

KAKL510004362019



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

AT K.G.F

DATED THIS THE 17TH 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.128/2019

PLAINTIFF/s : 1. Sri. Venkataramappa @
Venkataramappa Bovi
s/o late Sri Dasanna Bovi,
Aged about 71 years.,

2. Sri. Srinivas
S/o Venkataramappa @
Venkataramappa Bovi
Aged about 55 years.,

Both are R/at Poojarahalli Village,
Kyasambahalli Hobli,
K.G.F.

(Rep. by Sri. **PR.**, Advocate.)

Vs

DEFENDANT/s : 1. Smt.Bharathi w/o Murugesh,
Aged about 40 years.,
R/at Poojarahalli Village,
Kyasambahalli Hobli,
K.G.F.

2. Sri.Pandu s/o Nagalingiah,
Aged about 56 years.,
R/at No.1494, Vijayanagar,
Bangarpet Town,
Bangarpet Taluk.

(Rep. by Sri. **M.N.P.**, Advocate.)

I.A.No.I

APPLICANT/s : 1. Sri. Venkataramappa @
(Plaintiffs) Venkataramappa Bovi
s/o late Sri Dasanna Bovi,
Aged about 71 years.,

2. Sri. Srinivas
S/o Venkataramappa @
Venkataramappa Bovi
Aged about 55 years.,

Both are R/at Poojarahalli Village,
Kyasambahalli Hobli,
K.G.F.

V/s

OPPONENT/s : 1. Smt.Bharathi w/o Muruges,
(Defendants) Aged about 40 years.,
R/at Poojarahalli Village,
Kyasambahalli Hobli,
K.G.F.

2. Sri.Pandu s/o Nagalingiah,
Aged about 56 years.,
R/at No.1494, Vijayanagar,
Bangarpet Town,
Bangarpet Taluk.

* * *

ORDER ON I.A.No.I

Plaintiffs have filed I.A.No.I under Order 39 Rule 1, 2 & 3 read with Section 151 of CPC praying this Court to pass an ad-interim order of Temporary Injunction restraining the defendants, their servants, family members, agents and such other persons claiming under them from interfering with the plaintiffs peaceful possession in respect of 'A' schedule property or in any other way, till the disposal of the above suit.

2. Plaintiff no.1 has filed an affidavit accompanying the said IA averring that, he has filed the suit for declaration of title, mandatory injunction and other consequential reliefs in respect of suit schedule property and second plaintiff is his son and land bearing Sy.No.51 was the ancestral property and said land to an extent of 2 acre 18 guntas fell to the share of first plaintiff in the mutual family settlement between the first plaintiff and his brother Sri.Munivenkatappa. They jointly sold small pieces of land to the second defendant extending East to West 30 feet and North to South 22 feet retaining land towards eastern and southern side of said piece of land sold to second defendant. The remaining land situated towards south of land measuring East to West 30 feet and North to South 22 feet sold to second defendant was being used by

public for thorough far though officially it was not a road either mud road or tar road. Now a tar road is laid by Government which exists towards south of his remaining land. They have conveyed pieces of land in Sy.No.51/1 and purchasers have raised the structure therein and this dispute is not in respect of any other piece of land wherein houses exist.

3. The piece of land sold to Sri.Pandu i.e. second defendant under the registered sale deed dated 17.07.2003 and towards south and east of remaining land is existing and taking advantage of wrong eastern and southern boundaries, the second defendant has instigated the first defendant to put up construction without panchayath license and she has put up construction on the site sold by him to second defendant on 17.07.2003 and in the process, the first defendant has extended measurement and instead of confirming to East to West 30 feet and North to South 22 feet, the building is raised to an extent of East to West 40 feet and North to South 30 feet by doing so, the first defendant has encroached his remaining portion of land in Sy.No.51/1 to an extent of 10 feet on the East and 8 feet on South. The defendants have no right, title, or interest over the suit 'A' schedule property and their interference

is illegal. Hence the pray the Court to allow the present application.

4. The defendant no.1 and 2 have filed written statement and have filed memo to adopt the written statement as also objection to IA No.1. The defendant no.1 in the written statement has denied plaintiff averments and contends that, the defendant no.2 has purchased the written statement schedule property from plaintiffs on 17.07.2003 for valuable consideration and same was registered before the Sub-Registrar Office at Bangarpet and defendant no.2 is in possession and enjoyment of the said property as an absolute owner and towards the eastern side of written statement schedule property there is a Government Karab and the said property is measuring East to West 30 feet and North to South 22 feet and defendant no.2 executed a gift deed in favor of his sister Smt.Sridevi on 04.09.2007 and the said Smt.Sridevi has transferred the khatha into her name on the basis of said gift deed from Marikuppam Gram Panchayath, in respect of written statement schedule property and said Smt.Sridevi has executed a sale deed in favor of first defendant on 23.02.2008 and on the basis of sale deed, the first defendant has transferred the khatha into his name in respect of written statement schedule property. As per

the survey sketch, there is a main road in the plaint schedule property and pathway is existing from Ballagiri Village to Pojarlahalli Village and the said pathway and main road has been formed by the Government and 11 guntas of land is reserved in Sy.No.51.

