

IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,
KRISHNARAJAPETE

:PRESENT:

SRI. ONKARAMURTHY.H. B.COM.,LLB.,
CIVIL JUDGE AND JMFC, K.R.PETE.

DATED THIS THE 18th DAY OF MARCH-2023

OS No.194/2021

Plaintiff:- Somegowda S/o Late
Venkategowda, aged
about 44 years, R/at
Dabbeghatta village,
Kikkeri hobli, K.R.Pete
taluk, Mandya district.

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

V/S

Defendant/s:- Lakkugowda L.P S/o
Late Puttappa, aged
about 55 years, R/at
Dabbeghatta form house
and village, Kikkeri
hobli, K.R.Pete taluk
Mandya district.

(By Sri.K.R.M, Adv.,)

I.A. NO. I

APPLICANT/S :- Somegowda

V/S

OPPONENT:- Lakkugowda

ORDERS ON IA NO.I.

1. This is an application filed by plaintiffs U/order 39 Rule 1 and 2 of CPC seeking for restrain the defendants his agent, servant or anybody behalf of the defendants are not to interfere with the peaceful possession and enjoyment of plaintiff in the suit schedule properties till the disposal of the suit.

2. In the annexed affidavit to the application it is stating that, originally the suit schedule property was belongs to K.V. Purushotama S/o Late K.T. Venkatappa Shetty and his children, they were sold the said property in favour of the plaintiff as per the register sale deed dated 01.03.2017. From the date of purchase the plaintiff having possession and enjoyment of the suit schedule property, the defendants are not having any right, interest, possession of the same, even though the defendants are powerful persons in men and money and they are tried to interfere peaceful

possession and enjoyment of the plaintiff. Hence the plaintiff pray for grant temporary injunction against the defendants till the disposal of the suit.

3. Per contra, on the other hand the defendants are appeared through their counsel and filed their written statement along with memo stating that, contention which taken in their written statement should be adopting as objection to above said IA. Wherein they denied entire entire averments of the plaint/application and contending that, the suit of the plaintiff is not maintainable under law or on facts. The brother of defendant by name L.P. Nanjappa was purchased the suit schedule property through the sale deed dated 07.06.1996. The defendants constructing one house in the said property and having possession and enjoyment of the suit schedule property, and they growing 130 coconut trees. Due to the mistake of revenue officials the survey number of property the mentioned as 103/3 instead of 103/2. The boundaries which

mentioned in the sale deed is 07.06.1996 and in the plaint schedule is one and the same. The plaintiffs are not having any right, interest and possession and taken undue advantage of wrong mentioned in RTC they are filed this false suit against the defendant. And created the sale deed dated 01.03.2017 with the intention of grab the suit schedule property. And denied all other averments of the application and pray for reject the application.

4. On the basis of above said rival contention of the parties material on record the following points would be arises for my consideration:-

1. Whether the plaintiff has made out a prima facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable loss or injury, if the application is not allowed?
4. What order ?

5. Heard, both the counsels, perused the materials on record.

6. My answer to the above said points are;

Point No.1 to 3 : In the Affirmative;

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

REASONS

7. Point No. 1 to 3: These points are inter linked with each other for avoiding the repetition of the facts and circumstances these are taken together.

8. It is the contention of the plaintiff that, plaintiff is a absolute owner and having possession and enjoyment of the suit schedule property. It acquired through sale deed 01.03.2017. The defendants are not having any interest, right possession. Unnecessary they tried and obstruct the possession of the plaintiff. The defendants denied the averments of the application and the ownership, possession and enjoyment of the plaintiff.

9. On perusal of material placed on record the sale deed dated 01.03.2017 which produced by the plaintiff is discloses that the plaintiff was purchased the property in Sy. No. 103/2 measuring an extent of 1 acre 26 guntas bounded on east by land of L.P. Nanjappa, west by land belongs to Baskar and Nanjappa, north by land of L.P. Nanjappa and south by Dabbeghatta vilage border and the land of Thamanna same is described in the plaint schedule. Further the plaintiff is paid tax on the said property. On the strength of sale deed the katha was mutated in to the name of plaintiff and he growing Ragi, Coconut and other corps thereby he having possession and enjoyment of the suit schedule property. the sale deed dated 07.06.1996 discloses that the property in Sy. No. 103/2 measuring an extent of 1 acre 17 guntas was purchased one Nanjappa S/o Puttappa and the copy of RTC which produced by the defendant is discloses that the katha of property in Sy. No. 103/3 measuring an extent of 2 acre 36 guntas

stands in the name of said Nanjappa. And the property in Sy. No. 103/2 measuring an extent of 1 acre 26 guntas stands in the name of plaintiff. But the main objection of the defendant that due to mistake and oversight the Survey number is entered in the sale deed that 103/2 instead of 103/3. But the sale deed which produced by the plaintiff and other revenue documents and plaint schedule described that the Survey number 103/2 measuring an extent of 1 acre 26 guntas belong to the plaintiff and same is acquired through above said sale deed. The land belongs to the defendant and plaintiff is entirely different. The plaintiff not claimed about the land belongs to defendants. Thereby it is clearly comes to know that there is dispute between the plaintiff and defendants in respect of suit survey number property and it come to conclusion after the trial. Further there is no material to shows that the defendants having any right, interest, and possession of the suit schedule property.

10. The law is well settled that in order to ascertain whether there is prima- facie case the court must be satisfied that the applicant has raised bonafide dispute which needs investigation and decision on merits and there is probability of applicant being entitled to the relief claimed by him/her. On verification of material placed on record it is clearly shows that, the plaintiff having present possession and enjoyment of suit schedule property.

11. At this stage court should see the prima facie material as believe that either the plaintiff having possession or not. In this regard the RTCs discloses that the plaintiff having possession of the suit schedule properties. But, the version of defendants are can not be considered at this stage it will be comes to conclusion after trial. Under this circumstances in the opinion of this court that the plaintiffs have substantiate the contention taken of in the application and shows that there is prima facie case and balance of convenience lies

his favour and if the TI is not granted irreparable loss or injury caused to them. **Accordingly I answered Point No.1 to 3 in the Affirmative.**

12. Point No.4: In lights of forgoing discussions, I proceed to pass the following:

ORDER

The application filed by the plaintiff U/o XXXIX Rule 1 and 2 of CPC is hereby allowed.

Under the circumstances no order as to the costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on ----th day of March-2023)

(Sri. Onkaramurthy.H)
Civil Judge & JMFC.,
K.R.Pete.

(Order pronounced in the open court,
vide separate order is passed)

ORDER

The application filed by the plaintiff U/o
XXXIX Rule 1 and 2 of CPC is hereby
allowed.

Under the circumstances no order as to
the costs.

For Issues by:

**Civil Judge & JMFC.,
K.R.Pete.**

