

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

:Present :

Smt. SHAKUNTHALA. R., BA.LLB LL.M.
c/c Civil Judge & JMFC, Krishnarajapet

Dated this the 22nd day of April 2025

O.S.No.748/2023

PLAINTIFF : Thayamma
W/o Devarajashetti
Aged about 50 years,
R/at Biruvalli Village,
Akkihebbalu Hobli,
Krishnarajapet Taluk,
Mandya District.

(By Sri.BMJ, Advocate)

Vs.

DEFENDANTS: 1) Nagendrashetti
S/o Late Javarashetti
Aged about 50 years

2) Indramma
W/o Sathisha
Aged about 38 years

3) Sathisha
S/o Late Venkatesha
Aged about 30 years,

R/at Biruvalli Village,
Akkihebbalu Hobli,
Krishnarajapet Taluk,
Mandya District.
(By Sri. RMD. Advocate)

PARTIES TO I.A. No.1

PLAINTIFF : Thayamma
W/o Devarajashetti
Vs.

DEFENDANTS : Nagendrashetti
S/o Late Javarashetti &
Others

**ORDER ON I.A.NO.I FILED BY THE PLAINTIFF
UNDER ORDER 39 RULES 1 AND 2 OF CPC**

The plaintiff has filed the instant application under Order 39 Rules 1 and 2 of CPC seeking an order of temporary injunction against the defendants to restrain the defendants from interfering with the peaceful possession and enjoyment over the suit schedule property by the plaintiff.

2. The matrix facts which constrained the plaintiff to file the instant application as stated in the affidavit are that, the suit schedule property is the property of one K.V.Swamy S/o Venkategowda, from defendant No.1. As such the defendants have no rights over the said property. Though having no rights have interfered with the peaceful possession and enjoyment over the suit schedule property. Hence this

application.

3. Per contra, defendants have filed memos dated: 14.03.2024 seeking permission to adopt their respective written statements as objections to the instant application. Same was permitted. The defendant Nos.1 to 3 in their written statement have stated that the property bearing Sy. NO. 74/4 measuring 1.26.00.00 guntas is the ancestral property of the defendants. The contention of the defendants is that the defendant No.1 had two wives namely Puttathayamma and Jayalakshamma. The said Puttathayamma had two daughter's Ratnamma and Manjula. The second wife Jayalakshamma had three children's namely Yogendra, Indiramma & Viswanath. The plaintiff by colluding with the daughter's of first wife namely Ratnamma and Mnajula has filed this false suit just to grab the property by creating the documents has filed suit in OS No. 14/2020 before Senior Civil Judge. The defendant No.1 has obtained loan from K.V.Swamy and Anusuya, for the security purpose has executed sale deed, dated: 09.02.2015. Several

Panchayath's taken place and the defendant No.2 agreed to give his share measuring 0.20.00.00 guntas to K.V.Swamy and Anusuya and the plaintiff. Though the plaintiffs having no right, title, interest and possession over the suit property have filed this suit just grab the property of the defendant. Hence he prays to dismiss the application.

4. Heard both sides. Perused the pleadings, I.A. No.1, affidavit and documents on record. The following points would arise for determination of this Court.

1. Does the plaintiff has made out the prima-facie case?
2. Does the plaintiff shows the balance of convenience lies in his favour?
3. Does the plaintiff proves that if the instant application is not allowed, the irreparable loss and injury would be caused to him?
4. What order?

5. This Court answer the above points as follows:

- 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

6. POINT NO.1 TO 3: Since these points are interconnected with each other taken up together for determination to avoid repetition of facts and circumstances of the case. The suit schedule property is the property of one K.V.Swamy S/o Venkategowda, from defendant No.1. As such the defendants have no rights over the said property. Though having no rights have interfered with the peaceful possession and enjoyment over the suit schedule property.

