

IN THE COURT OF CIVIL JUDGE AND JMFC, BELLUR.

Dated on this the 05th day of October 2018

::PRESENT::

Sri.Nemachandra, LL.M.,
6th Additional Civil Judge
and J.M.F.C., Hassan.

O.S. No.243/2017

Plaintiff : Revamma and others
Vs.

Defendants : Boodesha and another

ORDER ON I.A No.II

Applicant : Revamma and others
Vs.

Respondent : Boodesha and another

**ORDERS ON APPLICATION FILED UNDER ORDER 39 RULE 1 AND 2
OF C.P.C.**

The present application is filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C with a prayer to restrain the defendants from interfering with plaintiff's possession over the suit schedule property and to restrain the defendants from doing any construction by removing fence in the suit schedule property till the disposal of the suit.

2. In the affidavit filed along with accompanying application, it is contended by the plaintiffs that, the suit schedule property belongs to one H.P. Rajegowda, who is the husband of plaintiff no.1. That the suit schedule property is the ancestral property of H.P. Rajegowda and that, the said H.P. Rajegowda died on 07.10.2016 thereafter the property was transferred in the joint name of plaintiffs. That the plaintiffs have fenced towards north-west

corner of the suit schedule property and that the defendants have appeared near the suit schedule property and have stated that, the said property belongs to them and they have threatened the plaintiffs that they will construct the building in the said portion. In this regard the plaintiffs have visited the police station, but it did not yield any fruits and hence the plaintiffs have filed the present case. It is further submitted that, the plaintiffs by virtue of inheritance are in the possession of the suit schedule property and that, the defendants have no manner of right, title and interest are interfering with the plaintiffs possession. With all this contention prays to allow the application.

3. On the other hand, the defendants contended that, the application filed by the plaintiff is not maintainable either in law or on facts. That the plaintiffs have filed the present application with all false facts. It is further contended that, the plaintiffs by colluding with revenue officers has created the documents in support of their contention. It is further denied by the defendants about the fencing of the property by the plaintiffs. The defendants further denied the allegation of interference by them. The defendant no.1 submits that, his father Ningegowda has purchased the property measuring 30X40 feet bearing katha no.244 through sale deed dated:22.10.1992 and that, the defendant no.2 submits that, her father by name Ganeshgowda has purchased the property on 14.10.1992 and later has executed the gift deed in her favour in respect of katha no.127. That the defendants have fenced the said properties and are in possession of the same. It is further submitted that, the plaintiffs are in the possession of the Sy.no.36 measuring 8 acre 25 guntas, the RTC reflects the names of 16 persons and that, there has been no demarcation of the property and Durasthu of the property. Hence the plaintiffs do not know where exactly their property is situated. With all these contention prays to dismiss the application.

4. I have heard the arguments advanced by both sides. Perused the materials on record.

5. From the above materials, the points that arise for my consideration are as follows;

1. Whether the plaintiffs have made out a prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss and injury which cannot be compensated in any terms, if the Temporary injunction is not granted?
4. What order?

6. My answers to the above points are as follows:-

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|--------------|-------------------------------------|
| Point No.1 : | Negative |
| Point No.2 : | Negative |
| Point No.3 : | Negative |
| Point No.4 : | As per the order for the following: |

:REASONS:

7. Point No.1 to 3:- Since all these points are inter-linked each other and as they are depending upon one another, for convenience sake, I propose to answer all these points together.

8. It is contention of the plaintiffs that, the suit schedule property is their ancestral property and that, after the death of one Channegowda the property was transferred to the husband of plaintiff no.1 by name Rajegowda and that after the demise of said Rajegowda, the katha was the suit schedule property was transferred in the joint name of plaintiffs. The plaintiffs have produced the RTCs pertaining to suit schedule property, its shows that, as per MR.H.47/2016-17 the name of plaintiffs is entered in respect of suit schedule property in the RTC. The plaintiffs have produced the grant certificate, which

shows that Sy.no.36/1 measuring 8 acre 25 guntas was granted one Channegowda S/o Venkategowda.

On perusing the documents furnished by the plaintiffs, they show that, the plaintiffs have inherited the suit schedule property and that, the revenue documents shows the names of plaintiffs in respect of suit schedule property.

9. On the other hand, the defendants have taken contention that, they are the owners of katha no.244 and 127. The defendants have produced the sale deed dated:22.10.1982, it shows that, the katha no.244 was purchased by one Ningegowda by one Channegowda and the gift deed dated:12.01.2009 shows that, the katha no.127/204 was gifted to the defendant no.2. Further, the memorandum issued by the Tahasildar, Bellur Taluk shows that, 30 guntas of land in Sy.no.36 was converted for the purpose of residential use and have produced few other documents in support of their contention.

