

KAKL510008872019



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,

AT K.G.F.

PRESENT: **Sri.VINOD KUMAR.M** BAL,.LLB,LLM.,
I ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

O.S. No.270/2019

DATED THIS THE 10th DAY OF AUGUST - 2023

BETWEEN :

K.V.Kumari,

D/o Venkataswamy,

Aged about 52 years,

Uttharadhikari/Administrator of

Sree Kotilingeshwara Swamy Temple,

Kammasandra Village,

Bethamangala Hobli, K.G.F. Taluk,

Kolar District.

... Applicant/Plaintiff

(By **Sri. M.N.**, Advocate.)

V/s

K.Shiva Prasad,

S/o late Sambashiva Murthy Swamiji,

Aged about 43 years,

(Pre-Sanyasathwa)

R/at: No.84, 1st Cross, 2nd "A" Main,

Near Kamakya Theatre Signal,

BSK 3rd Stage,

Bengaluru.

.... Opponent/Defendant No.2

(By **Sri. N.S.**, Advocate.)

ORDERS ON IA No.III U/O 39 RULE 1 & 2 OF CPC R/w**Sec.151 of CPC**

After remanded the present suit, the Applicant/Plaintiff has filed an IA.No.III U/o 39 Rule 1 & 2 R/w Sec.151 of CPC praying to pass an Ad-interim order of temporary injunction restraining the Defendant No.2, his agents, servants or anybody from dispossessing her in possession of suit schedule car without due process of law, in the interest of justice and equity.

2. In support of application sworn in the affidavit by contented that, she filed suit for permanent injunction against Defendants in respect of suit schedule car. One Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji was founder of the Kotilingeshwara Temple and also owner of suit schedule car bearing No.KA-08-M-5684. She is spinster and a brahmakumari. The said swamiji took her as secretary in the said temple about 30 years ago. During the life time of said swamiji executed a Registered Will dated 08-01-2004 in her favour as uttaradhikari of the said temple. The said swamiji died on 14-12-2018. After death of swamiji, she become owner in possession of the suit schedule car includes its key & original documents. She also paid car loan a sum of Rs.2,00,000/- to the financing company and also paid policies to the suit schedule car. In the meantime, the defendants with Smt.Anuradha & one Mahesh have filed false complaint as well as legal notice in respect of suit schedule car contended that, the said car, keys & original documents are in her possession

and demanded to return the same and also lost of original document as filed false affidavit before ARTO. In this regard, she replied that, suit schedule car belongs to temple and also defendants are not entitle to ask for delivery of said car. The defendants are making all illegal acts to take over the possession of suit schedule car forcibly without due process of law. The defendants have no any right, title or possession over the suit schedule car. She has made out a prima-facie case balance of convenience lies in her favour. If the order of injunction is not granted, she will be put loss and injury. On the other hand, the Defendant No.2 will not be put to any loss. Hence, she prays to allow the application.

3. Per contra, the Defendant No.2 filed objections to IA No.III by denying the contents of affidavit inter-alia contended that, the application is not maintainable either in law or on facts. It is further that, the plaintiff has no right over the suit schedule car and not entitle for discretionary relief of injunction. The plaintiff cannot take shelter under order passed in OS No.25/2019 in respect of suit schedule car. The said car was never temple property. But, it is individual property of his father. After death of his father, he has inherited and got changed the RC in his name before ARTO, K.G.F. Since the date, he is owner of the suit schedule car. The plaintiff cannot seek injunction against true owner and is not in lawful possession of the same. The plaintiff has no prima-facie for

grant of injunction. On these ground, he prays to dismissal the application with cost.

4. Heard on IA No.III by learned counsel for plaintiff with documents & list of decisions and that of learned counsel for defendant No.2 with documents. Perused the documents available on records.

5. Now the points that arise for my consideration are as under:

(1) Whether the Plaintiff has made out a prima-facie case in her favour?

(2) Whether the balance of convenience lies in favour of Plaintiff?

(3) Whether the Plaintiff will be put to irreparable loss or injury, if the IA No.III is not allowed?

(4) What order?

6. My findings on the above said points as here under :

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 :-

:: R E A S O N S ::

7. Point No.1 to 3 : These points are inter-connected with each other and taken up together for common discussion. This is the suit filed by the Plaintiff against Defendants for the relief of Permanent Injunction in respect of suit schedule car.

