

**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNARAYAPATNA**

-:: **PRESENT** ::-

Sri. Sagar G. Patil.

B.A., L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

Dated this the 31st day of August, 2017

Original Suit No.302/2016

Plaintiff : Girigowda

-Vs-

Defendants : Bharathi and others

I.A No-2

Applicant : Girigowda

-Vs-

Opponents : Bharathi and others

ORDER ON I.A No.2 U/o 39 RULE 1 & 2 OF C.P.C.,

The plaintiff has filed this application U/o 39 rule 1 and 2 of C.P.C and sought to restrain the defendants from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. The plaintiff has sworn to an affidavit in support of I.A and stated that, earlier the suit property was the ancestral property of the plaintiff. During the lifetime of plaintiff's father they got divided the

family properties under the panchayath parikath dated 08-01-1987. In the said palupatti the suit property was allotted to the share of the plaintiff. Since then he has been in possession of the suit property as its absolute owner. Originally grand father of the plaintiff purchased property measuring 10 guntas in Sy.No.56/1 on 30-10-1926 and the suit property comes within the said 10 guntas. The suit property was mutated in the municipal records and the plaintiff is paying tax to the municipality. The plaintiff constructed house 30 years back on the western half portion and residing therein. On the eastern remaining space plaintiff's son put steel box to run business and obtained electricity collection. The said shop is damaged and hence the plaintiff is constructing structure to the extent of 23X14 feet.

3. Such being the facts the defendants who are not having any right or possession over the suit property are trying to interfere with plaintiff's peaceful possession and enjoyment of the suit property. Hence, this application.

4. In pursuance of the suit summons the defendants have put their appearance through their counsel and filed written statement. The defendants in their written statement have denied the entire plaint averments and contended that, the property measuring 24 guntas in Sy.No.57 of Channarayapatna was reserved for Keshava Devara temple and the same was in possession of its Archaka Srinivasa Aiyanger. Later on out of 24 guntas 14 guntas was acquired for S.C and S.T

colony. The said 14 guntas was phoded and new survey number was assigned as Sy.No.57/2. The suit property comes within the said 14 guntas. The plaintiff has illegally got mutated his name in the municipal records in collusion with the officials. The plaintiff is trying to fraud the defendants and gulf the suit property. The plaintiff is trying to put up construction in the property measuring 14 guntas in Sy.No.57/2. Hence, prays to dismiss the application.

5. On the basis of rival contention the following points arise for my consideration:

- 1) Whether the plaintiff proves that, he has made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that, balance of convenience lies in their favour?
- 3) Whether the plaintiff proves that, if T.I is not granted in their favor they will be put into irreparable injury?
- 4) What order?

6. My findings to the above points are as under:

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

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

REASONS

7. Points No.1 to 3:- The plaintiff has filed this suit for the relief of permanent injunction. The plaintiff in order to establish his case has placed on record the tax demand register extracts, wherein the suit property stands in the name of the plaintiff. The self-tax assessment extract shows that the plaintiff has declared assessment in respect of the suit property. The copies of chalan shows that the plaintiff has paid amount for the declaration of self-tax assessment. The electricity bill shows that the plaintiff has obtained electric connection to the suit property. The copy of license shows that the plaintiff has obtained license to run the business. The photos show that the plaintiff is constructing the structure to run the business. The tax demand register extract shows that the suit property stands in the name of the plaintiff. The mutation register shows that the suit property measuring 4 guntas in Sy.No.56/1 mutated in the name of father of the plaintiff. The RTC extract shows that, property in Sy.No.56/3 stands in the name of father of the plaintiff. The mutation register shows that property in Sy.No.56/1 mutated in the name of father of the plaintiff on the basis of pouthivarasu. The RTC extracts show that property measuring 10 guntas in Sy.No.56/1 was standing in the name of grand father of the plaintiff by name Sannagirigowda. The same reveals that the suit property was allotted to the father of the plaintiff in a family partition and his name was mutated in the revenue records on the basis of partition and he was in possession of the suit property.

8. The defendants have produced the documents to show the land acquisition proceedings took before the learned Deputy Commissioner. The documents pertaining to land acquisition shows that property measuring 14 guntas in Sy.No.57 was granted to Harijana colony. The mutation register shows that the said 14 guntas mutated in the name of Harijana colony. The RTC extracts from the year 1975-76 to 2000-01 shows that the property in Sy.No.57 was earlier standing in the Name of Keshavadevaru and Archaka Srinivasaiah. The present year RTC of Sy.No.57/2 show that land measuring 14 guntas stands in the name of Harijana colony. The photos are produced to show the property measuring 14 guntas and the suit property. On perusal of the documents produced by the defendants it is clear that property in Sy.No.57 was earlier belong to Keshavadevaru temple and was in possession of its Archaka Srinivasaiah. The land measuring 14 guntas was acquired in Sy.No.57 for Harijana colony and the same was mutated in the name of Harijana colony.

9. The records reveals that the plaintiff is claiming right title and possession over the property in khata No.99/1 and SAS No.138/1 and claimed that the same was earlier in Sy.No.56/1 and produced number of documents to show his possession over the suit property. On the other hand the defendants are claiming right title to the Harijana colony over the property measuring 14 guntas in Sy.No.57. The documents produced by the defendants' show that property measuring 14 guntas stands in the name of Harijana colony in Sy.No.57/2. The defendants

have not produced any documents to show that the suit property comes within the said 14 guntas in Sy.No.57/2. The documents produced by the plaintiff shows that his property in Sy.No.56 was introduced to the limits of Municipality and also produced the Municipal khata extract. But the defendants have not produced any such documents to show that their property was introduced to the limits of Municipality. Therefore on perusal of the entire material on records the same reveals that the suit property and the property measuring 14 guntas in Sy.No.57/2 are entirely different from each other and the plaintiff is in possession of the suit property and the defendants are in possession of 14 guntas property in Sy.No.57/2. The defendants have no right over the suit property. The defendants have to approach competent authority and get identifies 14 guntas of property in Sy.No.57/2. The documents prima facie shows that the suit property does not come within land measuring 14 guntas in Sy.No.57/2. Therefore this Court is of the opinion that the plaintiff has shown prima facie case.

10. The plaintiff has shown prima facie case and prima facie possession over the suit property. The records reveal that the plaintiff has collected material for the construction and also started construction of the structure. Therefore, if the temporary injunction is not granted in favor of the plaintiff he will be put to irreparable loss and untold hardship. If the defendants obstruct the construction of the structure by the plaintiff over the suit property during pendency of the suit, the plaintiff will face much inconvenience than the defendants as he has

collected material for the constuction. Moreover the defendants are claiming rights over the property in Sy.No.57 and not in suit Sy.No.56. Therefore if the plaintiff constructs the structure over the suit property no inconvenience will be caused to the defendants. **Hence, I answer point No.1 to 3 in the affirmative.**

11. Point No.4:- For the forgoing reasons, I proceed to pass the following;

:- ORDER :-

The application filed by the applicant/plaintiff U/o 39 rule 1 and 2 of C.P.C is here by allowed.

The defendants, their agents, servants, attorneys anybody on behalf of them are hereby restrained from obstructing the construction of temporary structure over the suit property and also from interfering with plaintiffs peaceful possession and enjoyment of the suit schedule property.

(Dictated to the stenographer, transcription typed by her, corrected, signed and then pronounced by me in open court on 31st day of August, 2017)

(Sagar G. Patil)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

