

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

Dated this the 02nd day of November 2018.

OS.NO. 192/2018

Present :

Sri. H.P.Mohan Kumar, B.Sc,LLB,
C/c Prl. Civil Judge & JMFC
Mulbagal

Plaintiff: Sri. B.V.Ramareddy

 V/s

Defendants: Sri. Siddareddy & others

Parties to I.A.No.1

Applicant: **Sri. B.V.Ramareddy**
Plaintiff: S/o late Venkatareddy,
Aged about 76 years,
Agriculturist,
R/at Belapanahalli Village,
Avani Hobli,
Mulbagal Taluk,
Kolar District.

(By **Sri. C.M.Govindareddy** –Advocate)

 V/s

Opponents:

Defendants:

1. Sri. Siddareddy,
S/o late Venkatareddy,
Aged about 65 years,
Agriculturist,

2. Sri. Venkateshreddy,
S/o Siddareddy,
Aged about 27 years,
Agriculturist,

3. Smt. Rathnamma,
W/o Siddareddy,
Aged about 55 years,
House wife,

4. Smt. Roja,
W/o Venkateshreddy,
Aged about 24 years,
House wife,

All are residing at:
Belapanahalli Village,
Avani Hobli,
Mulbagal Taluk,
Kolar District.

(By **Sri. K.V.Shankarappa** - Advocate)

ORDERS ON I.A.NO.1 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 restraining the Defendants, their agents, P.A. Holders from illegally interfering the possession of Plaintiff over the suit schedule property till the disposal of the suit.

2. In the Affidavit the Plaintiff / Applicant has stated that the averments of plaint may be treated as part and parcel of the affidavit. He further stated that he is the absolute owner in possession of the suit schedule property. The said property

was allotted to him through a family partition effected during the year 1962-63. Since then he has been in possession of the suit schedule property. The Khata also recorded in his name and he has been paying tax to the concerned authority. During the year 1995-96 the Government sanctioned a house under Ashraya Yojane for the purpose of constructing dwelling house. In the said regard Panchayath authority verified the records and confirmed the possession and enjoyment of the Plaintiff and release the amount. With the help of said amount, the Plaintiff constructed the dwelling house to an extent of 32 feet by East to West and 22 feet by North to South and he kept open the remaining extent of 16 feet by East to West and 30 feet by North to South for the purpose of tethering cattle. Such being the case the Defendants by colluding with Panchayath authority created some documents. In the said direction the Plaintiff also issued notice to the panchayath authority. Hence, Defendants with the help of concocted documents, trying to dispossess the Plaintiff from the suit schedule property. Therefore, the Plaintiff has filed the present suit. He also stated that he has a prima-facie case, balance of convenience in his favour and if the

injunction is not granted the Plaintiff will be put to great hardship. **With these averments prayed to allow the application.**

3. On the other hand the Defendant Nos.1 and 2 appeared through their counsel and filed their written statement and also filed memo to adopt the written statement filed by them as objection statement to the application filed by the Plaintiff Under Order 39 Rule 1 and 2. Similarly Defendant Nos.3 and 4 also filed memo to adopt the written statement of Defendant Nos.1 and 2 as their written statement as well as objection statement. The Defendant Nos.1 and 2 have denied the entire case of the Plaintiff and interalia contended that Plaintiff, 1st Defendant and Chinna Reddy are the sons of late Venkatareddy and Papamma. The said Chinna Reddy and parents of Plaintiff and the 1st Defendant are no more. Chinna Reddy died leaving behind his wife. During the lifetime of Venkatareddy, he along with his sons lived in a Hindu Undivided joint family by enjoying the joint family properties. Subsequent to the demise of propositus of the family, joint family continues. As such suit schedule property is also joint family property. Thereafter, for the purpose of availing

financial benefits from the Government to construct the dwelling house. Plaintiff, 1st Defendant and wife of Chinnareddy requested the panchayath authorities to transfer the Khata of their respective shares. Accordingly, panchayath authority has mutated the Khata of the suit schedule property as 16 x 30 feet each in the name and favour of Munirathnamma, Ramareddy and Siddareddy. However, the Plaintiff filed the present suit by showing wrong boundaries. They also contended that the Plaintiff erasing the name of 1st Defendant and Munirathnamma in the document produced by himself. They also contended that they have filed the suit for partition and separate possession against Plaintiff herein in OS No.222/2014 on the file of Prl. Civil Judge. They also further contended that due to non-availability of documents they were not incorporated the suit schedule property in the said suit. Now, they have taken steps to incorporate the suit schedule property in the above-referred suit. They also further contended that the Plaintiff has no absolute right over the entire extent of the suit schedule property. **With these contentions prayed to reject the application.**

4. Heard the learned counsels for Plaintiff and Defendants.

Perused the materials available on record.

