

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

-:: PRESENT ::-

Sri. S. Chinnaswamy,
B.A. L.L.B.,

Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

Dated 29th day of June 2020

O.S. No. 653/2018

Plaintiff : Bhagyamma
V/s

Defendants : B.H. Krishnegowda and another

Parties to I.A. No.1

Applicant : Bhagyamma
V/s

Opponent : B.H. Krishnegowda and another

ORDER ON I.A. NO.1 FILED BY THE PLAINTIFF
U/O 39 RULE 1 AND 2 OF CPC

It is an application filed by the plaintiff under order 39 rule 1 and 2 of CPC for seeking order of temporary injunction restraining defendants from interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property till disposal of this suit.

2. In support of her application, she has sworn an affidavit, wherein she has stated that, the suit schedule property originally belongs to Government same was granted to her husband Ningegowda @ Chandregowda in the year 1994, the property situated at Bydarahally Village, in Sy.no.50/1 measuring 25 guntas, Sy.no.50/2 measuring 15 guntas and except 5 guntas of Karab land. Accordingly, the katha of the suit schedule property had been changed in the name of her husband as per MR.no.19/1998-99. During the lifetime of her husband, he was in possession and enjoyment of the suit schedule property. After death of her husband, plaintiff has changed the katha of the suit schedule property as per MRH.no.7/2017-18, wherein she is in possession and enjoyment of the suit schedule property by growing various crops. Such being the case, the defendants have no manner of right, title and possession over the suit schedule property. Defendants are trying to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property, the balance of convenience and prima facie case lies in her favour and if the order of temporary injunction is not granted, she would be put irreparable loss and injury. Hence pray for allow the application.

3. On the other hand, defendants have filed their written statement and prays for adopt the written statement as objection

to I.A.1, wherein the defendants have denied the entire affidavit averments except changing the katha of the suit schedule property in the name of plaintiff as per M.R.No.7/2017-18. But further denied the very possession and title of the suit schedule property. And further contended that, the schedule mentioned in the plaint is not correct towards northern side and southern side, the schedule mentioned in the plaint is not correct. There is a road and defendant property is situated towards northern side and southern side of the suit schedule property. In order to have unlawful gain, plaintiff has furnished wrong boundary of the suit schedule property. And further contended that, the plaintiff's husband has sold the property bearing Sy.no.50/1 measuring 10 guntas and in Sy.no.93 measuring 30 guntas in favour of defendant on dated:14.03.2000. Since from the date of purchase, the defendants are in possession and enjoyment of the above said property. Since the plaintiff's husband was not cultivating the property situated towards southern side of 10 guntas, which is purchased by defendant in Sy.no.50/1 is cultivating by the defendants measuring 4-5 guntas. Accordingly, the defendants are in possession and enjoyment of the 4-5 guntas. On the basis of bagarhukum saguvally from 18 years in-order to grab the property of defendants, which is cultivating by the defendants. The plaintiff has

filed this false suit against the defendants and there is no any durusth proceedings has been conducted by the revenue authorities. Hence, plaintiff has no prima facie case and balance of convenience lies in favour of plaintiff, if the order of temporary injunction is not granted, she would not be put irreparable loss and injury. Hence pray for reject the application with cost.

4. Heard on both side.

5. The following points are arised for court consideration as under:

1. ***Whether the plaintiff has made out a prima-facie case for grant of temporary injunction as prayed in I.A.No.1?***
2. ***In whose favour balance of convenience lies?***
3. ***Whether plaintiff will be put to irreparable injury in case injunction is not granted?***
4. ***What Order?***

6. This court answers to the above points are as follow written statement:-

Point No.1	:	In the Affirmative
Point No.2	:	In the Negative
Point No.3	:	In the Negative
Point No.4	:	As per the final order For the following;

:: REASONS ::-

7. Point No.1 to 3:- These three points are inter-linked, to each other are taken for common discussion to avoid the repetition of facts and circumstances of the case.

