

IN THE COURT OF CIVIL JUDGE, CHITTAPUR

Before : Sri. **K.S.Rotter**, B.Com. LL.B (Spl),
Civil Judge, Chittapur

Dated this 8th day of December 2014

O.S. No.77/2013

Saneevappa S/o Narasingarao Akkasaliga,
Age:48yrs, Occ: Agricultural,
R/o|:Allur (B), Tq: Chittapur
(By.Sri.B R Kanta Advocate)

....Plaintiff

V/s.

1. Hanamanth S/o Sabanna, Age: 55yrs,
 2. Nagappa S/o Durganna, Age: 40yrs,
 3. Monappa S/o Hanamanth, Age: 35yrs,
 4. Devappa S/o Hanamantha, Age: 25yrs,
 5. Mallappa S/o Hanamantha, Age: 23yrs,
- All Occ: Agri, |R/o: Sankanur, Tq:Chittapur
(D2 & 3 Ex parte, D1, 4 & 5 By.Sri.G S Hiremath
Advocate)

....Defendants.

ORDERS ON I.A.NO.I

The plaintiff has filed I A - I U/O.39 Rules-1 and 2 of C.P.C.
praying therein for restraining the defendants, their agents, or any

other person on their behalf interfering in to the possession of the plaintiff over the suit house as described in para No.2 of the plaint.

2. On the other hand, the defendant No.1, 4 & 6 have appeared and filed written statement and adopted the same as objections to I A No.I and prayed for dismissal of the same. Defendant No.2 & 3 remained absent and they placed Ex-parte.

3. Heard both the sides.

4. The points which arise for my consideration are as below :-

1. *Whether the plaintiff has made out prima-facie case as per IA – I?*
2. *Whether balance of convenience leans in favour of the plaintiff?*
3. *Whether the plaintiff will be put to irreparable loss and injury if T I order is not granted?*
4. *What order?*

5. My findings on the above points are as under :-

1. Both parties are directed to maintain
2. status-quo with regard to suit properties
3.
4. — As per final order for the following :-

REASONS

6. **Points No.1 to 3:** I take these points for common consideration, because they are inter-linked with each other.

7. This a suit filed by the plaintiff for the relief of permanent injunction against the defendants. It is the case of the plaintiff that, the suit house property, which is shown in plaint hand sketch including open space bearing No.1 – 73 measuring 58 feet X 65 feet situated at village Sankanoor in Chittapur Taluka, is originally belonging to the father of plaintiff by name Narasingarao Bharmayya. It is stated that, after the death of father of the plaintiff, he has succeeded the said property and entered his name by filing an application for mutation. Since, then the plaintiff is the owner and in possession of the suit house and open space surrounding of the said house without any interference. Further the plaintiff contended that, the defendants are no way concerned to the suit property. The plaintiff contended that, the defendants without having any right, or interest over the suit property or open space are trying to dispossess them. Further the plaintiff contended that, they are using the suit open

space for storing haystack and firewood etc. since long time. It is stated that, the plaintiff is residing in Allor (B) village for his livelihood and his mother and sister are residing in the suit house. As such, the defendants taking disadvantage of woman folk are trying to dispossess them from suit house property and open space. Hence, the plaintiff contended that, he has got a prima-facie case, balance of convenience lies in his favour and if TI not granted he will be put to irreparable loss and injury and hardship. Accordingly, prayed for allowing of I A No.I.

8. On the other hand, the defendant No.1, 4 & 5 in their written statement, contended that, the suit of the plaintiff as well as I A No.I is not at all maintainable. The defendants denied the description of the suit property shown by the plaintiff. It is denied that, the suit house property of plaintiff bearing No.1-73 measures 58 feet X 65 feet. It is stated that, the plaintiff has shown the suit property as per their wish and will in the suit plaint hand sketch. It is stated that, the suit open space is not belonging to the plaintiff and it is a part and parcel of the property of defendants bearing No.1-71. It is stated that, the said suit open space is situated within the Mandal Panchayat of

