

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC AT MULBAGAL.**

Dated this the 30th day of November-2019.

OS.No.07/2017

Present :

Smt. A.N. Kanthamma, B.A.,LLB,
Addl. Civil Judge & JMFC
Mulbagal

Plaintiff: Sri. S. Govindu

V/s

Defendants: Smt. Lakshamma & others,

Parties to I.A.No.I

Applicant
Plaintiff

Sri. Govindu,
S/o Late Pamula Venkateshaiah,
Aged about 63 years,
Agriculturist,
R/o Maraheru-Kothuru Village,
Kasaba Hobli,
Mulbagal Taluk,
Kolar District.

(By **Sri. M.L.Venkatesh**- Advocate)

V/s.

Opponents:
Defendants

1. Smt. Lakshamma,
W/o Late Nagaraja,
Aged about 50 years,
House wife.

2. Sri. Mallikarjuna,
S/o late Nagaraja,
Aged about 25 years,
Agriculturist.

3. Sri. Purushotham,
S/o late Nagaraja,
Aged about 20 years,
Agriculturist.

All are Residing at
Maraheru-Kothuru Village,
Kasaba Hobli,
Mulbagal Taluk,
Kolar District.

(By Sri. K. R. Rajanna -Advocate)

**ORDERS ON I.A.NO.I FILED U/O 39 RULE 1 AND 2 OF
CPC**

IA No.1 filed by the Plaintiff U/O 39 Rule 1 and 2 R/w Sec. 151 of CPC for seeking the grant of Temporary Injunction in favour of Plaintiff and thereby temporarily restrained the Defendants, their agents, servants, coolies, workers, P.A.Holders or any person or persons claiming through them from interfering the peaceful possession and enjoyment of the Plaintiff over the suit schedule property till the disposal of the suit.

2. The brief facts of the Plaintiff's case are that the originally suit schedule property and non suit schedule property is belonged to husband of Defendant No.1 and

father of Defendant Nos.2 and 3 i.e., Nagaraj. The said Nagaraj during his life time, he had sold suit schedule property for his family necessity for valid sale consideration Under Sale deed dated 27-05-1999 and on the same day possession was delivered in favour of the Plaintiff. The Plaintiff submits that from the date of purchase the Plaintiff is in possession and enjoyment of suit schedule property. The Plaintiff submits that after purchasing the suit schedule property the Plaintiff has leveled the suit land and he has constructed Ashwatha Katte and dug two bore wells and obtained power supply and constructed house to an extent of 15 x 30 feet and raised different types of trees and crops like tomato, potato, ragi, paddy etc in the suit schedule property. The Defendants, who have no manner of right, title, interest in the suit schedule property, are tried to interfere in peaceful possession and enjoyment of the suit schedule property. He has also stated that he has made out a prima facie case, balance of convenience in his favour. If the application is not allowed he will be put to irreparable loss

and injury. **With these averments he has prayed for allow the application.**

3. After service of summons, the Defendants have appeared through their counsel and filed written statement and objection to above said IA. The Defendants contend that the suit schedule Sy.No.179/1, totally measuring 6 acre 20 guntas consisting dry land mud well and mud house and eucalyptus trees and other existing features. It is contended that the said property is the ancestral property of Defendants and they are in continues possession and enjoyment the said property. It is contended that at no point of time the father of Defendants had not executed any alleged registered deed dated 27-05-1989 in favour of Plaintiff and no sale consideration amount has been passed and Defendants have not delivered possession of the suit schedule property to the Plaintiff and said sale deed is created and concocted and forged documents. Hence the said sale deed is not binding on the Defendants. It is contended that originally Sy.No.179/, measuring 6 acre 22 guntas was belonged to

the great grand father of Defendants i.e., Malagappa @ Appaji. It is contended that after the death of Malagappa @ Appaji his son Chikkavenkata Swamy had succeeded the suit schedule Sy.No.179/1, measuring 6 acre 22 guntas. It is contended that during the life time of Chikkavenkata Swamy, he had sold portion of land towards southern side and western side to various persons and remaining property was in possession and enjoyment of said Chikkavenkata Swamy and his son Nagaraj. It is contended that after the death of said Chikkavenkata Swamy his son i.e., Nagaraj and these Defendants were succeeded to the remaining land and they are in possession and enjoyment by doing agriculture. The Plaintiff is not in possession and enjoyment of the suit schedule property at any point of time. It is contended that the Plaintiff is astrologer wandering from one place to another place by doing his avocation as palmist. It is contended that the Plaintiff is permanently residing at Ramamurthi Nagar, Bengaluru. It is contended that towards southern side of suit schedule property there is

