

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

**Present: Smt.Shridevi J. Darabare.,
MA.LL.M.,
Civil Judge & J.M.F.C.,
Shiggaon.**

ORIGINAL SUIT No.187/2019

DATED ON THIS THE 14th DAY OF JULY-2020

- PLAINTIFFS:**
- 1) Shri Mallappa S/o Ulavappa Badni,
Age: 60 years, Occ: Agriculture,**
 - 2) Shri Nagaraj S/o Maritammappa Badni,
Age: 38 years, Occ: Agriculture,**
 - 3) Anand S/o Maritammappa Badni,
Age: 36 Years, Occ: Agriculture,**

**All are R/o Kadahalli, Tq: Shiggaon,
Dist: Haveri.**

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

- - V/S - -

- DEFENDANTS :**
- 1) Shri Basavaraj S/o Mallappa Badni,
Age: 78 Years, Occ: Agriculture,**
 - 2) Iranna S/o Shambanna Venkoji,
Age: 45 Years, Occ: Agriculture,
Both are R/o Kadahalli, Tq: Shiggaon,
Dist: Haveri.**

(By Sri G.K.G Advocate.)

PARTIES TO I.A.No.I

Applicant : Shri Mallappa S/o Ulavappa Badni,
(Orig. Plaintiff] **and others**

V/s

Opponents : Shri Basavaraj S/o Mallappa Badni,
(Orig. Defts) **and others.**

ORDER ON I.A. NO.I FILED UNDER ORDER XXXIX
RULE 1 AND 2 OF CPC.

The plaintiffs/applicants have filed this application on above said procedure for an order of temporary injunction against the defendant No.2, their men, servants or person or persons claiming under them restraining from obstructing or interfering in the lawful and peaceful possession and enjoyment of the suit schedule property in any manner.

2. In the affidavit annexed to this application, it is stated that, the suit property is ancestral property of plaintiffs. Further stated that plaintiff is making use of suit property by storing haystack since long time without any obstruction. Further stated that property bearing VPC No.27/B1 of defendant No.1. is adjacent to suit property towards North South. Defendant No.1 given an application to enter the electronic property extract (ಇ ಸ್ವತ್ತು), wherein defendant No.1

shown measurement and possession of his property in map as 'L' shape. Further stated that defendant No.1 colluding with surveyor got created electronic property extract by showing his property in square shape by encroaching towards Northern side as shown in the hand-sketch map 'A.B.E.F.' further stated that defendant No.1 sold the property including suit property of plaintiff by creating false Sale Deed to defendant No.2 on 29.04.2019. The Sale Deed executed by defendant No.1 in favour of defendant No.2 is not binding on plaintiff. On false Sale Deed defendant NO.2 is obstructing peaceful possession and enjoyment of suit property of plaintiff. Hence, this application. Plaintiff have made out prima facie case and balance of convenience. If the application is not granted plaintiffs will put into untollerable loss and injury. On the other hand no harm is caused to defendants. Hence prayed to pass TI against defendant not to obstruct or make changes in the record of rights till disposal of the suit.

3. On the other hand learned Counsel for defendants filed one memo to treat the written statement as objection to the I.A.No.I. Hence, this Court has to refer the written statement of the defendants. In the written statement-cum-objection, wherein it is stated that suit of plaintiffs is false, frivolous and vexatious. Same is not maintainable under law and facts, deserves to be dismissed in limine. Further denied para No. 2 to 6 of plaint averments. Further stated that the suit

property is black roof tiles bearing VPC No.27/A situated at Kadahalli village, but plaintiff has falsely shown in plaint averments as house and backyard. Further stated that the house of plaintiff and defendant are adjacent to the each other.

