

IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C. AT ARSIKERE.**Dated: 22nd day of April 2024.****-: Present :-****Sri Rafeeq Ahmed, BA, L.L.B
Addl. Civil Judge & JMFC,
Arasikere.****ORIGINAL SUIT No.253/2020**

Plaintiff : Nanjappa S/o Lakkegowda,
aged about 60 years,
Bhageshwara Village,
Gandasi Hobli,
Arasikere Taluk.
(By Sri.HSM, Advocate)

V/s

Defendants : 1. Balakrishna S/o Gopalegowda,
aged about 40 years,
2. Mohankumar S/o Gopalegowda,
aged about 35 years,
3. Manjunatha S/o Gopalegowda,
aged about 30 years,
All are R/o.Bhageshwara Village,
Gandasi Hobli,
Arasikere Taluk.
(By Sri.JPS, Advocate)

PARTIES IN I.A.No.II

Applicant/Plaintiff : Nanjappa S/o Lakkegowda,
V/s
Opponents/Defendants : Balakrishna and others

i.	Provision under which the applications are filed	U/o XXXIX rule 1 and 2 of CPC
ii	Reliefs sought for	To grant temporary injunction
iii	The date on which the application is filed	04.04.2024
iv	Number of the applications	III
v	The date on which the order objections are filed by different opponents	15.04.2024

vi	The date on which the order were passed on the said applications	22.04.2024
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ORDER ON I.A.No.III U/O XXXIX RULE 1 AND 2 OF CPC

This application No.III has been filed by the plaintiff counsel U/o XXXIX Rule 1 and 2 of CPC praying to restrain the defendants, their agents, workmen or anybody on their behalf from trespassing and not to cultivate crops in the suit property till disposal of the suit.

2. Brief facts of the case: That suit property is the ancestral property of plaintiff. About 30 years ago during the partition took between the plaintiff and his brothers the suit property was fallen to the share of plaintiff. The khatha is changed in the name of plaintiff and he is paying kandayam. The defendants are not related to the plaintiff's family. Towards the northern side of the suit property the defendant property is situated. The defendants are having no any kind of right, possession over the suit property. Inspite of that about two days back the defendants tried to encroach and cultivate crops in the suit property. There was panchayath taken between the plaintiff and defendants but the defendant did not heed the advise of the panchayathdars. Hence, the plaintiff is having prima-facie case and balance of convenience lies in favour of plaintiff. Hence prays to allow the IA No.I.

3. On receipt of application learned counsel for the defendants have filed objection to IA No.I. In the written objection to the

application filed by the defendants have stated that at the time of filing of the suit on 14.07.2020 the plaintiff had filed IA U/o. XXXIX Rule 1 and 2 of CPC for restraining the defendants from laying foundation in the suit property. On 13.08.2020 the case was adjourned. The defendants appeared through their advocate and filed objection. On 13.08.2020 the IA order was not extended. Later on 23.03.2021 against the plaintiff filed IA U/o. XXXIX Rule 1 and 2 of CPC which was not considered and the case was posted for plaintiff evidence. The case is posted for cross examination of PW1. During the cross examination PW1 has clearly admitted that towards the northern side of defendants property and southern side of plaintiff property there is a Kaaluve. Later the land of plaintiff is situated. The plaintiff is not having any right in the defendants property, but inspite he has filed this application. About 40 years the defendants after purchase they are in peaceful possession and enjoyment of the their property and digged bore-well, installed pipe and cultivating crops. The residential house of defendants is fallen down. So the defendants have started new construction in their property. Hence, prays to dismiss the IA No.I.

4. Heard, Both side counsel. Perused material on record. On perusal the following points arise for my consideration:-

:-POINTS:-

1. Whether the plaintiff has made out prima facie case to grant temporary injunction as prayed in application?

2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff proves if Temporary Injunction order is not granted, plaintiff will be put to irreparable loss?
4. What order?
5. My answer to the above points are as follows:-

Point No.1 to 3 :- In the Negative

Point No.4:- As per final order for the following:-

:-REASONS:-

6. Point No.1 :- The plaintiff has to prove prima facie case that he is in peaceful possession and enjoyment of the suit property and defendants caused interference in the suit property.