10. It is argued by the advocate for plaintiffs that, the plaintiffs have inherited the suit schedule property and they are in the possession of the same and that the defendants are interfering with their possession and argued that, the defendants are interfering and hence, the plaintiffs have made out sufficient grounds and the plaintiffs have made out prima faice case and balance of convenience lies in their favour and prays to allow the application.

11. On the other hand, the defendants have argued that, the defendants are the owners of the katha No. 244 and 127 and that, they are the owners of site measuring 30X40 feet each, which was alienated by the order of Tahasildar and that, the RTC reflects that in Sy.no.36 they are the several owners and that, the plaintiffs do not know where their property exists in Sy.no.36 and that, there is no identification of the property which

belongs to the plaintiffs and the plaintiffs have not made out sufficient grounds to allow the application. With all these contention prays to dismiss the application.

12. On perusing of the above said documents furnished by both the parties, it is clear that, the plaintiffs are owners of the suit schedule property. On the other hand, the defendants are owners of the property measuring 30X40 feet each, which was converted for the residential purpose in Sy.no.36. Hence, after going through the averments of the both the plaintiffs and defendants and the documents produced by both the parties, they show that, the plaintiffs and defendants are the owners of their respective properties in Sy.no.36. Hence, at this stage, by looking into documents produced by the plaintiffs and defendants it cannot be said, who is in actual possession of the suit schedule property without knowing the genuineness of such documents. Further it is settle principle of law that, while granting temporary injunction express opinion as to the merits of the matter should not be given. Since the both the parties have produced the documents in respect of their rights and the main relief of the plaintiffs is for permanent injunction and the present IA is filed for the relief of temporary injunction and if the documents produced by the parties are examined in detail and opinion on such documents is given, without examining the parties to the suit, it will effect the outcome of the main relief.

13. Further, as per the documents produced by the plaintiffs, there are several owners in Sy.no.36. Further, the plaintiffs have not produced any documents by which demarcation of the property belonging to them is made. Further, the properties of the defendants are also in the Sy.no.36. Hence at this stage without examining the parties, it cannot be said that, who is in the possession of which property and the alleged interference. Further, the plaintiffs have contended that, they have fenced in the suit schedule property

and that, the defendants contended that they have fenced the property belonging to them. Hence there is a dispute in respect of fencing the property and that, the said dispute cannot be decided without examining the parties and appreciating the evidence.

14. Further, if at all the temporary injunction restraining the defendants is granted then, the plaintiffs might remove the fence. Further, the defendants contended that, their properties are the residential sites and that, the suit schedule property is a agricultural land. Further, if at all the defendants have to construct anything they have to obtain license and permission from the concerned authorities and as per the law of the land, in the agricultural land construction cannot be carried out. If at all the injunction as prayed for the plaintiffs is granted then, the properties of the defendants which are a residential sites will get wasted without proper care and the defendants will be forced to spend money for removing the plants and wastages from their property. Hence in my view, if the application is allowed irreparable loss and injury will be to the defendants and the balance of convenience lies in the favour of the defendants.

15. Further, the father of defendant no.1 and defendant no.2 have also filed OS.no.180/2018 and OS.no.181/2018 against the plaintiff no.1 herein alleging that, the plaintiff no.1 and her men are interfering with their possession in respect of their property. Hence considering the allegation of both the parties, at this stage without proper evidence the interference by the defendants and also the possession of the plaintiffs and defendants cannot be decided.

16. Hence, considering the averments of the both the parties and documents produced by both the parties, in my view, the plaintiffs have failed at this stage to show the alleged interference. Further, the plaintiffs have contended that, they have given compliant to the police, but has not

produced any documents in support of it. As discussed above, there is a cloud over the possession of the property and dispute regarding demarcation of the property and also about fencing the property.

17. Hence, for the reasons stated above, in my view the plaintiffs have not made out prima facie case at this stage and have failed to prove that the balance of convenience lies in their favour and that they will be put to irreparable loss and injury, if the application is not allowed and also the plaintiffs have failed to fulfill ingredients under Order 39 Rule 1 and 2 to issue temporary injunction has prayed for in the application at this stage. Further the defendants have produced documents which shows that they are also owners of the residential sites formed in Sy.no.36. Hence for the reasons stated above, in my view, the plaintiffs are not entitled for the reliefs as prayed for in the application, For the reasons I answer point no.1 to 3 in the Negative.

18. Reasons for point No.4:- For the reasons stated above, I proceed to pass the following:

:ORDER:

The application filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C is hereby dismissed.

No order as to cost.

(NEMACHANDRA)
C/c Civil Judge &
JMFC, Bellur.

