

KAHS710007902021



IN THE COURT OF CIVIL JUDGE & JMFC.,
AT HOLENARASIPURA.

PRESENT : **SMT. CHETHANA B.A., L.L.B.,**
Civil Judge & JMFC,
Holenarasipura.

O.S.NO.161/2021

DATED THIS THE 18th DAY OF FEBRUARY - 2025

Plaintiff :- Yashodamma,
W/o. Krishnamurthy,
Aged about 58 years,
R/at: K.Muddanahalli village,
Hallymysore Hobli,
Holenarasipura Taluk
Hassan District.

(By Sri.T.S.K., Advocate)

-V/s:-

Defendant/s: Swamy,
S/o. Late.Giriyaiah,
Aged about 48 years,
R/at: K.Muddanahalli village,
Hallymysore Hobli,
Holenarasipura Taluk,
Hassan District.

(By Sri.S.B.S., Advocate)

ORDERS ON IA NO.V

Applicant/s : Yashodamma

V/s

Opponent/s : Swamy

- | | | |
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| i | Provision under which the application is filed | Order XXXIX Rules 1 and 2 of CPC |
| ii | Relief sought for | Temporary Injunction |
| iii | The date on which the application is filed | 29.10.2024 |
| iv | The date on which the objections are filed by different opponents | 07.11.2024 |
| v | The date on which the orders were passed on the said application | 18.02.2025 |

ORDER ON APPLICATION FILED UNDER ORDER XXXIX**RULES 1 AND 2 OF C.P.C.**

This Interim application No.V is filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking to restrain the defendant from interfering into her peaceful possession and enjoyment over the suit 'A' and 'B' schedule properties till the disposal of the suit.

2. In the affidavit annexed to the application, it is stated that, the Plaintiff is the absolute owner in possession of the suit schedule properties and she has purchased the same through Registered Sale Deeds; it is her self acquired properties. The

khatha of suit schedule properties has been changed into her name and she is paying tax to the Government. Except the Plaintiff, no one has any kind of right over the suit schedule properties. The Defendant is not in possession of the suit schedule properties. Since, the Defendant is influential person in the locality, he is interfering into the possession of plaintiff by threatening the Plaintiff to give the suit schedule properties to him. When the plaintiff approached the police to lodge complaint in this regard, it was intimated to him to resolve the dispute in the Court as the dispute is civil in nature and have not taken any action against Defendant. The Defendant cannot be restrained without the order of this Court. Therefore, it is very much necessary that, till the disposal of the suit, the Defendant has to be restrained. She has *prima-facie* case and balance of convenience lies in her favour. The document pertaining to suit schedule properties are standing in her name and she is in possession of suit schedule properties. If the temporary injunction is not granted, the Plaintiff would be put to irreparable loss and injury. Hence, it is prayed to allow the application.

3(a). On the other hand, the Defendant has filed a memo seeking to consider the written statement filed by him as

objection to this application. In the written statement, it is contended that, the Defendant is in possession of suit schedule property and he is cultivating the same. The father of Plaintiff by name Late.Giriyaiah has been in possession of the same for around 40 years. The father of Raju S/o. Kalaiah has given the possession of properties to the father of defendant in the year 1995. From that day onwards, the father of Defendant was in possession of said properties. Accordingly, the name of Defendant's father finds place in cultivators' column of hand written RTC extracts. The Defendant was also cultivating the suit schedule properties along with his father while he was alive. After the death of his father, the Defendant is cultivating the same. He is growing millet, jower etc,.

(b). The Plaintiff also knows the fact that, the Defendant and his father are in possession of the suit schedule properties. The Plaintiff and Defendant are from same village. Raju S/o. Late. Kalaiah and K.R.Rakesh S/o. Raju have executed a false Sale Deed in favour of Plaintiff without the knowledge of Defendant though, it is within their knowledge that, the Defendant is in possession. Already the Defendant had instituted a suit against said Raju and Rakesh as per O.S.No.133/2021 in this Court

seeking to declare the Defendant herein as the owner of suit schedule properties by way of adverse possession and to declare the Sale Deed executed in favour of Plaintiff herein as null and void. Th same was instituted on 20.04.2021. the Plaintiff herein is the Defendant No.3 in that suit and said K.R.Rakesh and Raju are respectively the Defendant Nos.1 and 2. The suit summons has been served on Plaintiff herein and he has engaged counsel in that suit. The Plaintiff has instituted this suit after 3 months from the date of Defendant instituting the suit only with the intention of troubling the Defendant. The Plaintiff by knowing the schedule from the suit instituted by Defendant, has got executed a rectified Sale Deed on 28.06.2021 i.e. after 2 months from the date of institution of suit so as to match the schedule in which the Defendant is in possession.