7. It is stated that suit property is the ancestral property of plaintiff. About 30 years ago during the partition took between the plaintiff and his brothers the suit property was fallen to the share of plaintiff. The khatha is changed in the name of plaintiff and he is paying kadayam. In this regard the plaintiff has produced the RTC of the year 2019-20 and one tax paid receipt which are marked as Ex.P1 and Ex.P2. On perusal of Ex.P1 RTC the land Sy.No.209/5 totally measuring 2 acre 13 guntas out of which 1 acre 6 guntas is entered in the name of plaintiff and remaining 1 acre 7 guntas is entered in the name of father of defendants by name Gopalegowda.

8. It is further stated that the defendants are not related to the plaintiff's family. Towards the northern side of the suit property the defendant property is situated. The defendants are having no any kind of right, possession over the suit property. In spite of that about two days back the defendants tried to encroach and cultivating the crops in the suit property.

9. The specific contention of the defendants is that at the time of filing of the suit on 14.07.2020 the plaintiff had filed IA U/o. XXXIX Rule 1 and 2 of CPC for restraining the defendants from laying foundation in the suit property. On 13.08.2020 the case was adjourned. The defendants appeared through their advocate and filed objection. On 13.08.2020 the IA order was not extended. Later on 23.03.2021 again the plaintiff filed IA U/o. XXXIX Rule 1 and 2 of CPC which was not considered and the case was posted for plaintiff evidence. The case is posted for cross examination of PW1. During the cross-examination PW1 has clearly admitted that towards the northern side of defendants property and southern side of plaintiff property there is a Kaaluve. Later the land of plaintiff is situated. The plaintiff is not having any right in the defendants property. In this regard the defendants have produced copy of RTC and two sale deeds.

On perusal of the first sale deed dated 14.08.1995. The father of defendant No.1 to 3 by name Gopalegowda got purchased land Sy.No.209/5 measuring 0-23 guntas bounded by towards East-road, West- land of Siddegowda, South- Halla, later land of

Nanjappa (plaintiff), North- land of Lakkamma from its previous owner by name Ningegowda S/o Ramegowda for consideration amount of Rs.8,000/-. The 2nd sale deed dated 15.12.1997. **On perusal of the 2nd sale deed dated 115.12.1997. The father of defendant No.1 to 3 by name Gopalegowda got purchased land Sy.No.209/5 measuring 0-24 guntas bounded by towards East-road, West- land of Chandregowda, South- land of Nanjegowda (plaintiff), North- land of Lakkamma and Urigowda and another property from its previous owner by name Kempegowda S/o Lakkegowda(brother of plaintiff) and his wife Smt. Chaluvamma and their minor children Dharmendra, Ravisha for consideration amount of Rs.20,000/-.** Therefore the father of defendant No.1 to 3 got purchased 0-23 guntas through 1st sale deed and got purchased 0-24 guntas through 2nd sale deed, totally purchased 1-07 acres in land Sy.No.209/5. After the sale deed the mutation No.23/1997-98 has been duly entered into the name of Gopalegowda. Further defendant has produced recent RTC of the year 2019-20 wherein the land Sy.No.209/5 totally measuring 2-13 acres out of 1-06 guntas is standing in the name of plaintiff, remaining 1-07 acres is standing in the name of Gopalegowda, father of defendant No.1 to 3.

