

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

AT: SRINIVASAPUR

Dated this the 16th day of April 2021

:PRESENT:

SHRI. NAGESH NAIK. M.A.,LL.B
Addl. Civil Judge & JMFC.,
Srinivasapur

O.S. NO:312/2019

Plaintiff:

Srinivasa Reddy,
S/o Late Chikka Nanjappa,
Aged about 78 years,
R/o 3rd Cross, Anjani
Extension, Chintamani,
Chikkaballapur District.

Now residing at
Kolathur Village,
Yeldur Hobli,
Srinivasapur Taluk,
Kolar District.

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

V/s

Defendant:

B.C.Somashekar,
S/o Late Chikka Lingaiah,
Aged about 78 years,
R/o Ghattahalli Village,
Holur Hobli,
Kolar Taluk.

(By Sri.G.C.H., Advocate)

CAUSE TITLE ON I.A NO.I

Applicant: Srinivasa Reddy

V/s

Opponent: B.C.Somashekar

ORDER ON I.A.No.I

The plaintiff/applicant has filed this IA.No.1 under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. with prayer to restrain the defendant, his agents, servants or anybody acting on his behalf from cut and remove the existing mango trees in the suit schedule property pending disposal of the suit.

2. *In the affidavit annexed to the IA-I, the plaintiff/applicant has stated that, he has filed this suit for permanent injunction in respect of suit schedule property against the defendant. He has prays to consider his plaint as part and parcel of his affidavit. It is stated in the plaint that, he is in lawful possession and enjoyment of the suit schedule property. The said property was formerly belongs to one Sri.Anjaneyaswamy trust, Gattahalli, Holur Hobli, Kolar*

Taluk. The plaintiff's father had purchased the said property from the trust through registered sale deed dated 02.01.1990. After purchase of said property, plaintiff father had raised wet crops in the said land. However due to the lack of rains and shortage of water, he was raising rain fed crops. The revenue authorities has also mutated the plaintiff's name in the katha of the suit schedule property as per MR No.15/2001-02. Thereafter father of the plaintiff died about 15 years back and plaintiff is in possession of the suit schedule property. Katha of the said property has been mutated in the name of plaintiff as per vide MR No.165-15/2001-02. The plaintiff had planted mango saplings in the suit schedule property and now they are fruit yielding trees. The defendant is stranger to the suit schedule property and he has no manner of right, title, possession over the suit schedule property. However he has made attempts to dispossess the plaintiff from the suit schedule property on

02.01.1990. The defendant is not a trustee of the above referred Sri.Anjanappaswamy Trust. In spite of it defendant has challenged the acceptance of katha in the name of plaintiff's father before the A.C., Kolar by filing an appeal in RA.No.120/2013-14 and it was allowed on 29.01.2015. The A.C., Kolar had set aside the katha stands in the name of plaintiff and his father in respect of suit schedule property. The plaintiff had challenged the said order before the Deputy Commissioner, Kolar in RA.No.131/2016-17. After contesting, said appeal was dismissed by confirming the order passed by the A.C., in RA.No.120/2013-14. Taking undue advantages of the said order, defendant is making hectic attempts to dispossess the plaintiff's from the suit schedule property. It is difficult for the plaintiff to resist the acts of the defendant. Hence he prays to allow the application.

3. *The defendant had filed memo and adopted the written statement as objection to IA.No.1. He has admitted the revenue proceedings before the A.C., and D.C., and denied the remaining case of the plaintiff. It is further contended that, suit schedule property is originally a Gomala land. It was in possession of the Anjanappaswamiji. He had applied for the Government to grant a said land and same was granted in favour of Anjanappaswamiji in the year 1961-62. He had established Anjanappaswamiji Ashrama in the year 1948 at Gattahalli and said land was granted to the Ashrama for the purpose of developing it. This defendant became devotee of the said Anjanappaswamiji in the year 1962. This defendant being the AD.Bsc graduate had developed all the properties of the Ashrama. This defendant had also purchased 50 acres of land in and around of the suit schedule property. The said Ashrama is now owning more than 100 acres of land near Gattahalli.*

