

**IN THE COURT OF II ADDL. CIVIL JUDGE & J.M.F.C.,
ARAKALGUD.**

**PRESENT : SRI. SIDDANAGOUDA PATIL T., B.A., LL.M.,
II Addl. Civil Judge & J.M.F.C.,
Arakalgud.**

Dated 23rd day of September 2019

O.S.No.201/2019

Plaintiff : Jayamma

(By Sri.Girish, Advocate)

-V/s-

Defendants Saroja & Another

**(By Sri. M.T.Sathyanaarayana,
Advocate)**

IA No. II

Applicant :

Jayamma W/o Late Javarappa,
Aged about 50 years,
R/o Sunnadakoppalu Village,
Mallipatna Hobli, Arakalgud
Taluk, Hassan District.

-V/s-

Respondents : Saroja & Another

**ORDER ON IA NO.2 UNDER ORDER 39 RULE 1 AND 2 OF
CPC**

This Interim application No.2 filed by the applicant/plaintiff under order 39 rule 1 and 2 of C.P.C. against the defendants not to interfere for putting up construction of house over the suit schedule property.

SUIT SCHEDULE PROPERTY

2. *Land bearing Khatha.No.53, Property measuring East-West 120 feet, North-South 40 feet site, which is situated at Mallipatna Grama panchayat, Mallipatna Village, Mallipatna Hobli, Arakalgud Taluk, Hassan District, bounded by:*

EAST: Road

WEST: Defendants house,

NORTH: Jayanna's survey number land

SOUTH: Vacant site of Kumara

3. In the affidavit annexed to the application in IA No.2 filed by the applicant/plaintiff stated that, the suit schedule property is the vacant site. The said property originally belongs to the one Venkatappa who is the brother of plaintiff and her brother's wife Pattalakshamma W/o Late Venkatappa was in

possession, thereafter khatha has been transferred in her son's name Jayanna S/o Late Venkatappa intern the said Jayanna by way of concent deed transferred given the said property in her favour and khatha transferred by Grama Panchaya in her name she has been in possession and paying tax regularly. Since she is poor lady under Basava Vasati Yojane, the grama panchayat granted a house in her favour. The plaintiff has constructed foundation over the suit schedule property. But the defedants having no iota of right, title and interest over the suit schedule property trying to interfere over the suit schedule property. Hence prays to allow the application.

4. The defendants appeared through their counsel and files a memo and adopted the written statement has objections to I.A No.2. In the written statement pleaded that, the defendants are husband and wife. The 1st defedant has been in possession over the 1 acre of land in Sy.No.54 from last 20 years and she has given representation under Form No.57 on 19.12.2018 to the Tahasildar for issuance of Saguvali Chit, the said representation is still pending consideration. The 1st

defendant utilizing the benefits of Ashraya Yojana from the government, constructed the house and cultivating the said land. The plaintiff having no iota of rights and possession over the said 1 acre of land trying the trespass over the suit schedule property and trying to construct house unlawfully. In this regard the 1st defendant filed the suit against one Jayanna and Kumara which is numbered as OS 174/2019. The plaintiff by colluding with the revenue authorities created false documents and trying to knock of the property of 1st defendant. On these grounds prays to dismiss the application.

5. Heard the arguments of both sides and by perusal of pleadings, application and documents on record, following points that arise for my consideration:

:POINTS:

- 1. Whether the plaintiff made out prima-facie case against the defendants in respect of suit schedule property?***
- 2. Whether the plaintiff further proves Balance of convenience lies in her favour?***

3. Whether irreparable loss causes to plaintiff if application is not allowed?

4. What order?

6. On careful perusal of records My findings to the above points are;

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:

: R E A S O N S :

7. **POINT NO.1 TO 3:-** The points No. 1 to 3 are inter linked with each other. Hence above points are taken up together for common discussion.

