

**IN THE COURT OF CIVIL JUDGE(JR.DN) & JMFC.,
KRISHNARAJAPETE.**

Dated: This the **21st** day of **March-2017.**

Present:

Sri. KUMARA.S. , B.A.LLB
Civil Judge (Jr.Dn) & JMFC.,
K.R.Pete.

O.S. No. 272/2016

PLAINTIFF : Ramesha C.M
S/o Mallegowda
Age 51 years
R/o Chinnenahalli
Kikkeri hobli
K.R.Pete Taluk.

(Rep,by **Sri.K.K.L,** Advocate)

V/s

DEFENDANTS:1) Nagaraju
S/o Papegowda@Kalegowda
Age 65 years
2) Jayalakshmi
W/o Nagaraju
Age 55 years
R/o Door No.2009
Defendants 1 and 2 are
R/o Chinnenahalli
Kikkeri hobli
K.R.Pete Taluk.

(Rep,by, **Sri. BCD and DRJ**
Advocates)

PARTIES TO I.A. NO.I

APPLICANT : Ramesha C.M

(Plaintiff)

V/s

OPPONENTS : Nagaraju and one
(Defendants)

ORDER ON I.A. NO. I

The plaintiff/ applicant has filed IA No.1 under order 39 rule 1 and 2 CPC requesting the court to restrain the defendants, from alienating the schedule properties pending disposal of the suit.

2. IA.No. 1 is accompanied by the affidavit of the plaintiff.

3. The defendants have appeared before the court through their counsel and filed their written statement .

4. I have heard the arguments advanced by the learned counsel for the plaintiff and defendants . Perused records and materials placed before the court.

5. The following points that would arise for my consideration and determination are,

1) Whether plaintiff/ applicant has made out prima-facie case?

2) Whether plaintiff proves that balance of convenience lies in his favour?

3) Whether plaintiff proves that irreparable loss would be caused to him if temporary injunction is not granted?

4) What order?

6. My answer to 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;

REASONS

7. Point No 1 to 3: In order to avoid repetition of facts and discussion, these points are taken together for common consideration.

It is the case of the plaintiff is that, Father of the plaintiff has purchased the suit schedule property under registered sale deed dated:23/6/1976. After his death there

was division between the legal heirs of the deceased Mallegowda. In that division suit schedule property fallen to his share. The defendants have no right, title, much less possession. They have got khatha illegally in collusion with the revenue officials. Taking undue advantage of the illegal revenue entry they have making hectic attempt to alienate the suit schedule property with malafide intention to deprive and defraud plaintiff. The defendants have already entered in to an agreement of sale. If they are allowed to sell away the suit schedule property, hardship and irreparable injury will be caused to the plaintiff and it leads multiplicity of proceedings. Hence, pray for allow the application.

8. Defendants in his written statement contended that the suit schedule property Sy.number 33/3A of Chinnenahalli village, measuring 4.08 guntas is self acquired property of 1st defendant. The 1st Defendant has purchased the said property from one

Kalasamma W/o Doddegowda under the register sale deed dated:15/07/1980. And after purchased the suit property the khatha of suit property mutated in the name of defendant no.1 and he is in peaceful possession and enjoyment of the suit property and khatha of suit property was changed in the name of the 2nd defendant being his wife. Suit schedule property was originally belongs one Doddegowda and after his death suit schedule property was mutated in the name of Kalasamma and said Kalasamma sold the suit property to defendant no.1 on 15/07/1980 and there was no land of plaintiff and suit property not belongs to plaintiff and boundaries furnished to suit property is false. And defendants plaintiff claim of the plaintiff that he has purchased suit property from one Kalelinge gowda and Kalelingegowda is no way concern with suit property and he is not in possession and enjoyment of the owner of the suit property and such said

Kalelingegowda has no right to sell suit property and in Sy.number 33/3 Kalegowda @Papegowda S/o Chikkegowda is in possession of suit property and sy number33/3 and 19 defendants is in possession of suit property . There is no suit property in Sy.number 33/3. 1st defendant has change the khatha of his suit property in the year 2012 and same was not changed by the plaintiff. Hence, pray for dismiss the application with costs.

