

**THE COURT OF THE PRL. CIVIL JUDGE, AND JUDICIAL
MAGISTRATE FIRST CLASS AT HONNALI.**

**PRESENT : Sri. M. Vijay, B.A.L., LL.B
Prl. Civil Judge & JMFC, Honnali.**

Dated this the 27th day of April 2019

OS.No.181/2018

PLAINTIFF/S :

D.Maheshwarappa, S/o Halappa D. 72
years, VISL retired employee, R/o IDK
127/A, New Town, Bhadravathi.

(By Sri. A.G.S., Advocate)

DEFENDANT/S :

1. C.G.Basavarajappa, S/o Late
C.G.Eshwarappa, 65 years, Agriculturist.
2. Veersha, S/o C.G.Basavarajappa, 32
years.
3. Shivakumara, S/o C.G.Basavarajappa,
30 years.
4. Haleshappa, S/o C.G.Basabarajappa, 28
years.

All are R/o Chinnikatte Village, Honnali
Taluk, Davanagere District.

(By Sri. S.B.P., Advocate)

Parties to the I.A No.1**APPLICANT :**

D.Maheshwarappa, S/o Halappa D. 72 years, VISL retired employee, R/o IDK 127/A, New Town, Bhadravathi.

OPPONENT :

C.G.Basavarajappa, S/o Late C.G.Eshwarappa, 65 years, Agriculturist & others.

ORDER ON IA-I

The plaintiff has filed this IA. U/o 39 R 1 and 2 of cpc praying to restrain the defendants from interfering with the possession of the plaintiff by way of TI.

2. The plaintiff has stated in sworn affidavit that, he is an absolute owner and in possession, of site bearing its khata no.84 property no.146 measuring 81 x 73 feets consisting of a shed, lavatory room, 4 coconut trees, one tamarind tree and one teak tree situated at Chinnikatte village. It was purchased by him in a court auction sale vide Ex.No.226/1989 from the file of Honnali and decree was passed by Hon'ble Munsiff Court, Shikaripura in OS.No. 49/1977. In pursuance of it, the khata of suit schedule property has changed into the name of plaintiff in

MR.No.4/94-95 and ever since he claims to have been in possession of the suit schedule property. Further, he alleged that, the defendants have no manner of right, title and interest over the same. But on 26.07.2018 at about 10.00 a.m the defendants have tried to encroach upon the suit schedule property and tried to construct residential house therein. However, timely he has resisted the illegal acts of the defendants from interfering with his possession by way of injunction, as he claims, he has prima facie case and balance of convenience lies in his favour. If the injunction is not granted he will be put great hardship and loss. Accordingly, prayed to grant temporary injunction.

2. On the other hand, the defendant have filed their written statement wherein they admitted that the suit schedule property is a vacant site, but they have denied his ownership as well as possession of the plaintiff over the suit schedule property and denied the interference and they vehemently contended that, the plaintiff has approached this court by suppressing the material facts. The plaintiff has not produced the sale certificate issued by the Hon'ble court and also the order sheet in Ex.No.226/1989 on the file of Munsiff Court, Honnali. Further, they submitted that, one C.G.Devendrappa S/o Eshwarappa had obtained the suit schedule property for

and on behalf of joint family under SR.NO.1721/73-74 dated 05.03.1974. The defendant No.1 and purchaser Devendrappa are brothers and members of joint family. Accordingly, the defendants have claimed that, they are in possession of the suit schedule property.

Further, they submitted that, the defendant NO.1 and one purchaser C.G.Devendrappa are the sons of C.G.Eshwarappa and Deviramma. His father had three sons by name 1) Devendrappa, 2) Basavarajappa and 3) Manjunatha and also 4 daughters by name 1) Rupavathi, 2) Sumitramma W/o present plaintiff, 3) Shantha and 4) Anitha. Further they alleged that, the plaintiff by name Sumitramma has created an acknowledgement of debt in her name and alleged that, Deviramma had raised a loan of Rs.1,50,000/- from the wife of plaintiff and executed acknowledgement debt, but in fact Deviramma has not executed any acknowledgement in favour of plaintiff's wife. After the death of Deviramma, wife of plaintiff had filed a suit before the Hon'ble Civil Court, Bhadravathi for recovery of money. The plaintiff purchased the suit schedule property in the court auction for and on behalf of C.G.Devendrappa and defendant No.1. The said C.G.Devendrappa and defendant NO.1 have pledged the suit schedule property to raise a loan in State Bank of