8. I have already narrated the facts stated in the affidavit annexed to the application and the facts pleaded in the written statement. The suit filed by the plaintiff seeking the relief

of Declaration of ownership and for permanent injunction over the suit schedule property against the defendants. The learned counsel for plaintiff vehemently argued that, the plaintiff is in possession over Sy.No.13/12 and the defendant is not in possession over Sy.No.54. The plaintiff to show that, she is in possession of the suit schedule property has been filed and relied upon the documents by perusal of the same Demand register extract for khatha No.53, situated at Mallipatna Village, for the year 2019-20 stood in the name of Jayamma W/o Javarappa and an Affidavit for transfer of site, executed by Jayanna S/o Late Venkatappa in favour of Jayamma W/o Javarappa, Letter dated: 09.02.2011 issued by Mallipatna Grama Panchayat, Two Tax paid receipts dated: 23.05.2019 and 01.08.2016, Form No.2 sanction of House under 'Rajeev Gandhi Vasati Nigama Niyamitha' and work order and Licence issued by Mallipatna Grama Panchayat for construction of the house in the name of plaintiff for site No.53, Two photos, which shows that, the construction of foundation work as laready completed.

9. The learned counsel for defendant vehemently argued that, the suit schedule property originally belongs to the

government and she has been in possession over the same from last 20 years. she has given representation under Form No.57 on 19.12.2018 to the Tahasildar for issuance of Saguvali Chit. But the plaintiff is trying to construct the house in her property unlawfully. The defendant furnished and relied upon documents produced in OS No.174/2019, by perusal of the said documents i.e., Acknowledgment for her representation issued by Tahasildar, in the name of 1st defedant with regard to Sy.No.54 for legalization of her possession, the RTC extract for Sy.No.54 for the extent of 14 acres 30 guntas of land situated at Mallipatna Village for the year 2018-19 in the name of government. Further she produced the photos to show that, the plaintiff is trying to construct the house in their property.

10. This is the suit filed by the plaintiff against the defedants for permanent injunction over the suit schedule property. The plaintiff alleged that, the defedants are trying to interfere to construct the house over the suit schedule property, but the defedant contended that, the plaintiff has been trying to constructing the house in Sy.No.54. I have gone through the

documents produced by both side carefully, the defendant otherthan the acknowledgement issued by the Tahasildar with regard to the representation giver by her for legalization of her possession over the Sy.No.54. No other documents has been produced, the defendant claiming that, she has been in possession more than 20 years over the 1 acre of land, the documents with regard to the construction of house by her no other documents has been produced. More over by careful perusal of documents produced by the plaintiff, the foundation work has been completed and the plaintiff obtained the licence from the grama panchayat for construction of house over the suit schedule property. The documents produced by the defendant to show that, she has been in possession in Sy.No.54 is not sufficient and more over the plaintiff pleaded that, she has been constructing the house in the suit schedule property and not in Sy.No.54. The contention of the defendant that, in the documents produced by the plaintiff there is discripencies in the boundaries are not at all teanable, since it is matter of trial when the defendant has not produced sufficient documents to show that, she is in possession in Sy.No.54 and the pliantiff trying to

construct house in said survey number. On the basis of only an acknowledgement issued by Tahasildar prima-facie it cannot be considered that, defendant is in possession over Sy.No.54. On the basis of above discussion the plaintiff established prima-facie case. The principles of balance of convenience and irreparable loss lies in favour of plaintiff when compare to defendants. Hence I answer point No. 1 to 3 are in the **Affirmative.**

11. In the facts and circumstances of the case no order as to costs.

12. **POINT NO.4:-** On the above discussed reasons, I proceed to pass the following:

:ORDER:

***The application No.2
filed by applicant/plaintiff
against the defendants under
order 39 rule 1 and 2 of CPC is
hereby Allowed.***

No order as to costs.

The defendants and their supporters, henchmen are hereby restrained by way of temporary injunction from interfering of construction of house by the plaintiff, over the suit schedule property till the disposal of the suit.

posted for appearance of parties by 23.10.2019.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court this the day of 23rd day of September 2019)

(Sri. Siddanagouda Patil T.)
II Addl. Civil Judge & J.M.F.C.,
Arakalgud.