10. It is the specific contention of the defendants that during the cross examination PW1 has admitted there is Halla towards the southern side and later the plaintiff land is situated. “ಪ್ರತಿವಾದಿ ತಂದೆ

ಗೋಪಾಲೇಗೌಡ ದಿ:18-05-1995ರಂದು ರಾಮೇಗೌಡರ ಮಗ ನಿಂಗೇಗೌಡನಿಂದ ಜಮೀನು ಸ.ನಂ.209/5ರಲ್ಲಿ 23 ಗುಂಟೆ ಜಮೀನು ಕ್ರಯಕ್ಕೆ ಪಡೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರು 1 ಎಕರೆ 7 ಗುಂಟೆ ಜಮೀನು ಬಿಟ್ಟು ಬೇರೆ ಜಮೀನು ಪಡೆದಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನಿಮ್ಮ ಸಹೋದರ ಮಾರಾಟ ಮಾಡಿದ 1 ಎಕರೆ 7 ಗುಂಟೆ ಜಮೀನಿನ ಚೆಕ್ಕುಬಂದಿ ಪೂರ್ವ ದಿಕ್ಕಿಗೆ ರಸ್ತೆ ಪಶ್ಚಿಮ ದಿಕ್ಕಿಗೆ ಸಿದ್ಧೇಗೌಡರ ಜಮೀನು ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ದಕ್ಷಿಣ ದಿಕ್ಕಿಗೆ ಹಳ್ಳ ಎಂದರೆ ಸರಿ. ಆ ಹಳ್ಳದಿಂದ ಪಕ್ಕ ನಿಮ್ಮ ಜಮೀನು ಎಂದರೆ ಸರಿ. ಉತ್ತರಕ್ಕೆ ಲಕ್ಕಮ್ಮನ ಜಮೀನು ಎಂದರೆ ಸರಿ. ಆ ಹಳ್ಳದಿಂದ ಈಚೆಗೆ ಪ್ರತಿವಾದಿಯರು ಜಮೀನಿನ ಸ್ವಾಧೀನದಲ್ಲಿ ಇದ್ದಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಆ ಹಳ್ಳದಿಂದ ಈಚೆಗೂ ನಾವೇ ಸ್ವಾಧೀನದಲ್ಲಿ ಇದ್ದೇವೆ ಎನ್ನುತ್ತಾರೆ.” Therefore the plaintiff has admitted that there is a Halla towards the southern side which is mentioned in the 1st sale deed between the plaintiff and defendants land. But the plaintiff in the plaint schedule boundaries has mentioned that towards northern side of the suit schedule property the land defendants is situated. But he has not mentioned anything in respect of existence of Halla between the land of plaintiff and defendants situated towards the southern side of the defendants land. Therefore the boundaries mentioned the plaint are not correct. No TI order can be granted. Therefore, the possession of plaintiff cannot be considered on the basis of revenue records. Hence, plaintiff has failed to proved prima-facie case. The above findings are considered for the disposal of IA only. **Hence, I answer point no.1 in the Negative.**

11. **Points No.2 to 3** :- These points are answered together to avoid repetation of facts.

12. As discussed above the plaintiff during the cross-examination has clearly admitted the boundaries mentioned in the 1st sale deed that there is a Halla towards the southern side. But the plaintiff in the plaint schedule boundaries has mentioned that towards northern side of the suit schedule property the land defendants is situated. But he has not mentioned anything in respect of existence of Halla between the land of plaintiff and defendants situated towards the southern side of the defendants land. Therefore the boundaries mentioned the plaint are not correct. Hence, balance of convenience does not lie in favor of plaintiff and no irreparable injury would cause to the plaintiff if IA is not allowed. ***I answer point No. 2 and 3 in the Negative.***

13. **Point No.4:-** In view of above said reasons while answering point No.1 to 3, I proceed to pass the following;

// ORDER //

The IA No.III filed by the plaintiff U/o XXXIX Rule 1 and 2 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, directly on computer, corrected by me and pronounced in the open court today this the 22nd April 2024.)

(Sri Rafeeq Ahmed)
Addl. Civil Judge & JMFC,
Arasikere.