

KAKL510004382021



**IN THE COURT OF PRL. CIVIL JUDGE & ADDITIONAL JMFC,**

**AT K.G.F**

DATED THIS THE 6<sup>TH</sup> DAY OF NOVEMBER 2021

: **PRESENT:**

**MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M**  
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.

**O.S. No.68/2021**

**PLAINTIFF/s** : 1. Sri. N.Imman s/o Anna Mary,  
Aged about 57 years.,  
  
2. Sri. Uthaman s/o late Anna Mary,  
Aged about 55 years.,

Both are R/at # 51,  
Old Oriental Lane,  
Coromandel Post, K.G.F.

(Rep. by Sri. **K.V.P.**, Advocate.)

Vs

**DEFENDANT/s** : 1. Sri.Kanikya Mary w/o Ruban,  
Aged about 50 years.,  
D/o Joseph,  
R/at Swaminathapuram,  
Near Thangarj Colony,  
Oorgaumpet Post,  
K.G.F.

2. Sri.Jackline w/o Rajan,  
Aged about 56 years.,  
C/o Joseph,  
R/at Swaminathapuram,  
Near Thangaraj Colony,  
Oorgaumpet Post,  
K.G.F.

(Rep. by Sri. **S.A.H.**, Advocate.)

### **I.A.No.I**

- APPLICANT/s** : 1. Sri. N.Imman s/o Anna Mary,  
(Plaintiffs) Aged about 57 years.,
2. Sri. Uthaman s/o late Anna Mary,  
Aged about 55 years.,

Both are R/at # 51,  
Old Oriental Lane,  
Coromandel Post, K.G.F.

V/s

- OPPONENT/s** : 1. Sri.Kanikya Mary w/o Ruben,  
(Defendants) Aged about 50 years.,  
D/o Joseph,  
R/at Swaminathapuram,  
Near Thangari Colony,  
Oorgaumpet Post,  
K.G.F.
2. Sri.Jackline w/o Rajan,  
Aged about 56 years.,  
C/o Joseph,  
R/at Swaminathapuram,  
Near Thangari Colony,  
Oorgaumpet Post,  
K.G.F.

\* \* \*

**ORDER ON I.A.No.I**

Plaintiffs have filed I.A.No.I under Order 39 Rule 1 & 2 read with Section 151 of CPC praying this Court to issue an ad-interim order of Temporary Injunction restraining the defendants, their family members, agents, workers and others on their behalf from trespassing in the suit schedule properties in any manner till the disposal of the above suit.

**2.** Plaintiff no.1 has filed an affidavit accompanying the said IA averring that, his mother has purchased the suit schedule properties under the registered sale deed dated 28.10.1983 and as per the sale deed, documents were transferred in the name of his mother and paid taxes during her lifetime and she did not transfer the suit schedule properties to anybody and kept the same vacant. His mother died leaving behind him and plaintiff no.2 and they also did not transfer and kept the same vacant. As they had no funds to put up any construction , they frequently visited the suit schedule properties and cleaned the same . The defendants having no manner of right, title, interest or possession over the suit schedule properties and who never and ever were in the suit schedule properties, as there is ill-will between the plaintiffs and defendants, the defendants keeping in mind the same on 17.02.2021 attempted

to trespass in the suit schedule properties and they immediately visited the suit schedule properties and protested the illegal acts of the defendants but, they did not care and taking advantage of the suit schedule properties being vacant, they want to grab the same by creating the documents as the defendants are influential and powerful persons in the locality having men and money at their command for their illegal activities and they have no support whatsoever and when approached the police, they did not taken any action against the defendants. Hence filed the present application.

**3.** The defendants have filed objection to IA No.1 and denies the plaint averments and contends that, the plaintiffs are not entitled for any relief and the application is devoid of merits and not maintainable in law and suit in its form is not at all maintainable as the plaintiffs are not at all in possession and enjoyment of the suit schedule properties and the plaintiffs have not produced any layout plan for having formed sites and in which survey number the said sites were formed. Originally the item no.1 of the written statement schedule property belonged to one V.Syed Mohideed having got the same under Court Auction and sale certificate was issued in favour of the said V.Syed Mohideen and all the

documents subsequently in respect of item no.1 of written statement schedule property stood in the name of V.Syed Mohideen and the said person had sold the item no.1 of written statement schedule property in favour of Smt.Govindamma under registered sale deed dated 01.06.1967 for a valuable consideration and put the said Smt.Govindamma in possession and enjoyment of the item no.1 of the written statement property. All the relevant documents were changed in the name of said Smt.Govindamma.