5. The plaintiffs mentioned in the schedule eastern side as Munivenkata Reddy property, Western side Munivenkatappa property, northern boundary has been given wrongly by mentioning as lands of Lakshmaiah, Bharathi, Devaraj, Ganesh, D.Venkateshappa, Ramaiah instead of correct boundaries i.e. main road running from KGF to Shanthipuram and the plaintiffs suppressed the main road and the plaintiffs have given wrong boundaries after the road towards northern side. The plaintiffs have already sold the lands to different persons and the plaintiffs are not having any manner of right over the written statement schedule property beyond the main road. The plaintiffs property is not at all existing and question of encroaching by the first defendant as alleged in the B schedule item no.1 and 2 does not arise. The defendant no.1 constructed a RCC roofed building in the written statement schedule property by investing of Rs.20,00,000/- and defendant no.1 is in possession and

enjoyment of the said property and now the plaintiffs have filed the above suit against the defendant no.1 by seeking mandatory injunction in respect of 'B' schedule property and after the lapse of four years , the plaintiffs have filed the above suit against the defendant no.1 by seeking mandatory injunction in respect of 'B' schedule property and if it was belonging to plaintiffs, what prevented them from filing the suit before the Court in the earlier stage, when the first defendant dug the foundation and has constructed the said house.

6. The plaintiffs have sold to an extent of 12 guntas of land in Sy.No.51/1 to one P.M.Venkatarama Reddy s/o Patel Munivenkata Reddy for valuable consideration on 28.02.2019, towards the northern side of suit schedule property and the said property is not at all existing and the said property is the main road and said P.M.Venkatarama Reddy has created the fake documents and gave wrong boundaries to cause wrongful loss to the defendant no.1 and the boundaries mentioned in the sale deed are all false boundaries and the plaintiffs have not at all stated anything about the said alleged sale deed and the suit of the plaintiffs is barred by non-joining of necessary parties.

7. The defendant no.2 admits that, the plaintiffs are father and son and land bearing Sy.No.51 is an ancestral property and the said land to an extent of 2 acre 18 guntas fell to the share of first plaintiff in mutual family settlement between first plaintiff and his brother Munivenkatappa and that, the plaintiffs jointly sold small piece of land to second defendant towards east to west 30 feet and north to south 22 feet retaining the land towards eastern and southern side of said piece of land sold to the second defendant. He admits that, the piece of land was sold to second defendant under the registered sale deed dated 17.07.2003 and towards South and East of remaining land of plaintiffs is existing but, taking advantage of wrong eastern of southern boundaries ,the second defendant has instigated first defendant to put up construction and she has put up construction on the site sold by them to the second defendant on 17.07.2003 and in the process, the first defendant has extended measurement and instead of confirming to East to West 30 feet and North to South 22 feet, the building is raised to an extent of East to West 40 feet and North to South 30 feet by doing so first defendant has encroached his remaining portion of land in Sy.No.51/1 to an extent of 10 feet on the East and 8 feet on South. The defendant no.1 has illegally

constructed a house in the suit schedule property and he has not obtained license. The second defendant has given many applications before the panchayath for the change of khatha in the name of defendant no.2 but, they have colluded with the defendant no.1 and changed the khatha in the name of defendant no.1, without the knowledge and consent of defendant no.2 and hence the khatha is null and void and without having right, title or possession over the suit property and the second defendant is absolute owner of written statement property and purchased from defendant no.1 and defendant no.2 from plaintiff under registered sale deed dated 20.07.2003 and after the purchase, all documents are transferred to his name and from the date of purchase, is in possession of the same and now the defendant no.1 has encroached the written statement property and constructed the house in written statement property without consent and knowledge .Hence pray the Court to reject the said application.

8. Heard the plaintiffs and defendants counsel and perused the materials on record.

9. 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 ?