That in order to prove the above point no.1, plaintiff has sworn an affidavit, wherein she has stated that, the suit schedule property is acquired by her husband under grant from the Government in the year 1994, the property situated at Bydarahally Village in Sy.no.50/1 measuring 25 guntas in Sy.no.50/2 measuring 15 guntas which is subject matter of the suit schedule property measuring 35 guntas bounded on east by Road, west by Appajigowda's land, North by ancestral property of plaintiff and South by Balaningappa's land.

8. In support of this contention, the plaintiff has produced xerox copy of grant certificate. On looking into the xerox copy of the grant certificate, it discloses that, as per NCRH.no.66/94-95, the property situated at Byadarahally Village bearing Sy.no.50/1, 50/2 and Sy.no.48/3 respectively measuring 25 guntas, 15 guntas and 12 guntas total measuring 1 acre 12 guntas and foot carab 5 guntas of land has been granted in the name of plaintiff's husband- Ningegowda @ Chandregowda. And further plaintiff has produced

official memorandum. On looking into the official memorandum it also discloses that, the plaintiff's husband had granted Sy.no.50/1, Sy.no.50/2 and Sy.no.48/3 respectively measuring 25 guntas, 15 guntas and 12 guntas in the Byadarahally Village, as per the sketch annexed to grant certificate.

9. Further there is no doubt that, the property bearing Sy.no.50/1, Sy.no.50/2 and Sy.no.48/3 measuring 1 acre 12 guntas of the property have been granted in favour of plaintiff's husband. And further, it is specific case of the plaintiff that, after the grant, plaintiff's husband was in possession and enjoyment of the suit schedule property. Accordingly, as per the MR.no.19/1998-99 the property bearing Sy.no.50/1, Sy.no.50/2 renumbered as 50/P9. Accordingly, the measuring 35 guntas is in possession and enjoyment to the plaintiff's husband -Ningegowda @ Chandregowda and also katha had been changed in the name of plaintiff's husband as per MR.no.19/1998-99.

10. In support of her contention, plaintiff has produced the xerox copy of the RTC extract for the year 2013-2014. On looking into the xerox copy of the RTC extract, it discloses that, the Sy.no. 50/P9 total measuring 2 acre 38 ½ guntas and wherein the plaintiff name is entered in respect of 35 guntas as per MR.no.19/1998-99

as per partition. In support of her contention, plaintiff has not produced any documents with regard to resurvey or durasth documents as stated by her in the pleadings.

11. Further, it is specific case of the plaintiff that, after death of plaintiff's husband, katha of the suit schedule property has been changed in the name of plaintiff as per MRH.no.7/2017-2018 in respect of Sy.no.50/P9. In support of the same, plaintiff has produced the RTC extract for the year 2018-2019. On looking into the RTC extract, it discloses that, the suit schedule property bearing Sy.no.50/P9 katha has been changed in the name of plaintiff. And further it discloses that, plaintiff is in possession and enjoyment of Sy.no.50/P9 measuring 35 guntas as per MRH.no.7/2017-2018 on the basis of pauthi varasu. There is no dispute that, the katha of the suit schedule property measuring 35 guntas has been changed in the name of plaintiff and also the documents produced by the plaintiff, prima facie clearly discloses that, the suit schedule property had been granted in the name of plaintiff's husband and then after death of plaintiff's husband, the suit schedule property katha has been changed in the name of plaintiff. At this stage, it is relevant to note the provision of Section.133 of Land Revenue Act, as per Section.133 of Land Revenue Act, there is a presumptive value attached to the entries made in the RTC extract. As per the

documents produced by the plaintiff, it discloses that, plaintiff is in possession and enjoyment of the suit schedule property.

12. But per contra, on the other hand, the defendants have contended in their written statement that, the plaintiff's husband has sold the property bearing Sy.no.50/1 measuring 10 guntas, Sy.no.90 measuring 30 guntas. In support of their contention, the defendants have produced xerox copy of the sale deed dated:14.03.2000. On looking into the zerox copy of the sale deed, it discloses that, plaintiff's husband Ningegowda @ Chandregowda has executed the registered sale deed on dated:14.03.2000 in favour of defendant-Krishnegowda, in respect of property situated at Channarayapatna Taluk, Hirisave Hobli, Byadarahally Village and same was acquired by him as per MR.no.8/1998-99 bearing Sy.no.50/1 measuring 10 guntas bounded on East by Government land, South by Boregoads's land, North by Gandasigowda and others land and south by Rangamma's land and another property bearing Sy.no.90 measuring 30 guntas which is not the subject matter of dispute in this case.