8. The learned counsel for plaintiff argued that, plaintiff is spinster and also uttaradhikari of Kotilingeshwara Temple on the basis of Will Deed executed by Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji. After death of said swamiji, she is in possession of suit schedule car and paying loan amount includes insurance policy to the said vehicle. The said car, its key & original documents are in the custody of plaintiff. The defendants & one Smt.Anuradha have issued legal notice & complaint by one Mahesh clearly admits that, the said car, its key & original documents are in possession and demanded to return the same to defendants. It is further argued that, the defendant No.2 got changed the RC of suit schedule car, but not on the basis of inheritance. The plaintiff never taken any shelter of OS No.25/2019. The RC Holder itself not mandatory to holding possession of suit schedule car. The defendants admits the plaintiff is in possession of suit schedule car. Now, the defendant No.2 trying to dispossess of suit schedule car and possession of suit schedule car should be protected without due process of law. On these ground, the counsel for plaintiff prays to allow the application.

9. The learned counsel for defendant No.2 argued that, the plaintiff claiming suit schedule car belongs to said swamiji. But, the plaintiff has not kept the legal custody of suit schedule car. The defendant No.2 is legal heirs of deceased swamiji. All the documents i.e., RC stands in his name. On these ground, the counsel for defendant No.2 prays to dismissal the application.

10. I have gone through the entire plaint & documents produced by the parties. The learned counsel for plaintiff & defendant No.2 have categorically admits in their arguments that, suit schedule car belongs to Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji, he was purchased during his life-time. In support of their arguments, both counsel have admits in the pleadings also. Such being, it is not in dispute the suit schedule car bearing No.KA-08-M-5684 belongs to Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji and was also founder of Kotilingeshwara Temple.

11. It is specific contention of plaintiff that, during the life time of said swamiji executed Registered Will dated 08-01-2004 and appointed as a Uttaradhihari of the Kotilingeshwara Temple. After death of said swamiji, he become owner in possession/custody of suit schedule car includes its key & original documents. In support of contention, the learned counsel for plaintiff argued that, the defendants & one Mahesh have admits the possession of car with documents in the custody of plaintiff. The counsel for plaintiff has produced the

copy of Legal Notice issued by defendant No.1 on 13-05-2019 at para No.9 reads as hereunder: ***(9) further it is to be noted that, you are utilizing the vehicle toyoto innova car for your personal use, which belongs to the deceased husband of my client and biological father of my 2nd & 3rd clients. You are hereby further demanded to hand over the vehicle to my clients along with vehicle records and key in a good condition.*** From the legal notice of defendants clearly contended that, vehicle are using by plaintiff and hand over to them with documents & its key. On other hand, the defendant No.2 filed objections contended in para No.16 that, ***the plaintiff cannot seek injunction against true owner and is not in lawful possession of the same.*** Even though, objections to present application itself clarifies that, plaintiff is not at all having lawful possession of suit schedule car that too holding unlawful possession of suit schedule car.

12. The learned counsel for defendant No.2 argued that, the plaintiff is not true owner of suit schedule car and holding the possession of the said car by illegally without hand over to them. Admittedly, the defendant No.2 claiming the suit schedule car as biological son of Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji, who was original owner of suit schedule car. It is also further not in dispute, the suit schedule car in the possession of plaintiff. The contention of defendant No.2 regarding plaintiff is not true owner & holding unlawful

possession cannot be consider at this stage. From the contention of both side clearly made out that, the suit schedule car is in the settled/unlawful possession with plaintiff as on the day.

13. The learned counsel for plaintiff specifically argued that, the plaintiff claiming the suit schedule car on the basis of possession and defendant No.2 claiming the suit schedule car under inheritance after death of father/Sri.Kamala Sambhava @ Sambhashiva Murthy Swamiji by way of issued legal notice, police complaint & complaint before ARTO, K.G.F. The possession of plaintiff in suit schedule car should be protected without due process of law. In support of contention the learned counsel for plaintiff has relying ratio in **Krishnaram Mahale V/s Shobha Venkatrao**, reported in 1989(4) SCC 131, wherein Hon'ble Apex Court held that,

In India persons are not permitted to take forcible possession as they are entitled to through a court.

