

**IN THE COURT OF THE ADDL. CIVIL JUDGE
& J.M.F.C
AT HOLENARASIPURA**

PRESENT : Sri.Arun Chougule.,
B.A. LL.B.(Hons.)
Addl. Civil Judge and J.M.F.C.,
HOLENARASIPURA

Dated this the 20th day of September, 2018

O.S.NO.146/2017

Plaintiff/s :- Nagarajegowda S/o Late Siddaramegowda,
aged about 38 years,
Chikkachagahalli village,
Kasaba hobli,
Holenarasipura taluk.

(By Sri.R.D.R.Advocate)

-V/s-

Defendant/s:- 1. Rajegowda S/o Late Chikkegowda,
aged about 65 years,

2. Smt. G.P.Jayashri W/o Late Krishnegowda,
aged about 48 years,
Both R/o Chikkachagahalli village,
Kasaba Hobli,
Holenarasipura taluk.

(By Sri.K.R.J.Advocate)

:: In IA.No. II::

Applicant/Plaintiff/s :- Nagarajegowda S/o Late Siddaramegowda

-V/s-

Opponents/Defendant/s :- Rajegowda S/o Late Chikkegowda
and another

ORDER ON IA.No.II FILED BY THE PLAINTIFF
U/O.39 RULE 1 and 2 OF C.P.C.

The plaintiff has filed the present application under Order 39 Rule 1 and 2 of C.P.C., seeking temporary injunction against the defendants restraining them from putting up bund in the suit property, till disposal of the suit.

2. The plaintiff has sworn to an affidavit along with the application stating that the suit property measuring 4 guntas of land in Sy.No.101/12 was part and parcel of Sy.No.101/8 totally measuring 28 guntas belonging to one Ramaiah S/o Jadiya. The said 28 guntas of land was equally divided and 14 guntas each was fallen to the share of Swamegowda S/o Jadegowda and Kengegowda. After the death of said Kengegowda, 14 guntas of land which had fallen to his share came to be recorded in the name of his wife Kamma and later it was transferred in the name of Kamma's son C.K.Chandrashekar. Thereafter, plaintiff's father namely Siddamegowda purchased the said 14 guntas of land in Sy.No.101/8 from said C.K.Chandrashekar under a registered sale deed dated 27.05.2002 for consideration of Rs.28.000/-. Plaintiff's father Siddamegowda died on 16.10.2006 and thereafter, a partition was held in the family of plaintiffs vide registered partition deed dated 16.05.2009 wherein the suit 4 guntas of land in Sy.No.101/8 came to be allotted to the share of plaintiff. Thereafter, Sy.No.101/8 which was totally measuring 14 gutnas came to be

renumbered as Sy.No.101/11, 101/12 and 101/13. 4 guntas of suit land belonging to the plaintiff came to be numbered as 101/12 and the plaintiff is in possession and enjoyment of the same. This being the fact, the defendants having their properties in Sy.No.101/7A, 101/71A1 and 101/71A3 adjacent to the suit property, without having any rights over the suit property they are trying to put up bund in the land belonging to the plaintiff. Therefore, the plaintiff filed the present suit against the defendants for permanent injunction and under the present application he is seeking temporary injunction restraining the defendants from putting up bund in the suit property, till disposal of the suit.

3. The defendants filed objections contending that the plaintiff, colluding with the revenue authorities, has got created documents to grab the property of the defendants and C.K.Chandrashakhar S/o Kengegowda, being the relative of the plaintiff, has executed sale deed mentioning wrong boundaries. The defendants further contend that the plaintiff's father Siddaramegowda had filed appeal before Assistant Commissioner, Hassan against the defendant No.1 and others in respect of suit property and some other properties challenging the mutation, which came to be dismissed. Certain properties in Chikkachagahalli village including Sy.No.101 has been acquired by the government and the plaintiff is not having any property in the said survey number and that he is neither in possession and enjoyment of the suit property. That the defendant No.1 is having properties in Sy.No.65/1, 101/3P and 101/7A and

defendant No.2 is having properties in Sy.No.51/3, 101/3, 101/7A, 51/4A, 101/71A2 and 101/71A3 and the defendants are in possession and enjoyment of their respective properties. This being the fact, the plaintiff has filed false suit only to harass the defendants. On these grounds, the defendants sought to dismiss the application.

4. Heard the arguments of both the counsel for plaintiff and defendants.

5. After hearing both the counsel and perusal of pleading and records, the following points arise for my consideration.

1:- Whether the plaintiff has made out a prima facie case?

2:- Whether balance of convenience lies in favour of plaintiff ?

3:- Whether irreparable loss will be caused to the plaintiff if the temporary injunction as prayed is not granted?

4:- What order?

6. My findings on 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 final order,
for the following:**

REASONS

7. Point No.1 to 3:

The plaintiff has filed the suit against the defendants seeking the relief of permanent injunction in respect of suit property bearing Sy.No.101/12 measuring 4 guntas situated at Chikkachagahalli village, Kasaba Hobli of Holenarasipura taluk. The case of the plaintiff is that the suit 4 guntas of land was fallen to his share in a partition held in their family vide registered partition deed dated 16.05.2009. At the time of partition, the survey number of the suit land was 101/8 which later came to be renumbered as 101/12. Plaintiff states that the defendants having no manner of right, title or interest over the suit property, they are trying to trespass and put up bund in the suit property. The defendants, on the other hand, contend that the government has acquired the entire property in Sy.No.101 and there is no property as described in the suit schedule. The defendants further contend that they are having properties in various survey numbers, which does not include suit survey number 101/8 or 101/12.

8. The plaintiff has produced certified copy of sale deed dated 27.05.2002 which shows that 14 guntas of land in Sy.No.101/8 was purchased by plaintiff's father from its earlier owners for consideration of Rs.28,000/-. The plaintiff has also produced certified copy of the registered partition deed dated 04.05.2009 (registered on 16.05.2009) which shows that 4 guntas of land in Sy.No.101/8 within the boundaries as shown in the suit schedule has been allotted to the share of plaintiff. Certified copy of M.R.No.18/2008-09 produced by

the plaintiff would show that the suit property came to be recorded in the name of plaintiff on the basis of the partition held in their family. The defendants have also produced numerous documents but none of them are pertaining to the suit property. Neither they have produced any document to show the acquisition of the suit property by the government. The above mentioned documents produced by the plaintiff would disclose that he has got a strong case at the trial and therefore, refusing to grant temporary injunction would cause more inconvenience to the plaintiff than that which is going to be caused to the defendants by granting it. Hence point Nos.1 to 3 are answered in the affirmative.

9. **Point No.4:-** In view of the above discussion, the following order is passed:

ORDER

The IA.No.II filed by the Plaintiff under Order 39 Rule 1 and 2 of C.P.C is hereby allowed and the defendants are restrained by way of temporary injunction from putting up bund in the suit property, till disposal of the suit

No order as to cost.

(Dictated to the stenographer, transcribed by her, revised by me and after corrections, pronounced in the Open Court on this the **20th day of September, 2018.**)

(Arun Chougule)
Addl. Civil Judge and JMFC,
Holenarasipura.