13. In this regard, the learned counsel for the defendant has argued that, the plaintiff has suppressed the material fact that, her husband had executed the registered sale deed in favour of

defendant in respect of Sy.no.50/1 measuring 10 guntas, she is not entitle for any relief from the hands of this court, since the plaintiff has not approach the court with clean hands. Hence pray for dismiss the application.

14. Even though as per the documents produced by the plaintiff, there is no dispute that, the katha of the suit schedule property bearing Sy.no. 50/1, Sy.no.50/2 total measuring 35 guntas has been standing in the name of plaintiff. Even though, as per the presumptive value attached to the RTC extract and unless and until contrary to prove by the other side, court has to presume that, plaintiff is in possession and enjoyment of the suit schedule property and the entires made in the revenue records are true and correct unless lawfully substituted.

15. On the other hand, inorder to contradict of the same, defendants have produced xerox copy of the sale deed, it clearly discloses that, out of the Sy.no.50/1 measuring 10 guntas has been sold in favour of defendant. The said fact has not been disclosed by the plaintiff itself is sufficient to draw adverse inference against the case of the plaintiff. As per the documents produced by the defendants, the plaintiff's husband has sold the property bearing Sy.no.50/1 measuring 10 guntas in favour of defendant.

16. On the other hand, defendant has specifically disputed the identity of the property contending that, towards northern side and southern side there is a property of defendants and Government road. But the said fact has to be traced out during the trial whether the schedule given to the suit schedule property is correct or not. But as per the documents produced by the defendants, sale deed it clearly discloses that, the plaintiff has not given the proper description of the plaint schedule.

17. Moreover it is well settled principle of law that, when the plaintiff has failed to furnish the correct identity of the property and suppressing material fact with regard to identity of the property and also selling of the property is sufficient to draw adverse inference against the case of the plaintiffs. In such circumstances, the plaintiff is not entitle for the relief of temporary injunction, she has to approach the court with clean hand without suppressing any material fact.

18. Even though, plaintiff has established that, she has prima facie case. But on looking into the balance of convenience is concerned. If the order of temporary injunction is granted definitely, defendant will be put into irreparable loss and injury because, the property already Sy.no.50/1 measuring 10 guntas has

been sold in favour of defendant in Sy.no.50/1 total measuring 25 guntas out of which 15 guntas had been retained by plaintiff's husband not measuring 25 guntas, as per the sale deed dated:14.03.2000, in case if the order of temporary injunction is granted in favour of plaintiff in respect of Sy.no.50/1 total measuring 25 guntas and Sy.no.50/2 measuring 10 guntas, definitely it caused inconvenience to defendant and also cause irreparable loss and injury to the defendant. On the other hand, if the order of temporary injunction is not granted no prejudice would caused to the plaintiff. Plaintiff has utterly failed to prove that, the balance of convenience lies in favour of plaintiff and moreover, if the order of temporary injunction is granted the right of the defendants will be effected. On the basis of order, plaintiff may dispossess the defendants from the property, which was purchased in Sy.no.50/1 measuring 10 guntas. Accordingly, the plaintiff is not entitled for the relief of temporary injunction order for restraining the defendants. Accordingly, this court has come to the conclusion that, the balance of convenience is not lies in favour of plaintiff, if the order of temporary injunction is not granted, no prejudice would caused to the plaintiff. Hence point No.1 is answered in **Affirmative** and Point no.2 and 3 are answered in the **Negative**.

19. **Point No.4:-** For the above discussion, this court proceed to pass the following;

: O R D E R :

The application filed by the plaintiff I.A.No.1 U/o 39 Rule 1 and 2 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the stenographer and computerized by her transcribed, then, corrected and pronounced by me in open court this the 29th day of June 2020)

(S. Chinnaswamy)
Prl. Civil Judge & J.M.F.C.
Channarayapatna.