Mysore to recover the said loan amount. The bank has filed the suit in Os.No.49/1977 before the Hon'ble Munsiff Court, Shikaripura and later on Ex.NO.226/1989 on the file of Munsiff Court, Honnali. The immovable properties i.e., the suit schedule property belongs to joint family of C.G.Devendrappa and defendant No.1, were sold in public auction, with active collusion of C.G.Devendrappa and defendant NO.1 had purchased the suit schedule property nominally in the name of plaintiff and retained the suit schedule property in their family and later the said sale held in court auction was cancelled and the plaintiff has obtained the sale amount. Against which, the plaintiff has preferred C.R.P.NO.195/2000 and 196/2000 before the Hon'ble High Court of Karnataka about the order forfeited of bid amount. As such, the plaintiff is not actually the purchaser. By suppressing all these facts , the plaintiff's wife behind the back of family of plaintiff, has challenged the khata of the suit schedule property in her name. As such, she is not the owner or in possession of it. Accordingly, prays to dismiss the IA.

3. Heard both the sides, perused the materials on record

4. The following points arise for my consideration.

1. *Whether the plaintiff has made out prima facie case?*
2. *whether the balance of convenience is lies in favour of plaintiff?*
3. *Whether the plaintiff will be put great hardship and loss if injunction is not granted?*
4. *What order?*

5. My findings to the above points are as follows:

Points 1 to 3 : in the Negative.

Point no.4 : as per the final order for the following:

REASONS

6. **Point No.1 to 3:** I have taken these points together for consideration ,in order to avoid the repetition.

7. The plaintiff in order to substantiate his case, he has relied upon c/c of DCB extract, Form No.11 and 12 for the year 2016-17, and mutation. On the other hand, the defendant No.2 has relied upon c/c of entire order sheet in Ex.No.226/1989, sale deed dated 01.03.1974. Considering the documents relied by both the sides, admittedly, the suit schedule property is a vacant site standing in the name of plaintiff. According to the plaintiff, he has purchased the suit schedule property in a auction held by the court in Ex.No.226/1989, but he has not relied upon the sale

certificate.

8. In contrary the defendant No.2 has relied upon the c/c of order sheet in Ex.No.226/1989 wherein it clearly discloses that, on 20.08.1999 the auction sale ordered by this court in Ex.No.226/1989 was set aside. Against which, the auction purchaser has filed a C.R.P. before the Hon'ble High Court of Karnataka in C.R.P. No.195/2000 and 196/2000. But all these facts have been suppressed by the plaintiff and the Execution petition was clearly discloses that, on 07.02.2004 it was closed as the execution petition was fully satisfied. But the plaintiff has suppressed all these facts and praying to restrain the defendants by relying upon only the DCB extract. But c/c of sale deed dated 01.03.1974, MR.No.7/1986-87 relied by the defendant NO.2 prima facie discloses that, he had purchased the suit schedule property and khata was stood in the name of defendant No.2 and none of the parties have relied upon the order copy of C.R.P.195/2000 and 196/2000. So, in the absence of that, admittedly the plaintiff and the defendants are relatives, unless the plaintiff has produced the sale certificate and confirmation of sale, it is not safe to rely upon only on DCB extract. When the contrary document discloses that, the suit claimed by the plaintiff based on execution petition i.e.,

auction sale was held in Ex.No.226/1989 which was set aside as per the order sheet relied by the defendant No.2. The plaintiff has not come up with this document accordingly. In the absence of that, the claim of the plaintiff that he is in possession, cannot be acceptable one. As such, I do not find any prima facie case to grant TI. Accordingly, I answer Points 1 to 3 in the Negative.

9. **Point no.2:** In view of my above findings, I proceed to pass the following :

//Order//

The IA-I filed by the plaintiff U/o.39 R 1
and 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, typed by her, corrected, signed and then pronounced by me in the open court, on this the 27th day of April 2019)

Prl. CJ & JMFC., Honnali.