The mango saplings were planted in the said property during the year 1963-64. This defendant had also planted mango saplings in the suit schedule property along with other lands belongs to the Ashrama. Sri.Anjaneyaswamiji was bachelor and died in the year 1971. After his death defendant became the successor of entire property of Sri.Anjanappaswamiji Ashrama. There was no need for the Ashrama to sell the suit schedule property in favour of father of the plaintiff in the year 1990 or 1999. The Sri.Anjanappaswamiji Trust, Gattahalli is nothing to do with the Anjanappaswamiji Ashrama. The suit land is not the property of the said Trust. The owner of the suit schedule property neither created trust nor the author of the Trust. The suit schedule property was never mutated in the name of Anjanappaswami Trust at any point of time. One Sri.R.Govind was not the president of said Trust at any point of time. The said Trust never possessed suit schedule property. No resolution was passed to sell the

suit schedule property. The said sale agreement was not executed by true owner and no sale deed was obtained by the plaintiff as per section 17 of Registration Act. The suit land is having market value more than Rs.5,00,000/- as on the date of alleged sale agreement. The plaintiff has to file the suit for declaration of title and not this frivolous suit for injunction. The plaintiff is not in possession of the suit schedule property. The plaintiff's father had colluded with the revenue authorities and changed the katha of the suit schedule property in his name as if he is son of Sri.Anjanappa. The plaintiff and said Anjappa are belongs to different caste. After the death of Anjanappaswamiji, plaintiff's father had changed the katha in his name vide MR No.165-24/1991-92 and it was created documents. The plaintiff's father is not the son of Anjappa. As per the said mutation his name was entered in the column No.9 of the RTC, but Anjappa name is shown in the cultivators column in

the RTC. The plaintiff has also got mutated the katha on the basis of pavathi varasu during the year 2001-02 and it was canceled by the A.C., and D.C., Kolar. It clearly shows that, plaintiff is not in possession of the suit schedule property at any point of time. The plaintiff is taking advantages of the wrong entries in the RTC and filed this false suit. With these grounds he prays to reject the application.

4. *Perused the written arguments filed by the plaintiff.*

The counsel for defendant was absent, hence arguments of defendant on IA.No.1 taken as nil.

5. *Now, the Points that would arise for the consideration of this court are as under:-*

- 1. Whether the plaintiff proves that he has prima facie case in his favour?*
- 2. Whether the balance of convenience lies in his favour?*
- 3. Whether the plaintiff proves that he would be subject to loss and hardship in the event of not allowing the I.A.?*

4. What Order?

6. The findings of this court on the above points are as under:-

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

:R E A S O N S:

7. **POINT NO.1:-** The plaintiff has filed this suit for permanent injunction in respect of suit schedule property. According to the plaintiff, he came to possession of the suit schedule property on the basis of sale agreement executed by the President of the Anjanappaswami Trust on 02.01.1990. According to the defendant, suit schedule property is not belongs to the Trust and they have no right to execute the sale agreement in respect of suit schedule

property in favour of the plaintiff. Moreover the revenue authorities have canceled the revenue entries standing in the name of plaintiff. The plaintiff is not in possession of the suit schedule property and defendant is in possession of the suit schedule property and he prays to dismiss the application.

8. The plaintiff has produced the copies of sale agreement dated 02.01.1990, mutation register extracts and RTCs of the suit schedule properties. Though the defendant has contended that, the manager of the Anjanappaswami Trust has no right over the suit schedule property, he has not produced any documents. The sale agreement dated 02.01.1990 discloses that, one R.Gonvida being the president of Anjanappaswami Trust had executed sale agreement in respect of suit schedule property in favour of the plaintiff and delivered the possession in favour of him.

