placed the map prepared by the revenue as well as survey officials in so far as the unauthorized occupants of forest land is concerned. The land paid receipt dt: 27.01.1989 is also placed on record and it is standing in the name of Basavanthappa S/o Shivappa. The same is not disclosing the property number and it is disclosing the number as TT. The similar land tax paid receipt has been placed on record. The

copy of form No.50 filed by H.S.Basavanth Kumar S/o G.Shankarappa was produced and it is with reference to the Sy.No.40, measuring 3 Acre 30 Guntas. The form No.A filed by the defendant No.2 is also produced and it is not disclosing any survey number or any reference of the property under lis is concerned.

14. Having referred the prima facie documents placed on record by the plaintiff and defendants, it appears that, the plaintiff's mother had purchased the property vide registered Sale Deed dt: 13.02.2015 from one Kubendrappa S/o Late Bhadrappa and Sarojamma W/o Kubendrappa. Thereafter, she gifted the same to plaintiff vide Gift Deed dt: 01.02.2019. In all these transactions, the necessary procedure of handing over of the possession of the property has been done and it has been mentioned in the said documents. The said documents are registered documents and they have got presumption in terms of Sec.58, 61 of the Indian Registration Act and the Section 114 of the Indian Evidence Act. Later, the revenue authorities assessed the land in the name of plaintiff and to evident the same two prima facie documents namely, RTC and mutation register extracts are produced on record. The said documents prima facie reveals the actual possession in and over the suit schedule properties is concerned as on the date of the filing of the suit. It is needles to point out that, the said revenue documents are prima facie evidence of possession of the person in the property is concerned in terms of Sec.133 of the Karnataka Land Revenue Act.

15. In order to rebut the said presumption the defendants have not placed anything on record apart from denying the possession as

well as title of the plaintiff in and over the suit schedule property is concerned. I have carefully perused the entire contents of the written statement as well as statement of objection filed opposing to the application on hand, the defendants have not set up a title over the suit schedule properties but have denied the possession of it by the plaintiff. It is the specific contention of the defendants that, they have got landed property on the Northern side of suit schedule property which is belongs to the Forest Department. However, the land which alleged to have been unauthorizedly occupied by the defendants is not yet been granted either in favour of defendant No.2 or in favour of defendant No.1 or one H.S.Bsavanth Kumar. Unless that has been done, the alleged claim of defendants cannot be resorted to and cannot be considered at all, until the full pledged trial is commenced or completed.

16. As per the available prima facie records which have got presumption under the law, the plaintiff has successfully established the existence of prima facie case in his favour. Once the prima facie case is established, the other two criteria for granting the *ad interim* temporary injunction would fall in line with. The balance of convenience and irreparable injury are necessarily lies in favour of the plaintiff only. On the other hand, the defendants so contended in statement of objection as well as in the written statement that, they will be put to irreparable loss, if the order as prayed for is granted, have not placed anything to prove the same prima facie. In the absence of the same, the contentions of the defendants cannot be

conceded at this prima facie stage. Thus, the **point No.1 to 3** held in the **Affirmative**.

17. **Point No.4:-** As a result, I proceed to pass the following:

ORDER

The IA No.I filed U/O.39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, the defendants, their family members, supporters or anyone claiming through them are hereby restrained from interfering with the possession and enjoyment of the plaintiff in and over the suit property till disposal of this suit.

No order as to costs.

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the **9th Day of February, 2024**)

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