(c). The father of Defendant has been in possession of suit schedule properties from around 40 years and after his death, the Defendant is been in possession and cultivating the same, and his possession is adverse possession. Since, the Defendant has already instituted the suit seeking to declare himself as the owner by way of adverse possession, the present suit is not maintainable. Neither the Plaintiff nor his vendors by name Raju

and Rakesh are in possession of the suit schedule properties. Therefore, the Plaintiff cannot seek the relief of permanent injunction against the Defendant. The Plaintiff has suppressed the fact of pendency of suit in O.S.133/2021 and filed this suit. The Plaintiff never been in possession of suit schedule properties. Accordingly, Raju and Rakesh also never been in possession of the same. Hence, it is prayed to reject the application.

4. Heard arguments of Learned counsel appearing for both the parties, perused pleading, application, objections and documents on record.

5. The following points arise for the consideration of this Court:

:POINTS:

- 1. Whether the plaintiff has made out prima-facie case against the defendant in respect of suit schedule properties in order to grant temporary injunction as prayed for?***
- 2. Whether the plaintiff further proves that, Balance of convenience lies in her favour?***
- 3. Whether irreparable loss or injury would be caused to the plaintiff if this application is not allowed?***
- 4. What order?***

6. After hearing the argument and on careful perusal of records, the findings of this Court to the above points are as follows:-

Point No. 1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Negative

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

: R E A S O N S :

7. POINT No.1:- The contents of affidavit annexed to the application filed by applicant and objections of defendant are already narrated herein above. In support of the contentions of plaintiff, she has relied up RTC Extracts; Mutation Register Extract; Online Copies of Sale Deeds dated 19.10.2020 and Rectified Sale Deeds dated 28.06.2021. In support of the contention of Defendant he has relied upon the copy of Plaint, Written Statement, Issues and Order Sheet of O.S.No.133/2021; Hand written RTC extracts.

8. In this case, it is the specific contention of the plaintiff that, she has purchased the suit schedule property through Registered Sale deed and accordingly, the revenue documents have been changed into her name. It is further contended that, she is in possession and enjoyment of the same by

paying tax to the Government. The documents relied upon by the plaintiff in support of her case, especially the Sale Deeds dated 19.10.2020 *prima-facie* shows that, she has purchased the suit schedule properties from one Rakesh and the schedule of the properties given in the documents relied upon by the plaintiff tallies with suit schedule properties. Further, the Mutation Register extract and RTC extract also shows that, by virtue of the said Sale Deeds the *khatha* has been changed into her name. However, it is the stand of the Defendant that, he is in possession of the suit schedule properties by way of adverse possession and his father also in possession of the same for around than 40 years. The hand written RTC extract produced by the Defendant *prima-facie* discloses that, his father's name is been entered in column No.12 of the said RTC even in since 1977-78 till 1980-81. It is not in dispute that Eraiah is the Defendant's father. If at all the father of the defendant was not in possession of the same, then how his name found a place in the said document, is to be ascertained only after the trial. The Defendant has filed suit seeking to declare himself as the owner of the suit schedule properties prior to the Plaintiff herein filing this suit. Therefore, upon consideration of the all these aspects it shows that, there is

an issue in this case which requires consideration by this Court. This Court cannot touch the merits while considering this kind of applications. Therefore, this Court is of the opinion that, the Plaintiff has made out that there is a *prima-facie* case. Accordingly, point No.1 is answered the **Affirmative**.

9. POINT Nos.2 and 3:- No doubt, the Sale Deeds and Rectified Sale Deeds being the Registered documents carries certain presumption. As discussed above, *prima-facie* the documents relied upon by the Plaintiff shows that, she is in possession of the suit schedule properties. However, at the same time as said above in column No.12 of Hand written RTC extract, the name of the father of Defendant find place. In this case, both the parties are claiming title over the suit schedule properties and are also claiming that, they are in possession of the same. Therefore, this Court is of the opinion that, it is not safe to grant the relief sought by the Plaintiff merely by drawing presumption on Registered documents. This Court cannot hold mini trial to ascertain as to who is actually in physical possession of suit schedule property. Apart from all these, this Court is also of the opinion that, if injunction as sought by the Plaintiff is granted, then suppose the Defendant is in possession of the suit schedule

properties he would be put to more hardship and irreparable loss and injury than the Plaintiff. Moreover, if injunction as sought is granted, the situation may also become irreversible at the time of final adjudication of the matter.. Therefore, it is not safe and just to injunct the Defendant as sought by the Plaintiff by way of temporary injunction. Hence, the plaintiff has not made out that, balance of convenience lies in her favour and she would be put to irreparable loss and injury if this application is not allowed. Accordingly, Point Nos.2 and 3 answered in the **Negative**.

10. Point No. 4: For the reasons stated while discussing Point Nos.1 to 3, this Court proceed to pass the following:

:ORDER:

The application i.e., I.A.No.V filed by Plaintiff under order XXXIX Rules 1 and 2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court on this the 18th **day of February - 2025**)

(SMT. CHETHANA)
Civil Judge & J.M.F.C.,
Holenarasipura.