As per section 53A of Transfer Property Act, Where any

person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right

expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or the part performance thereof.

*Therefore transferee is entitled to protect his possession over the suit schedule property. In this regard I would like to rely upon the decision of **Honble High Court of Karnataka reported in ILR 1998 KAR 3230, in the case of Narasimhasetty V/s Padmasetty, wherein it was held that, right of the transferee to retain his possessed envisaged under section 53A of Transfer of Property Act is statutory in nature and it has not been subjected to any limitation either express or implied. It has been further held that, the law of limitation does not apply***

to defence raised under section 53A of Transfer of property Act since the section does not provides for any limitation on expiry thereof. It has been further held that, notwithstanding the fact that a transferee in possessed pursuant to contract of sale fails to file a suit for specific performance within the prescribed period of limitation, still in law, the contract remains valid and operative entitling him to exert his right to retain the possession over the property in exercise of his statutory right conferred by section 53 A of the Act by way of defence in a suit brought against him by his transferrer, for recovery of possession”.

In this case, the plaintiff came to possession of the suit property on the basis of sale agreement executed by the president of Anjanappaswami Trust. Hence the ratios held in the above decision is applicable to the facts of the case on hand. Whether the said Trust had right over the property or

not is a triable issues. The old RTC produced by the plaintiff discloses that, he is in possession of the suit schedule property. Though there is no dispute regarding cancellation of katha stands in the name of plaintiff, in respect of possession is concerned, defendant has not produced any document to show that he is in possession of the suit schedule property. The defendant has also not produced any documents to show that, said Trust has no right over the suit schedule property to execute sale agreement in favour of plaintiff. Therefore at this stage, plaintiff has made out a prima facie case.

9. *Hence, At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction*

application, the court cannot go into the prima facie title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.

10. *The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.*

11. *The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.*

12. *At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 – Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another. In the Hon'ble Supreme Court held in para 16 that:*

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has

made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

*The ratio laid down in the above decision clarifies that the plaintiff has to made out prima facie case in order to obtain temporary injunction. In view of above discussion and on the basis of pleadings and materials placed by both the parties, I am of the considered opinion that the plaintiff has made out prima facie case in his favour. Accordingly, Point No.1 is answered in **Affirmative**.*

13. POINT NOS.2 & 3: *As these points are interconnected with each other, I have taken up together for consideration in order to avoid repetition of facts.*

14. *The object of interlocutory injunction is to protect the applicant against the injury by violation of his right for which he could not be adequately compensated if issues were*

resolved in his favour at the trial. In the present case, it could be seen that, there is dispute by both the parties in respect of title and possession of the suit schedule properties and in the mean time the applicant/plaintiff has made out prima facie case in his favour. Therefore at this stage, if the prayer of the plaintiff is not allowed it may further make difficult the matter & it also may results in multiplicity of proceedings and irreparable situation may arise.

15. *The temporary injunction order can be passed on settled principles taking into account, the three basic grounds are prima facie case, balance of convenience and irreparable loss. But, in the case on hand, the plaintiff has made out grounds for prima facie case. Thus, in the present situation, if the prayer of the plaintiff is allowed, no loss or hardship is going to be caused to other side. Therefore, there are sufficient materials on record to hold that the balance of convenience lies in favour of applicant/plaintiff. In view of*

my above discussion, I answered point Nos.2 and 3 are in the **Affirmative**.

16. POINT NO.4: In view of my above discussion under point No.1 to 3, I proceed to pass the following:

:O R D E R:

The I.A-I filed by the plaintiff/ applicant under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant, his agents, servants or anybody acting on his behalf are hereby restrained from cut and remove the existing mango trees in the suit schedule property pending disposal of the suit.

*(Dictated to the Stenographer, on computer and computerized by her, corrected by me, and then pronounced in the open court on this the **16th day of April, 2021.**)*

(NAGESH NAIK)
Addl. Civil Judge & JMFC,
Srinivasapur.