

IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

Dated this the 19th day of February 2021

:: PRESENT::

KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, K.G.F.

OS No 28/2020

Plaintiff : - **Sri. N.Ramachandra Reddy**

V/s.

Defendants :- **Sri. Srinivasa Reddy**

Cause Title On IA NO. I

Applicant: - **Sri. N. Ramachandra Reddy**
S/O. Narayana Reddy,
Aged About 60 Years,
R/at. Pottepalli village,
Parandahalli Post,
Robertsonpet Hobli,
KGF Taluk.

(By Sri. K.V.P., Advocate)

V/s.

Respondents:- **Sri. Srinivasa Reddy**
S/O. late. Narayana Reddy,
Aged About 55 Years,
R/at. Parandahalli Village & Post,
KGF Taluk.

(By Sri. K.M.V., Advocate)

Cause Title On IA NO. II

Applicant: - **Sri. Srinivasa Reddy**
S/O. late. Narayana Reddy,
Aged About 55 Years,
R/at. Parandahalli Village & Post,

KGF Taluk.

(By Sri. K.M.V., Advocate)

V/s.

Respondents:-

Sri. N. Ramachandra Reddy
S/O. Narayana Reddy,
Aged About 60 Years,
R/at. Pottepalli village,
Parandahalli Post,
Robertsonpet Hobli,
KGF Taluk.

(By Sri. K.V.P., Advocate)

**: ORDER ON IA NO.I & II FILED UNDER ORDER 39 RULE
1 AND 2 R/w sec. 151 OF CPC :**

The plaintiff has filed IA no.1 U/O 39 Rule 1 & 2 R/W sec. 151 of CPC seeking temporary injunction, restraining the defendant, his family members, agents, representatives and others on behalf from trespass into the suit schedule property on any side whatsoever pending disposal of suit.

02. The defendant has filed IA no.2 U/O 39 Rule 1 & 2 R/W sec. 151 of CPC, seeking temporary injunction, restraining the plaintiff, his family members, servants, agents, and his power of attorney holders and others representing him from demolishing or remove the structure of Mariamma Temple in the annexure application schedule property in any manner till disposal of suit.

03. In the accompanying affidavit of IA no.1 , it is stated that the suit schedule property and other properties acquired by plaintiff under inheritance among other family members in the year under M.R no 2/92-93, since then all revenue documents stands in his name and he is in possession and enjoyment of the same without any body's interference. That he has not transfer or part the schedule property to any body and kept as it is in the schedule property here is one old Maramma temple existing measuring 15 x10 feet facing north and the remaining property kept as it is for his need since he have no funds, there is some mis-understanding with the defendant when he was in his village keeping in mind he is giving trouble to his property stating that he will claim the same by illegal methods, he attempted to dispossess him with his supporters with a great difficulty resisted his illegal acts, he went away with a slogan that against he will come and will give trouble, the defendant came near the property on 15-01-2020 along with his men and gave threats for which he gave a complaint to the police, they have not taken any action since the matter is in civil in nature and hence he filed the suit. He has a prima facie case and the balance of convenience lies in his favour. If it is not granted he will be put to hardship and injury. On the other hand the defendant will not be put to anything. On these grounds he prays for allow IA no.1.

04. In the accompanying affidavit of IA no.2 , it is stated that the plaintiff has filed a false suit against defendant without any right, title, much less possession over the suit schedule property, in the suit schedule property there is a Mariyamma Temple is existing from time memorial, the plaintiff who have obtained ex-party injunction against him for not to tres pass into the schedule property, on the guise of the order owned and possessed by him, the plaintiff want to demolish or remove the structure of the Mariyamma Temple existing. That the plaintiff's suit for bare injunction is not maintainable, since the plaintiff is not in possession and enjoyment of the suit property at any point of time, and no revenue documents are continued in his name, to show his lawful possession and enjoyment of the suit property at any point of time. Such being the state of affairs suit for bare injunction is not maintainable without declaration of title. In this matter plaintiff not established his possession over the property related to him lawful possession over the property since the suit schedule property is lawful possession and enjoyment of the defendant and his family members from time memorial, this fact also well within the knowledge of the plaintiff. That the plaintiff who not pleaded properly for the acquisition of the suit property the defendant is suspect the documents and plea taken by the plaintiff are false and incorrect. That the plaintiff purposely suppressed the material fact, and who not filed suit against all the parties who are necessary and proper

party to the suit, and in the land bearing survey no.1/3 consisting of 15 guntas of land which was owned and possessed by the defendant and his family members, which was acquired by the defendant family members under a register sale deed dated 02-06-1969. That the material fact, who have not made all the parties, who are in possession and enjoyment in land bearing survey no. 1/3 and the intentionally left out the parties not made them as a parties, the suit property is not an agricultural land at present, though the revenue entries found in the name of the defendant and his family members. No point of time the plaintiff name independently placed in the revenue records related to suit schedule property.