Gramatana property bearing old Kaneshkumari No.65, subsequent Khata No.56 at present Panchayath E Khata No.151900901200900159 measuring East to West 12.192 and North to South 12.192 in total measuring 148.64 sq. meters (40 x 40 feet) consisting of old stone roofed house with varanda and at present newly constructed building is situated at M.Kothur Village and bounded on East by: Saraswathamma and Anjappa house, West by: Sandhudari and then Ashwatha Kunte, North by: V.P. Road. It is contended that the Defendants are in possession of the suit survey number property with V.P. Khata since their ancestors Malagappa @ Appaji. It is contended that the Defendants have demolished and constructed dwelling house in the above said V.P. Khata property by obtaining building license and plans. It is contended that the Defendants have constructed the building up to centering level and erected doors and windows to the said building. It is contended that the Plaintiff nor in the family members are in possession of the suit schedule property. It is contended that on 31-12-2016 at 12-00 P.M. the Plaintiff

and his supporter have come and illegal trespassed in the suit schedule property and demolished newly constructed building. It is contended that the Plaintiff and his family members have caused loss, damaged to the doors and windows erected in newly constructed building. It is contended that the Defendants have lodged complaint against the Plaintiff and his supporters and at that time the Plaintiff has shown forged and created sale deed and RTC extract in the name of the Plaintiff. It is contended that the Nangali police of sub-inspector has directed the Plaintiff not to obstruct to Defendants's construction work and Plaintiff has undertaken that he will not disturb the construction work. It is contended that 31-12-2016 again the Plaintiff and his family member have illegally trespassed in to V.P Katha property and demolished walls and doors windows and caused loss more than Rs.50,000/- to Defendants. The Plaintiff is not in the possession of the suit schedule property and Defendants are in possession of suit schedule property. **With these**

averment the Defendants pray to dismiss the application.

4. Heard the learned counsel for plaintiff and defendants.
Perused the materials available on record.

5. The points for consideration of this Court IA No.1 are as follows:

- 1. Whether the Applicant/Plaintiff has made out prima facie case?*
- 2. Whether the balance of convenience lies in favor of Plaintiff?*
- 3. Whether the irreparable injury or hardship will be caused to the Plaintiff if TI is not granted?*
- 4. What order?*

6. My findings to above points are as below for the reasons herein after mentioned.

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. Points No.1 to 3:- As these points are interconnected they are taken up together for the purpose of avoiding repetition of facts.

8. The Plaintiff has filed the above suit for Permanent Injunction against the Defendants. In support of his case the Plaintiff has produced the following documents 1) Certified copy sale deed, 2) Mutation extract, 3) RTC extracts.

9. At this stage without going to the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go in to the prima-facie title and only to considered whether the Plaintiff has made out a prima-facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of thing in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. In other words, the object of granting an order of interim relief is to evolve workable formula to the extent called by the demands of the situation. It is further admitted legal position that the granting of Temporary Injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future from the possible injury.

11. The power of granting Temporary Injunction is at the discretion of the court. This discretion, however should be exercise reasonable, judicially and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

12. As such the Plaintiff has to establish the prima-facie case, balance of convenience and also irreparable loss and

injury. On careful perusal of the pleadings and documents of the Plaintiff, it appears to this court that the Plaintiff has claimed his right based on the registered sale deed dated 27-05-1989 and said sale deed has been executed by the husband of Defendant No.1 and father of Defendant Nos.2 and 3. Once the sale deed has been executed by the husband of Defendant No.1 and father of Defendant No. 2 and 3, the Defendants have no any manner of right, title and possession over the suit schedule property and the sale deed has been executed in the year 1989 and till this day the Defendants have not taken any action against said transaction. If the said sale deed is created or concocted, the Defendants have to challenge said sale deed by seeking appropriate relief in the manner known to law. On perusal of sale deed, the recital of the sale deed prima-facie depicts the delivery of possession. In addition to that at this stage it also appears to the court that the Khata also recorded in the name of Plaintiff. In support of his case the Plaintiff has produced RTC and in the RTC meg. 4 acres in

Sy.No.179/1 out of 6 acres 0.22 guntas is standing in the name of the Plaintiff. Apart from that there are no documents placed by the defendants to show their and their family members's possession over the suit schedule property at this juncture. It is relevant to note that both parties have ample opportunities to prove their case after the conclusion of their respective evidence. It is settled position of law that the granting of injunction is to keep the properties in intact till the completion of suit. Therefore the Plaintiff establish the case for trial. Similarly, balance of convenience is in favour of Plaintiff. If Temporary Injunction is not granted the Plaintiff will be put to more injury and hardship than the Defendants. Therefore, I answer **Point Nos.1 to 3** in the **Affirmative**.

13. Point No.4:- Having thus discussed in detail referred to above, I proceed to pass the following.

ORDER

The Application filed by the Plaintiff U/O 39

Rule 1 and 2 of CPC is hereby allowed.

Accordingly, the Defendants, their agents, servants, coolies, workers, PA Holders, their representatives, their family members or any persons claiming through them are hereby restrained from interfering the possession and enjoyment of Plaintiff over the suit schedule property till the disposal of the suit by means of temporary injunction.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, transcript revised, corrected and pronounced by me in open court on this the 30th day of November- 2019.)

(A.N.Kanthamma)
Addl. Civil Judge & JMFC.,
Mulbagal..