**4.** The said Smt.Govindamma was in need of liquid funds and was looking for prospective purchaser in order to alienate item no.1 of written statement property and defendant no.1 came forward to purchase the same and a deal was struck between the defendant no.1 and Smt.Govindamma and by virtue of a deal, a registered sale deed dated 07.06.2007 had come into light and defendant no.1 is in possession and enjoyment of the item no.1 of the written statement schedule property and all the relevant documents stood in the name of defendant no.1 subsequent to the registered sale deed dated 07.06.2007. The plaintiffs have no right, title, interest or possession over the item no.1 of the written statement schedule property but, the plaintiffs without having any right, title, interest or possession attempted to illegally interfere with the peaceful

possession and enjoyment of defendant no.1 over the item no.1 of the written statement schedule property and with great difficulty defendant no.1 resisted the illegal acts of the plaintiffs and in pursuance of the interference, the defendant no.1 has lodged complaint to the police to render police help on 28.02.2021 but, the police have brushed aside the case as the matter is civil in nature and directed the first defendant to approach competent Court and first defendant having no alternative had filed a suit for permanent injunction in O.S No.79/2021 on the file of II Addl. Civil Judge, KGF and obtained order of injunction restraining the plaintiffs, their family members, agents, servants, and others acting on behalf of them from illegally interfering with the peaceful possession and enjoyment of first defendant over the item no.1 of written statement schedule property.

**5.** The item no.2 of the written statement property originally belonged to one V.Syed Mohideen having got the same under Court Auction and sale certificate was issued in favour of the said V.Syed Mohideen and all the relevant documents subsequently in respect of item no.2 of written statement schedule property stood in the name of V.Syed Mohideen and the said person had sold the item no.2 of written statement schedule property in favour of

Smt.Govindamma under the registered sale deed dated 01.06.1967 for valuable consideration and put the said Smt.Govindamma in possession and enjoyment of the item no.2 of the written statement property. All the relevant documents were changed in the name of said Smt.Govindamma.

**6.** The said Smt.Govindamma was in the need of liquid funds and was looking for prospective purchaser in order to alienate item no.2 of written statement property and defendant no.2 came forward to purchase the same and a deal was struck between the defendant no.2 and Smt.Govindamma and by virtue of a deal , a registered sale deed dated 07.06.2007 had come into light and defendant no.2 is in possession and enjoyment of the item no.2 of the written statement schedule property and all the relevant documents stood in the name of defendant no.2 of the written statement schedule property but, the plaintiffs having no right, title, interest or possession over the item no.2 of the written statement schedule property attempted to illegally interfere with the peaceful possession and enjoyment of defendant no.2 over the item no.2 of the written statement schedule property and with great difficulty, the defendant no.2 resisted the illegal acts of the plaintiffs and in pursuance of the interference the defendant no.2 has lodged

complaint to the police to render police help on 28.02.2021 but, the police have brushed aside the same, as the matter is civil in nature and directed the second defendant to approach competent Court and second defendant having no alternative has filed a suit for permanent injunction in O.S No.78/2021 on the file of I Addl. Civil Judge, KGF but, the plaintiffs are threatening the defendant no.2 that, they will interfere with item no.2 of written statement property and with great difficulty defendant no2 had resisted the plaintiffs and regarding item no.1 of suit schedule property, the plaintiffs have failed to show the boundaries. Hence, pray the Court to reject the said application.

**7.** Heard the plaintiffs and defendants counsel and perused the materials on record.

**8.** On perusal, the following points arise for my consideration:

1. Whether the plaintiffs have made out prima-facie case ?
2. Whether the plaintiffs further show that the balance of convenience lies in their favour ?
3. Whether the plaintiffs further show that an irreparable injury will be caused to them if the said IA is not allowed ?