4. On 02.05.2019 defendant No.2 purchased black tiles house i.e., property bearing V.P.C.27/B1 measuring East-West 4.40 mtrs. North-South 12.30 mtrs., which has no backyard. Further stated that V.P.C.No.29/B is the ancestral property of defendant No.1. The name of one Rudrappa S/o Mallappa Badni and his brother i.e., defendant NO.1's name has been jointly entered to the said property. On 31.07.2009 as per resolution the property bearing V.P.C.No.27/B1 was fallen to the share of defendant NO.1. Since then defendant No.1 is owner in possession and enjoyment of suit property. Further due to financial problem to defendant No.1, he sold the property. Prior to selling the property he got electronic property extract. While issuing electronic property extract the panchayat officials issued notice to neighbors of the said property to measure the property of defendant No.1 and the officials obtained the signature of the applicant and other neighbors on the application. Further stated that plaintiff No. 2 has also affixed his signature on the application and got created 'E' map and by enquiring on the facts defendant NO.2 purchase the property from defendant No.1. further as per

sale deed defendant No.2 is the owner and in possession and enjoyment of suit property. Now in the year 2019 due to heavy rain the house of defendant NO.2 collapsed and the defendant NO.2 cleaned the space and now it is open space. Taking undue advantage of property of plaintiff adjacent to property of defendant trying to grab the property of defendant. Hence filed false suit therefore prayed to dismiss the application with cost.

5. I heard learned Counsel for plaintiff and learned Counsels for defendants.

6. The point arises for my determination is as follows:

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for in the application?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the irreparable loss or injury would be caused to the plaintiff in the event of refusal to grant an order of T.I.?

4. What order?

7. My answers to the above points are as under:

Point No.1 to 3: - In the Affirmative

Point No.4 : - As per final order,

for the following:

REASONS

8. **Points No.1 to 3:** Since these points are interlinked each other hence, taken up together for common discussion.
9. It is specific case of the plaintiff the suit property is ancestral property of plaintiffs. Further stated that plaintiff is making use of suit property by storing haystack since long time without any obstruction. Further stated that property bearing VPC No.27/B1 of defendant No.1. is adjacent to suit property towards North South. Defendant No.1 given an application to enter the electronic property extract (ಇ ಸ್ವತ್ತು), wherein defendant No.1 shown measurement and possession of his property in map as 'L' shape. Further stated that defendant No.1 colluding with surveyor got created electronic property extract by showing his property in square shape by encroaching towards Northern side as shown in the hand-sketch map 'A.B.E.F.' further stated that defendant No.1 sold the property including suit property of plaintiff by creating false Sale Deed to defendant No.2 on 29.04.2019. The Sale Deed executed by defendant No.1 in favour of defendant No.2 is not binding on plaintiff. On false Sale Deed defendant NO.2 is obstructing peaceful possession and enjoyment of suit property of plaintiff. Hence, this application. Plaintiff have made out prima facie case and balance of convenience. If the

application is not granted plaintiffs will put into untollerable loss and injury. On the other hand no harm is caused to defendants. Hence prayed to pass TI against defendant not to obstruct or make changes in the record of rights till disposal of the suit.

10. To prove the contention of plaintiffs, plaintiffs has produced property extract bearing V.P.C.No.27/A situated at Kadahalli village, house extract bearing V.P.C.No.27/B1 situated at Kadahalli village, certified copy of application filed before Gram Panchayath, N.M.Tadas, certified copy of electronic map, certified copy of Sale Deed in favour of defendant No.2 executed by defendant No.1 dated 29.04.2019 and receipt copy of objection filed by plaintiff No.1 before Gram Panchayath, N.M.Tadas.
11. On the other hand, the defendants also produced documents. There are certified copy of property extract i.e., bearing V.P.C.No.27/B1, certified copy of notice issued by Taluka surveyor, certified copy of statement signed by defendant No.1, plaintiff No.2 and two others, xerox copy of electronic map, property extract of V.P.C.No.27/B1, 27/B, certified copy of resolution dated 31.07.2009, one photo and CD and receipt of photo studio.
12. On perusal of property extract furnished by plaintiffs it reveals that property bearing V.P.C.No.27/A is standing in the name of plaintiff and his brothers and property bearing 27/B1 is standing in the name of defendant No.1 further it is