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

1. **Whether the Plaintiff/ applicant has made out a prima facie case in his favour?**

2. **Whether the balance of convenience lies in favour of Plaintiff/Applicant?**

3. **Whether the applicant / plaintiff will be put greater hardship if temporary injunction is not granted?**

4. **What Order?**

6. The findings of this Court on above point are as here under :

Point No.1: In the **Negative**

Point No.2: In the **Negative**

Point No.3: In the **Negative**

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

REASONS

7. **Point Nos.1 to 3:-** All these points are interconnected, hence they have taken up together for common discussion to avoid repetitions.

8. Admittedly, the present suit filed by the Plaintiff against the Defendants for the relief of Permanent Injunction. According to the Plaintiff the suit schedule property belong to him. The said property was allotted to his share in a partition among his family members during the year 1962-63. Since then he has been in possession of the suit schedule property by effecting the Khata in his name. During the year 1995-96 he was constructed the dwelling house to an extent of east to west 32 and north to south 22 feet and rest of the extent has been used for tethering cattles. Such being the case the Defendants were tried to dispossess him with the help of concocted documents. In support of his contentions, he has produced Demand Register Extract for the year 2011-12, Tax Assessment Extract for the year 2011-12, another Demand Register extract and Tax assessment extract for the year 2014-15, House sanctioned order and Letter issued to Chief Secretary Zilla panchayath, two tax paid receipts, Photo copy of Registered Sale deed dated 16-01-2013, 7 positive photographs, photo copy of NCR and Endorsement.

9. On the other hand Defendant Nos.1 and 2 have contended that suit schedule property is also joint family property the said property was divided into 16 x 30 feet for the purpose of availing financial benefits in order to construct dwelling house. Such being the case the plaintiff has shown wrong boundaries and file the present suit. In support of their contentions they have produced photo copy of the Demand Register extract for the year 2014-15, Photo copy of Tax paid receipt, Photo copy of License issued by the Angonda Halli Gramapanchayath, photo copy of Mortgage deed, photo copy of sale deed dated 11-05-1981.

10. Learned counsel for Plaintiff vehemently argued that Plaintiff and Defendants were divided during the year 1962-63 itself. Such being the case there is no joint status by and between Plaintiff and Defendants. It is also argued that plaintiff schedule property is absolutely belonging to Plaintiff. He also argued that as of now the Defendants are constructing the building in the vacant space kept open for the purpose of tethering cattles.

11. On the other hand learned counsel for Defendant vehemently argued in the line of written statement averments and specifically argued that there was a division in the suit schedule property to an extent of 16 feet x 30 feet each in the name and favour of Munirathnamma, Plaintiff and Defendants for the purpose of availing financial benefits, the same has been depicted in the panchayath document. He also argued that the said description finds a place in the document produced by the Plaintiff himself. However, the Plaintiff has erased the same with an intention to hide the said fact before this court. He also further argued that the Plaintiff has no right to question the construction undertaken by the Defendants. He also further argued that on perusal of the application under challenge the Plaintiff has not claimed any relief to stop the construction undertaken by the Defendants. However, he also argued that if the Plaintiff succeeds, the construction automatically goes to the Plaintiff. Hence, he requested to reject the application.

12. Let me analyze the case and defence of the parties. On careful perusal of the documents produced by the Plaintiff, it clearly explains that those documents are not for the year

2017-18, which means the Plaintiff has not produced the Panchayath documents for the year 2018. Moreover, he has contended that plaint schedule property was allotted to him in a partition between family members. On perusal of the documents produced by the Plaintiff it shows that the Khata of the plaint schedule property came to be mutated in the name of Plaintiff on the basis of Pavathi varasu. Moreover, at this juncture Plaintiff has not produced any documentary evidence to substantiate the partition. Again at this juncture on perusal of documents produced by the Defendants go to shows that property bearing V.P.Khata No.64 divided into three parts wherein the name of Plaintiff, 1st Defendant and name of Munirathnamma is appeared. In addition to that the 1st Defendant has obtained license to construct house to an extent 16 feet x 60 feet by East – West, 30 feet by North – South. It is relevant to note that whether the documents produced by the Defendants are concocted or not, that has to be answered after the completion of full-fledged trial. That means without trial at this stage this court cannot say whether those documents are concocted or not. Therefore at this juncture on careful perusal of documents and pleadings of

both sides, it appears to this court that at this juncture the Plaintiff has not made out a prima-facie case. Similarly the Plaintiff also not established other two principles. It is relevant to note that Plaintiff has an ample opportunity to prove his case at the time of trial. Hence, I answer point Nos.1 to 3 in the **Negative**.

13. Point No.4:- Having thus discussed in detail referred 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 rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed by him and corrected by me, and then pronounced in the open Court on this the 02ND DAY OF NOVEMBER 2018)

(H.P.Mohan Kumar)

C/c Prl. Civil Judge & JMFC.,
Mulbagal.