9. It is settled principles of law that the person seeking equitable relief of temporary injunction should make out prima-facie case for grant of interim injunction. The prima-facie case means, a case which involves serious question of law and facts and which requires trail of the case which is arguable one. The party should also prove that the balance of convenience is in his favour and that irreparable loss would be caused to him if interim injunction is not granted. The equitable circumstance should also be taken

in to consideration while granting or refusing the interim injunction.

10. The plaintiff has filed present suit for the relief of declaration and permanent injunction against the defendants. On perusal of materials on record it appears that, this case involves serious question of law and facts, and which requires trial. Whether the plaintiff has purchased suit property ? or Whether the plaintiff is in possession and enjoyment of the suit schedule property? Or Whether the defendants interference with his possession ? Or Whether defendants are in possession and all other things and factual aspects came to picture only after full pledged trial. Therefore, this case involves serious question of facts and law which are tried by the court. Hence, the plaintiff has made out prima-facie case for trial. Accordingly, point No.1 is answered in the affirmative.

11. The plaintiff to substantiate his claim , he has produced sale deed dated:23/6/1976 which shows that the suit schedule property was purchased by father of plaintiff by name Mallegowda from one Kalalingegowda S/o Chikkegowda , The RTC extract produced by the plaintiff which shows that khatha of suit property was stands in the name one Kalegowda @Papegowda. Plaintiff has produced documents which is endorsement issued by the Tahasildar stating that MR records for Sy.number 33/3 and 33/7 for which no such MR is entered in the revenue records. RTC extract produced by the plaintiff shows that the originally suit property was stands in the name of Kalalingowda S/o Chikkegowda is ancestral property of him. Sale agreement dated:13/5/2016 shows that one defendant no.2 by name Jayalakshmma entered into agreement with respect of property bearing Sy.number 33/3 measuring 4.08 guntas and Sy.number 33/18 measuring 3.08 gunts

infavour of one Nagegowda S/o Late Govindegowda which shows that there was a sale agreement between defendants no.2 with one Nagegowda. Copy of Panchayath palu patti produced by the plaintiff shows that the suit property measuring 4.08 guntas of lands was fallen in the share of plaintiff. Which is unregistered palu patti. The defendants has also produced sale deed dated:15/07/1980 shows that the 1st defendant has purchased property from one Kalasamma S/o Dodde gowda under register sale deed. After said sale deed khatha was mutated in the name of the defendant no.1 and 2. The same is effected in the mutation register extracts. Property bearing Sy.number33/19 measuring 4.08 guntas of land which stands in the name of defendant no.2 who is wife of defendant no.1. The documents produced by the plaintiff at this stage creates doubt about possession of suit property whether defendants or plaintiff. However, plaintiff sought relief of

temporary injunction for not to alienate suit property to anybody till disposal of the suit. In case suit schedule property alienated during the pendency of the suit it leads to multiplicity of proceedings and irreparable loss and injury would be caused to the plaintiff. Therefore, the balance of convenience lies in favour of the plaintiff and irreparable loss would be caused to the plaintiff if temporary injunction is not granted. Hence, it is just necessary to maintain the present status quo suit property till pending disposal of the suit. Accordingly plaintiff is entitled for the relief of temporary injunction as sought in the application. Accordingly, point no.2 and no.3 are answered in the affirmative.

12. Point No.4 : In view of the above discussion and reasoning to the above points, I proceed to pass the following;

ORDER

A) IA.No.1 filed by the plaintiff/ applicant under order 39 rule 1 and 2 of CPC is hereby allowed.

B) The defendants are hereby restrained from alienating the suit schedule property in any manner to any body till pending disposal of the suit.

C) Under the circumstance of the case, no order as to costs.

(Dictated to the Stenographer, the transcript revised by me and pronounced in open court, this the 20th day of March-2017)

(KUMARA.S)
Civil Judge(Jr.Dn) & JMFC.,
K.R. Pete.