noticed that at the time of giving application to the PDO Gram Panchayat, N.M.Tadas defendant No.1 shown the hand-sketch map, description and measurement of the property bearing V.P.C.No.27/B1. It is pertinent to note here that the hand-sketch produced by the defendant No.1 rivers 'L' shape i.e., '7'. Further on perusal of E map it is noticed that the area of property is shown in rectangle. This is clear from the map that the measurement of property bearing V.P.C.No.27/B1 and measurement shown in the E sketch map does not tally. Further it is contention of the plaintiff that defendant No.1 encroached the suit property of plaintiff towards North-South, the plaintiff has not mentioned the measurement of encroachment in suit property. But on perusal of the E sketch issued by the concerned authority it is clear that some of the portion of property of plaintiff has been encroached by defendant No.1. Further, the certified copy of Sale Deed reveals that defendant No. 1 sold the property bearing V.P.C.No.27/B1 to defendant NO.2 by showing the E sketch and Electronic property extract. Wherein the measurement of property bearing V.P.C.No.27/B1 is shown including the portion of property of plaintiff. On perusal of documents produced by defendant it is noticed that the surveyor got issued notice to the defendant No.1, plaintiff No. 2 and others. The surveyor received the statement stating that no objection to create E property extract for property bearing

V.P.C.NO.27/B1 for which the defendant No.1, plaintiff NO.2 and other have affixed their signature. And other documents produced by the defendant No.1 i.e., property extract which is standing in the name of defendant No.1 after the death of his father. Further the resolution reveals that the bearing property bearing V.P.C.No.27/B1 fallen to the share of defendant No.1. Though the defendant have produced these documents it is not clear that the plaintiff has shown wrong description and measurement of the suit property as contended by the defendants. The another contention taken by the defendants that seems the Sale Deed defendant No.2 is in possession and enjoyment of the suit property but in the written statement filed by the defendants to treat it has objection to I.A.No.I has specifically stated that now the said house property is collapsed and it is open space. Plaintiff is trying to grab the property of defendant. This can be decided only after full fledged trial. Hence, the contentions taken by the defendants holds no water.

13. From the above discussion it is noticed that the suit is one for declaration and consequential relief of injunction against defendants. Therefore at this juncture to avoid the multiplicity of the suits I am of the opinion that the plaintiff has proved prima facie case and balance of convenience lies in the favour of plaintiffs. If the application is not allowed then the plaintiffs will be put into great hardship and loss. To protect the rights of the

plaintiffs over the suit property. I am of the opinion that the defendant NO.2 should be restrained not to obstruct the peaceful possession and enjoyment of the suit property in any manner. Accordingly Points No.1 to 3 are answered in the “*Affirmative*”.

14. **Point No.4** :- In view of the above discussion and the answer to the above points, I proceed to pass the following:

O R D E R

I.A.No.I filed by the applicants/plaintiffs u/O.39 Rule 1 and 2 CPC is hereby allowed.

Defendant No.2 is hereby restrained from not to obstruct the peaceful possession and enjoyment of the suit property in any manner of plaintiffs till disposal of the suit.

(Dictated to the stenographer, direct on computer and typed by her, then signed and pronounced by me in the open Court on this the 14th day of July 2020).

**(SMT.SHRIDEVE J. DARBARE)
CIVIL JUDGE & JMFC,
SHIGGAON.**

Order pronounced in the open court
vide separate Order as Under:

O R D E R

*I.A.No.I filed by the applicants/plaintiffs u/O.39
Rule 1 and 2 CPC is hereby allowed.*

*Defendant No.2 is hereby restrained from
not to obstruct the peaceful possession and
enjoyment of the suit property in any manner of
plaintiffs till disposal of the suit.*

**CIVIL JUDGE & JMFC,
SHIGGAON.**