10. 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

11. POINT NO.1 :- It is the case of plaintiffs that, the land bearing Sy.No.51 was the ancestral property and said land to an extent of 2 acre 18 guntas fell to the share of first plaintiff in the mutual family settlement between the first plaintiff and his brother Sri.Munivenkatappa. In order to show that, the plaintiffs got 2 acre 18 guntas land in Sy.No.51 through mutual family settlement has

not produced the said document. The plaintiffs stated that, they jointly sold small pieces of land to second defendant extending East to West 30 feet and North to South 22 feet retaining land towards eastern and southern side of said piece of land sold to second defendant. The said contention that, the land was sold to the second defendant is admitted by first defendant and also the second defendant but, the first defendant denies the further averments of plaintiffs that, they have retained southern and eastern side towards land sold to the second defendant. The plaintiffs to show that, they have sold East to West 30 feet and North to South 22 feet to second defendant and have retained southern and eastern towards the said sold land has not produced any document. Further, the point to note is that, the plaintiffs say that, they have jointly sold small piece of land to second defendant East West 30 feet and North South 25 feet and they had an extent of 2 acre 18 guntas but, they have neither stated the boundaries of the 2 acre 18 guntas nor have stated the boundaries of sold portion to defendant no.2. Further the plaintiffs have also not stated the boundaries of retained portion by them towards eastern and southern side of second defendant sold property. Further, the plaintiffs say that, the remaining land of plaintiffs towards south of

East to West 30 feet and North to South 22 feet sold to second defendant was being used by public and tar road is laid by the Government towards south of remaining land of the property but, again to substantiate the same, the plaintiffs have not produced document at this juncture. The defendant no.1 has denied the boundaries of plaintiffs and plaintiffs to substantiate the boundaries given in the plaint have not produced any document at this juncture.

12. The plaintiffs have produced RTC of Sy.No.51/1 standing in the name of plaintiff no.1 for 2 acre 18 guntas, mutation record of Sy.No.51/1 reflecting name of plaintiff no.1 for Sy.No.51/1 and one sale deed dated 17.07.2003 of second defendant made by plaintiffs of 30 X 22 feet and in the said sale deed of second defendant, the boundaries towards said 30 X 22 feet eastern side is shown as Munivenkatareddy, western side Devaraj house, northern side Lakshmaiah land and southern side panchayath land and in the said sale deed, the southern and eastern side of land stated to be retained by plaintiffs is not been mentioned neither, the letter addressed by plaintiff no.2 to Panchayath Development Officers through any light on the said aspect. Further, it could be seen that, the plaintiffs have stated that, Sy.No.51 was their ancestral

property and 2 acre 18 guntas fell to the share and 30 feet East West and North South 22 feet was sold to the defendant no.2 and said sale deed also reflects Sy.No.51 but, the schedule given in the plaint and relief claimed therein is not with respect to Sy.No.51 but, Sy.No.51/1 and the plaintiffs have not shown as to when the Sy.No.51 was phodied and given the sub number as Sy.No.51/1, Sy.No.51/2 and Sy.No.51/3. Further, the plaintiffs state that, taking advantage of wrong eastern and southern boundaries, the second defendant has instigated first defendant to put up construction without license and he has put up construction on the second defendant lands and in the process have extended measurement to 40 feet East West and North South 30 feet and encroached the plaintiffs portion which is denied by the defendants and the plaintiffs to show that, the defendants have encroached into his property by construction have not produced any document at this juncture.

13. Further the defendant no.1 has stated that, the second defendant has purchased the written statement property from plaintiffs on 17.07.2003 and the second defendant is in possession of the same and towards eastern side of written statement property there is Government karab and this goes to show that, the

defendant no.1 is denying the plaintiffs averments that, he has retained eastern portion towards sold land of defendant no.2 as defendant no.1 has contended that, the eastern boundary of the sold property of second defendant is Government karab. Further, the defendant no.1 states that, the second defendant executed gift deed to his sister Smt.Sridevi on 04.09.2007 and has produced the xerox of the same and in the said gift deed towards east and south is shown as road and karab gudde and same also creates doubt about the stance of plaintiffs that, they have retained the southern and eastern portion towards second defendant sold property. Further, the defendant no.1 states that, said Smt.Sridevi sold to first defendant written statement schedule property on 23.02.2008 and first defendant has transferred the khatha to his name and has produced sale deed dated 28.02.2019 to show that, the plaintiffs have sold portion of Sy.No.51/1 to different persons and hence, when they have sold the portion of Sy.No.51 to different persons and sale deed produced dated 28.02.2019 reflects the same, the question that arise is, how much extent of the property is left with the plaintiffs after having sold so many portions of Sy.No.51 to others. Hence at this stage, plaintiffs have not produced any documents in order to ascertain as to which portion of Sy.No.51/1

is retained by the plaintiffs after having sold portions and though documents are produced they do not substantiate the version of the plaintiffs regarding the boundaries shown by the plaintiffs for the retained property i.e. A schedule property . Further the sketch produced do not show any encroachment which has been stated as 'B' schedule property by the plaintiffs. Hence, the plaintiffs have failed to show prima-facie case and Point No. 1 is answered in Negative.

14. POINT NO.2 AND 3:- As in point no 1, this court by giving reasons have concluded that, the plaintiff has 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.

15. 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, 2 and 3 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 17th day of November 2021.)

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