7. The defendants have contended that the property bearing Sy. NO. 74/4 measuring 1.26.00.00 guntas is the ancestral property of the defendants. The contention of the defendants is that the defendant No.1 had two wives namely Puttathayamma and Jayalakshamma. The said Puttathayamma had two daughter's Ratnamma and Manjula. The second wife Jayalakshamma had three children's namely Yogendra, Indiramma & Viswanath. The plaintiff by

colluding with the daughter's of first wife namely Ratnamma and Mnajula has filed this false suit just to grab the property by creating the documents has filed suit in OS No. 14/2020 before Senior Civil Judge. The defendant No.1 has obtained loan from K.V.Swamy and Anusuya, for the security purpose has executed sale deed, dated: 09.02.2015. Several Panchayath's taken place and the defendant No.2 agreed to give his share measuring 0.20.00.00 guntas to K.V.Swamy and Anusuya and the plaintiff. Though the plaintiffs having no right, title, interest and possession over the suit property have filed this suit just grab the property of the defendant.

8. The plaintiff has produced Sale deed, dated: 05.10.2021, Encumbrance, RTC, Mutation Register Extract, Police Station Acknowledgments, Photographs, Tax paid Receipt, Acknowledgment, Sale deed, dated: 09.02.2015, Patta Book. The defendant has produced RTCs, M.R., Notice, dated: 14.02.2022, Relinquishment deed, Demand Register, Receipts, Order from Tahasildar, Government Hospital Receipts, Letters to Police Officers, Postal Receipts, Postal

Acknowledgments, CD, Photographs, Police Station Acknowledgment, Daily News paper.

9. It is to be noted that at the time of considering interim application, the court need not consider the merits of the case, but interim application has to be disposed off with the help of available documents produced by both sides. The plaintiff has produced Sale deed, dated: 05.10.2021 for having purchase the suit property from one K.V.Swamy S/o Venkategowda in Sy. No. 78/4 measuring 1.26.00.00 guntas. Further the plaintiff has produced sale deed, dated: 09.02.2015 wherein the defendant No.1 has sold the suit property to the vendor of the plaintiff. The RTC bearing Sy. No. 78/4 measuring 1.26.00.00 guntas wherein name of the plaintiff is incorporated. Mutation Register Extract bearing No. T4/2022-23 in the name plaintiff.

10. The defendant Nos. 1 to 3 though contended that they had obtained loan from the plaintiff for which they had executed sale deed for security purpose only. Further the plaintiff has produced the sale deeds executed by defendant

Nos. 1 to the vendor of the plaintiff. Hence the contention taken by the defendant Nos. 1 to 3 holds no water.

11. Firstly, the documents produced by the plaintiff prima facie shows that the plaintiff is in possession of the suit schedule property. That the plaintiff is alleging that the suit schedule property is purchased from its lawful vendor and as such she is in possession of the same. The contention of the defendant is that the documents produced by the plaintiff are concocted and created and as such the plaintiff is not entitled to injunction order. These facts has to be adjudicated by conducting full fledged trial. Hence, in my opinion, the plaintiff is having prima facie case. However the documents produced by the plaintiff prima facie shows that much hardship will be caused to the plaintiffs if not the application is allowed. Hence, the plaintiff is having balance of convenience. The arguments of the learned counsel for the plaintiff are acceptable one. Hence, above points are answered in the **Affirmative**.

12. POINT NO.4: In view of the discussion made above on point Nos.1 to 3, this Court proceeds to pass the following:

O R D E R

I.A.No.I filed by the plaintiff under Order 39 rule 1 and 2 of CPC is hereby allowed with costs.

The defendants or their agents are here by temporarily restrained from causing any interference over the suit schedule property by the plaintiff till disposal of the suit.

(Dictated to the stenographer, transcribed and computerized by her, then corrected pronounced in the open court on this the **22th day of April 2025**)

**(Smt. SHAKUNTHALA R.)
C/c Civil Judge & JMFC.,
Krishnarajapet.**

(order pronounced in the
open court vide separate order)

O R D E R

I.A.No.I filed by the plaintiff
under Order 39 rule 1 and 2 of
CPC is hereby allowed with costs.

The defendants or their agents
are hereby temporarily restrained
from causing any interference over
the suit schedule property by the
plaintiff till disposal of the suit.

**C/c Civil Judge & JMFC.,
Krishnarajapet.**