05. It is further submitted that the properties are transferred to one person to another person, it shall be a proper form of acquisition such as register instrument or gift will or sale deed or IHR entries shall be there in the revenue entires. Especially in this case the plaintiff relied the revenue records it can be easily looked in to this Court, the defendant suspected the document relied by the plaintiff, since the plaintiff family members forefather's name and the names of defendant family are similar. Taking advantage of the similar names are coming in the family of the plaintiff. That the plaintiff yet to have file suit for declaration of title and implead all the parties who are all in possession and enjoyment of the property in survey no. 1/3, unless and until the

plaintiff without establishing his title over the property related to suit is consent. The property comes within the municipal limits, since where the suit property is situated at Pottepalli Village, Bethamangala Hobli, KGF Taluk, the Pottepalli village is merges and comes within the city municipal council Robertsonpet, KGF, the plaintiff allegedly filed this suit against the defendant to an extent of 1 ½ guntas is equal to 1633 feet, it it attracts the site value the plaintiff have to pay the court fee on the market value as ascertain and reserve the public document which the valuation may be arrived in the custody of sub-Registrar Bangarpet, the defendant is at liberty to produce the valuation certificate issued by sub-registrar office, Bangarpet Taluk, the plaintiff have to pay the court fee on the valuation certificate issued by the sub-registrar Bangarpet Taluk. The property bearing survey no. 1/3 consisting of 15 guantas of land belongs to defendant and there family members on which the defendant family members were sold the properties to a different purchasers in different sale deeds under a registered sale deeds, and retained the suit property for his own use and occupation. That in the suit schedule property the defendant family members who had constructed a Mariamma Temple long back from time memorial, said temple till today maintaining and look after the welfare of Mariamma temple by this defendant and his family members, this fact well within the knowledge of the entire villagers of Pottepalli and including the plaintiff.

06. It is further submitted that the Mariyamma temple is within the property of the defendant, said temple is measuring to an extent of 10 x 15 within the written statement schedule property, said temple is in the Northern side of suit property in all around the temple i.e., Eastern side of the temple vacant space and thereafter road leads to Eastern side of the Pottepalli Village, Western side vacant space there is a municipal drainage and thereafter Narayanappa and other house properties, Northern side vacant space, and from North-South direction and South by: road. Same is bounded on the East by: Road leads to Pottepalli to towards Parandahalli main road and others house properties, West by: Municipal drainage thereafter Narayanappa and others house property, North by: plaintiff and others property, and South by: road thereafter house properties. It is absolute and exclusive property of the defendant and his family members, in the said Mariyamma temple every Tuesday and Friday and in the Hindu festival season the defendant family members and entire Pottepalli Villagers are performing pooja according to their convenient. The property consisting of Mariyamma Temple in the village of Pottepalli is constructed by the defendant family in his property. The plaintiff who have a property towards Western side of the defendant property, said suit property except the temple rest of the area is a vacant, the plaintiff who have a property towards Western side of the defendant property. The defendant family members want to

renovate the temple or construct the temple and to modernize the temple for the purpose of the villagers in the interest of public at large and the desire of the forefathers of the defendant family members and the defendant, due to lack of financial assistance said process is pending.

07. It is further submitted that the defendant called competent for construction process of Mariyamma Temple, the competent are visited and verified the property meanwhile the plaintiff who made an attempt and voluntarily picked up for quarrel and claiming the defendant property illegally, unlawfully on the alleged documents owned and possessed by him, for that the defendant who lodged complaint against the plaintiff. The police who called the plaintiff and advised him not to interfere into the property of the defendant and the temple activities, and warned to the plaintiff. That the plaintiff in order to complicate the matter he filed bare injunction without declaration suit is not maintainable, the plaintiff keeping in the mind, take revenge against the defendant and his family members and to grab the valuable property who created the revenue documents. That the written statement schedule property are absolute and exclusive property of the defendant and exercising all rights of ownership or lawful possession over the property. That the plaintiff who suppressed the material fact and he allegedly given wrong measurement wrong boundaries wrong description in order to grab the

valuable property of the defendant who mis-leaded and misrepresented to this court, when the plaintiff is not in possession question of trespass by this defendant is does not arise, on the other hand the defendant is in lawful possession and enjoyment of the property. This application to safe guard the interest of the temple called as Mariyamma Temple in the suit property, the interest of general public, and the community at large and the defendant and his family members. If the order of injunction is not granted as prayed by the defendant or not allowed the application filed by the defendant, the defendant will be put to irreparable injury and hardship, it cannot be compensated in any terms of money, in the interest of justice it need to be allowed. No hardship or injunction will be caused to the plaintiff. He has made out a prima facie case and balance of convenience to consider the application filed by the defendant. On these grounds he prays for allow IA no.2.

08. IA no.1 is resisted by the defendant by filing objections. It is nothing but the replica of affidavit averments annexed to IA no.2.