4. What order ?

9. On perusal of materials on record and after hearing the arguments canvassed by both the counsels, my findings for the above points are as under:-

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

### **REASONS**

10. **POINT NO.1** :- It is the case of plaintiffs that, the suit schedule properties i.e the vacant Site No.11, 12, and 13 at Oorgaumpet, KGF are adjacent to each other and measures 30 X 40 feet and originally they belonged to Smt.Govindamma wife of late Balaraman and she sold the same to one Anna Mary wife of Narasimhan under the registered sale deed dated 28.10.1983 who is the mother of plaintiffs and all the documents are standing in the name of their mother .During her lifetime she did not transfer the suit schedule properties till her death and kept the same vacant and died leaving behind the plaintiffs and the plaintiffs also did not transfer the suit schedule properties to anybody and kept the same

vacant till today. Since the plaintiffs were not having sufficient funds to put up any construction in the suit schedule properties it was kept vacant but, plaintiffs frequently visit the suit schedule properties and cleans the same as and when required. In order to substantiate the same , the plaintiffs have produced xerox of sale deed dated 28.10.1983 in the name of Anna Mary from Smt.Govindamma reflecting the sale, encumbrance certificate from Smt.Govindamma to Anna Marry, endorsement, SAS form, receipt, death certificate of Anna Mary and sale deed of Smt.Govindamma i.e. vendor of Anna Mary. The said documents specially the sale deed dated 28/10/1983 posits the sale made to Anna Mary by Smt. Govindamma of suit site no.11, 12 & 13 but, it could be seen that, in the plaint schedule and in the IA No.1 schedule, the boundaries for item no.1 has not been specified. The defendant has specifically stated in his objection about the missing of the boundaries of item no.1 of the suit schedule properties yet, the plaintiffs have not made any attempt to amend the schedule and add the boundaries to the item no 1 of the suit schedule properties. As item no.1 do not have boundaries it is difficult to ascertain whether the sale deed property only is claimed by the plaintiffs and that, they are in possession of same.

**11.** Further it can be seen that, the defendant no.2 has claimed right over site no.2 of written statement property under registered sale deed dated 07.06.2007 from Smt.Govindamma and the said item no.2 is vacant site no.13 over which the plaintiffs are also claiming the right. No doubt, the boundaries stated by the plaintiffs for site no.13 is different from item no.2 boundaries of written statement schedule property given by defendant no.2 but, the plaintiffs by not specifying full description of the item no.1 has failed to provide proper identification of the suit property . In the citation submitted by the defendants i.e ***K Gopala Reddy v Suryanarayana and others 2004 (1) KCCR 662*** it is stated that, when the plaintiff failed to prove his title and establish the identity of the property, the grant of injunction doesn't arise at all in favour of plaintiffs and hence, this Court is of the opinion that, the plaintiffs have failed to show the prima-facie case and considering the discussion made above Point No.1 is answered in Negative.

**12. POINT NO.2 AND 3:-** As in point no 1, this court by giving reasons have concluded that, the plaintiffs have failed to prove the prima facie case, there is no need to discuss further regarding the balance of convenience and irreparable

injury, as it is settled law that, when a party lacks the existence of prima facie case, the other two requirements such as balance of convenience and irreparable loss, loses their significance. In **Kashi Math Samsthan and Another -v/s-**

**Srimad Sudhindra Thirtha Swamy and Another AIR 2010**

**SC 296** it has been held that, in order to obtain an order of injunction, the party seeking the grant of injunction, has to prove that he has made out the prima facie case to go for trial, balance of convenience is also in his favour and he will suffer irreparable loss if the injunction is not granted. But it is equally well settled that, when a party fails to prove a prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove a prima facie case to go for trial, it is not open to the court to grant injunction in his favor, even if he has made out a case of balance of convenience and irreparable injury. Accordingly the point no. 2 and 3 are answered in Negative.

**13. POINT NO .4** :- In view of the discussion made above, I proceed to pass the following:-

**ORDER**

I.A.No.I filed by the plaintiffs under  
Order 39 Rule 1 and 2 read with Section  
151 of Civil Procedure Code is hereby  
rejected with cost of Rs.200/-.

*(Dictated to the Stenographer, on computer and computerized by him,  
corrected by me, and then pronounced in the open court on this the 6<sup>th</sup> day of  
November 2021.)*

**(NASRAT MUKHTAR AHMED KHAN)**  
**PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.**