Allolli village and in the year 1991 -92 the Grama panchayat has given No.1-72. It is stated that, since 25 years the said open space is situated in property No.1-72 in the Manadal Panchayat. Hence, the plaintiff with an intention to grab the said property has filed this false suit. Further the defendants contended that, the suit open space property is belonging to the defendants and they are belonging to poor family and they are using the said suit open space since 25 years and storing the house hold articles and using the said property for their carpentry work and plaintiff is no way concerned to the said property. The defendants contended that, the father of plaintiff by name Narasingrao is the only owner to their extent 1-73 and not concerned with the suit open space. The defendants also denied the alleged interference as contended by the plaintiff. Hence, the defendants contended that, plaintiff has no prima-facie case, nor balance of convenience lies in his favour. Accordingly, the defendants prayed for dismissal of I.A. No.I.

9. The advocate for plaintiff vehemently canvassed his argument and contended that, the house property and open space bearing 1-73 is belonging to plaintiff and they are using the said property since 25

years without any obstruction. Now the defendants with an intention to grab the suit property and open space trying to dispossess them from the suit property. It is argued that, if defendants dispossessed the plaintiff and his mother and sister from the suit property they will be put to irreparable loss and hardship. Hence, they prayed for temporary injunction against the defendants.

10. On the other hand, the advocate for the defendants vehemently canvassed his argument and submitted that, the suit open space, which is shown by the plaintiff is part and parcel of the defendants property No.1-71. The plaintiff is the owner of only constructed house No.1-73 and he was no way concerned to the suit open space. The open place is given No.1-72 and the defendants are in possession and enjoyment of the property since 25 years. It is also stated that, the plaintiff with intention to grab the suit open space and to give harassment to the defendants filed this false suit. Hence they prayed for rejecting the application.

11. I have perused the pleadings and documents and other material on hand. In this case plaintiff contending that, the suit house property and open space as shown in plaintiff hand sketch and bearing No.1-73 measuring 58 X 65 feet is originally belonging to his father and after his death he has got entered his name to the said property. But now the defendants are trying to dispossess the plaintiff from the suit property. On the other hand, it is the contention of the defendants that, suit open space is part and parcel of their property No.1-71 and it was given separate number as 1-72 by the Mandal Panchayat. The defendants stated that, the plaintiff is not in possession of the suit open space and they are in possession of the suit open space No.1-72 since 25 years. The plaintiff in support his contention has produced copy of mutation register, property extract, sketch map issued by the Gram Panchayat and tax paid receipts. On perusal of these documents it is observed that, in the year 1997 the measurement of property No.1-73 is shown into 58 X 65 feet. On the other hand, the defendants have produced the documents pertaining to property No.1-72 i.e. sketch map issued by Mandal Panchayat Allolli property

extract and tax paid receipt. These documents show the existence of open space in property No.1-72.

12. When the rival contentions of both parties are taken into consideration, the dispute between the plaintiffs and defendants revolves around the ownership and possession of the suit open space. However, in this case, on perusal of the contentions of both parties and the maps produced by both the parties clearly shows the existence of suit open space, but whether the said property is situated within the house property No.1-73 of plaintiff, or 1-71 of defendant is questioned to be determined. In this respect at this stage, there is no material on hand, for deciding the said question evidence of both plaintiff and defendants are required. On pleadings and documents on hand, both plaintiff and defendants are claiming their right over the suit open space and here the question of ownership and possession over the suit open space is involved. For deciding the said questions evidence of both parties is necessary and it requires full-fledged trial. Unless the said fact is determined finally the suit property has to be preserved in its present form, or else it will affect the rights of either parties. Hence, at this stage, I am of the opinion that it will be just and proper,

if both the parties are directed to maintain status-quo with regard to the suit property until disposal of this suit. Therefore, I answer points No.1 to 4 accordingly.

13. **Point No.5** : For the foregoing reasons I proceed to pass the following :-

ORDER

I A I filed by the plaintiff U/O.39 Rules-1 and 2 of CPC is hereby partly allowed.

Both plaintiff and defendants are hereby directed to maintain status-quo with regard to the suit property pending disposal of suit.

No order as to costs.

(Dictated to the steno, typed by him corrected by me and then pronounced in open court on this 8th day of December 2014)

**(K.S.Rotter),
Civil Judge, Chittapur**