Another ratio laid down in **Ram Rathan & other V/s State of UP**, reported in 1977(1) SCC 188, wherein Hon'ble Apex Court held that,

A true owner has every right to dispossess or throw out a trespasser while the trespasser is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing

is possession to the knowledge of the true owner. In such circumstances, the law requires that, the true owner should dispossess the trespasser by taking recourse to the remedies available under the law.

Another ratio laid down in ***Puran Singh & other V/s State of Panjab***, reported in 1975(4) SCC 518, wherein the Hon'ble Apex Court held that,

This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellants party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled

possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a strait jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession. Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

(i) that the trespasser must be in actual physical possession of property over a sufficiently long period;

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus prossendie. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and'

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had

grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

14. In this regard, I am relying decision laid down in ***Ramegowda V/s Varadappanaidu***, reported in 2004(1) SCC 769, wherein Hon'ble Apex Court held that:

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner

must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

Another ratio in **Sampangi Ramaiah V/s Venkatamma**, reported in 2002(1) KCCR 85, wherein Hon'ble High Court of Karnataka held in para No.8 that,

From this decisions it is abundently clear a trespasser is entitle to resist his possession by filing a suit even against a true owner and only remedy available to the true owner is to evictim under due process of law.

15. The learned counsel for defendant No.2 argued that, RC & vehicle insurance of the suit schedule car are in the name of defendant No.2. On perusal of RC & vehicle insurance stands in

the name of defendant No.2 after obtained duplicate RC from ARTO of K.G.F. On other hand, the learned counsel of plaintiff argued that, the RC of suit schedule car got changed in the name of defendant No.2 upon lost of original RC, but not under inheritance. Mere holding of RC & insurance of suit schedule car itself not holding the possession of the same. From the contention of plaintiff & admitted by defendant No.2 itself clearly reveals that, the plaintiff is in possession of suit schedule car. On other hand, the defendant No.2 claiming the true owner of suit schedule car itself consider on merits and also defendant No.2 admits the illegal possession of plaintiff over suit schedule car as unauthorized. It is settled law that, the settled possession of suit schedule car by the plaintiff should be protected in accordance with law unless due process of law.

16. By close reading of above ratios in **Krishnaram Mahale case, Ramanathan case, Puran Sing case, Ramegowda's case & Sampangi Ramaiah case** by Apex Court & Hon'ble High Court of Karnataka clears that, the settled possession of property should be protected unless eviction from due process of law. Admittedly, in the present suit the Plaintiff has taken the suit schedule car after death of swamiji. Admittedly, the Plaintiff come up with application to protect his possession from Defendant No.2 and safeguard his settled possession of suit schedule car. It is settled law that, the settled possession of

Plaintiff should be protected in the above ratios and clearly applicable to present case in my hand.

17. It is important to note that, the relief of present application about restraining the Defendant No.2 from dispossessing the Plaintiff in suit schedule car. Admittedly, the Plaintiff is in possession of suit schedule car after death of swamiji. The relief of Plaintiff is harmless and no one has to be caused any loss if the order of injunction is passed. The possession of the Plaintiff in application suit schedule car has been protected as same till disposal of suit on merits. If not granted order of injunction against Defendant No.2, the enjoyment rights of the Plaintiff would be defeated. Therefore, the plaintiff has made out prima-facie case and balance of convenience lies in her favour. If order of injunction is not granted, she will be deprive her rights over possession of application schedule car, which cannot compensate in any terms of money. If any contention of defendant No.2, it will decide in full-fledged trial and not at this stage. Hence, it is necessary in the facts and circumstances of the case to pass an order of injunction till disposal of the suit. Accordingly, I answered to **Point No.1 to 3** in the **Affirmative**.

18. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass following:-

ORDER

I.A.No.III filed by the Plaintiff U/o 39 Rule 1 & 2 R/w Sec.151 of CPC is hereby allowed.

Consequently, the Defendant No.2, his agents, servants & others are hereby restraining from dispossessing with plaintiff's possession of the application schedule car till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on computer and typed by him, corrected, signed by me & then pronounced in the open Court on this the **10th day of August – 2023**).

Sd/-

(VINOD KUMAR M.)

I ADDL. CIVIL JUDGE & JMFC.,
K.G.F.