09. IA no.2 is resisted by the plaintiff by filing objections, it is nothing but the replica of affidavit averments annexed to IA no.1

10. Heard both side. Perused the materials available on record.

11. Points that would arise for final determination of these applications are as follows:

Point No.1: *Whether the Plaintiff has made out prima-facie case for grant of temporary Injunction as sought in IA no.1?*

Point No.2: *Whether the balance of convenience lies in favour of the Plaintiff?*

Point No.3: *Whether the Plaintiff will be put to irreparable loss and hardship, if IA No. 1 is not allowed?*

Point No.4: *Whether the defendant has made out a prima facie case for grant of temporary injunction as sought in IA no.2?*

Point No.5: *Whether the balance of convenience lies in favour of the defendant?*

Point No.6: *Whether the defendant will be put to irreparable loss and hardship, if IA No. 2 is not allowed?*

Point No.7 : *What Order?*

12. The findings on the above points are as follows;

- Point No.1: In the Negative
- Point No.2: In the Negative
- Point No.3: In the Negative
- Point No.4: In the Affirmative
- Point No.5: In the Affirmative
- Point No.6: In the Affirmative
- Point No.7: As per final order for the following;

R E A S O N S

13. **Point no 1 & 4:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. The plaintiff has filed the suit for the relief of permanent injunction with respect to suit schedule property. No counter claim sought by the defendant.

14. It is the specific case of the plaintiff that the schedule property and other properties were belonged to one Munivenkatareddy S/O Late Narayana Reddy, after his death his sons N. Ramakrishna Reddy, 2) Ramachandra Reddy have opened the katha under inheritance, in which plaintiff got the schedule property and other three lands under M.R 2/92-93. Upon perusal of aforesaid mutation register, it shows that suit schedule property and other 3 properties have mutated in the name of plaintiff by pavathi varis basis. Old RTC produced by the plaintiff is also substantiated the said

fact. But on perusal of computerised RTC, only 1 guntas is standing in the name of plaintiff. Except these documents plaintiff has not produced any document.

15. It is the contention of defendant that land bearing survey no. 1/3 consisting of 15 guntas of land was owned and possessed by the defendant and his family members, which was acquired by the defendant family members under a register sale deed dated 02-06-1969. From the date of purchase defendant's family members are in possession and enjoyment of the property to an extent of 15 guntas. In this regard defendant relied on certified copy of sale deed dated 02-06-1966. Upon perusal of said document, it shows that Chinnappa @ Chikkappa has sold property in survey no. 1/3 to an extent of 10 gutnas to Palli Munivenkatappa.

16. Admittedly total extent in survey no. 1/3 is 15 guntas. Out of which 10 guntas was purchased by the said PlliMunivenkatappa and remaining 5 guntas are in the name of said Chinnappa. Though plaintiff contended that the suit schedule was belonged to Munivenkata Reddy, he has not stated that how said Munivenkatarreddy acquire the suit schedule property. Mere revenue records standing in the name of plaintiff are not sufficient to hold that plaintiff is in possession over the suit schedule property.

17. Admittedly, there is Maramma Temple existing in the suit schedule property. Photos produced by the defendant are also substantiated the said fact that Maramma temple existing in the suit schedule property. The apprehension of the defendant that plaintiff is trying to demolish or remove the structure of Mariyamma temple. Now the question arises whether defendants application is maintainable without sought for counter claim. For sake of convenience, order 39 Rule 1(a) is reproduced as under;

I) Cases in which temporary injunction may be granted where in any suit is proved by affidavit or other wise-

a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree.

18. The word any party referred in rule 1(a) of order 39, it shows that defendant's application is maintainable. Material available on record shows that plaintiff has not prima facie case to proceed with the case and defendant has prima facie case. Accordingly Point 1 is answered in the Negative. Point no. 4 is answered in the Affirmative.

19. **Point No.2 & 3:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. While answering point no 1 this court holds that plaintiff has failed to make out the prima facie case, question of

considering the aspect of irreparable loss or balance of convenience will not arise for consideration. Therefore, the plaintiff is not entitled for any relief on IA no.1. Hence I answer the point no 2 and 3 in the negative.

20. **Point No.5 & 6:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. The defendant has established prima facie case to proceed with the case. It is the apprehension of defendant that plaintiff is trying to demolish or remove the Mariyamma temple situated in suit schedule property. If the plaintiff is trying to remove the said temple, much inconvenience will be caused to the defendant. In such circumstances, the defendant will be put to heavy and irreparable loss. So, also it may lead to multiplicity of proceedings. By considering the facts and circumstances of the case, the defendant has established that balance of convenience lies in his favour and he will be put to more hardship and loss, if the temporary injunction is not granted. Accordingly Point no.5 and 6 are answered in the Affirmative.

21. **Point No.4:** For the foregoing reasons I proceed to pass the following;

ORDER

IA no.1 filed by the plaintiff
U/O 39 Rule 1 and 2 R/W sec. 151
of CPC is hereby by dismissed with
cost of Rs. 100/- .

IA no.2 filed by the defendant
U/O 39 Rule 1 and 2 R/W sec. 151
of CPC is hereby by allowed with
cost of Rs. 100/- .

The plaintiff, his family
members, servants, agents, and
his power of attorney holders and
others representing him are hereby
restrained from demolishing or
remove the structure of Mariyamma
Temple in the suit schedule
property in any manner till disposal
of suit.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced
in the open Court on this the 19th day of February 2021)

Sd/-
(KIRAN S.P)

II Addl. Civil Judge & JMFC,KGF