

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
AT SRIRANGAPATNA**

**Present :-
Smt. Chaitra A.M.,
B.Sc., L.L.B.,
Prl. Civil Judge and JMFC,
Srirangapatna.**

Dated this 7th day of November, 2015

O. S. No. 423/2012

Plaintiffs :-

**1. Sri. Vajeer Saheb
S/o Sri. Babujan,,
aged 55 years,**

**2. Sri. Saalaar Khan,
S/o Babujan, aged 40 years,**

**Both are R/at: Melapura village,
Kasaba Hobli, Srirangapatna Taluk.**

(By Sri.H.R.,-Adv)

Vs

Defendants :-

**1. Sri. S. Ravikumaka,
S/o Sri. Srinivasu,
aged 35 years,**

**2. Smt. Puttalaxmamma
W/o EereGowda,
Aged 40 years,**

**Both are R/at: Melapura village,
Kasaba Hobli, Srirangapatna Taluk.**

(By Sri.M.R.V.,-Adv)

:: Orders on application filed by the plaintiff under Order 39 Rule 1 AND 2 R/W/Section 151 of CPC ::

The plaintiff has filed the application under order 39 Rule 1 and 2 r/w sec. 151 of CPC seeking for an order of temporary injunction to restrain the defendants from alienating the application schedule properties until disposal of the suit.

2. The gist of the application is as follows;

The plaintiff has filed the affidavit. In the affidavit, it is stated that plaintiff filed suit one for a relief of permanent injunction. The plaintiff has shown 'A' and 'B' schedule properties. 'A' schedule property i.e., Sy.No.110/1 belongs to plaintiff and 'B' schedule property i.e., Sy.No.110/3 and 110/4 belongs to defendants. The land of plaintiff is situated behind the land of defendants. The defendants have got their land surveyed and a sketch was prepared by surveyor in this behalf. In the sketch, the surveyor has shown that as a channel is situated by the side of defendants land, but actually after the land of defendants, the plaintiffs garden is there and then channel. So a survey conducted by surveyor is wrongful and a false sketch was prepared and now the defendants are intending to sell their lands for their needs and the plaintiff has no absolutely objections for the

alienation, but the defendants on the basis of the false survey sketch selling the properties where in the garden land of plaintiff is coming but the garden land belonging to plaintiff is not shown in the sketch. Under these circumstances, if the defendants sell their property by wrongly depicting their lands and by including the garden land of plaintiff, the plaintiff will lead to so many disputes and great hardship. The defendants are unnecessarily meddling with the plaintiff property and interfering and the same cannot resist the illegal act of defendant without assistance of court. Under these circumstances, the prevention of alienation is necessary and the plaintiff is having prima-facie case against the defendants and documents also lies in favour of plaintiff. If the temporary injunction is granted no loss will be caused to the defendant. If the Temporary injunction is not granted, the plaintiff will be put to loss and legal injury, the purpose of filing the suit will be defeated and no prejudice will be caused to the defendants. If an order of Temporary injunction is granted, as the plaintiff is claiming their legitimate right over 'A' schedule property. On these allegations the plaintiffs prayed to allow the application.

3. On the other hand the defendants have filed memo stating that written statement filed by them has to be treated a objections to I.A. . In the written statement, it is contended the suit is filed for a relief of permanent injunction restraining the defendant from interfering with plaintiff peaceful possession and enjoyment of the suit

schedule 'A' property and for such other relief the suit is not maintainable and liable to be dismissed. Further contended that avernments made in para 4 of the plaint is partially correct is so far as to conducting and measuring the land by the Survey Department, but it is incorrect to say that a wrongful survey conducted and a false sketch is prepared, based on this sketch the defendants intending to sell suit 'B' schedule property. Further contended that survey department has conducted the survey and measured the land on the application as per the enjoyment and land records by following due process in accordance with law where in the plaintiff appeared and participated in the measurement of the suit 'B' schedule property. The plaintiff has not whispered nor objected for the survey on the spot and endorsed the same by affixing their signature in the mahazar was drawn by the survey officer as the same was correct and legal. But now the plaintiff is causing obstruction to the defendants when the defendants are intending to sell the suit 'B' schedule property and filed the present suit by alleging falsely. Further contended that the plaintiff has surveyed his land 'A' Schedule property after filing the suit on 2.7.2013 and obtained survey sketch for the purpose of selling his land in the suit 'A' schedule property to the very same person to whom the defendants wants to sell the 'B' schedule property. Further the plaintiffs is having alternative remedy under the statutory provisions pleaded under the Karnataka Land Revenue Act. On these

contentions, the defendants sought to dismiss the application filed by the plaintiff.

4. Heard arguments on I.A. for plaintiff and defendants, perused the documents submitted by parties and perused the records.

5. The following points arise for my consideration is as follows:

1. Whether the plaintiff has made out prima facie case against the defendants?
2. In whose favour, the balance of convenience lies?
3. Who will be put to irreparable loss and legal injury?
4. What Order?

6. My findings to the above points are as follows: -

Point No.1 :- In the negative

Point No.2 :- In favour of defendant

Point No.3 :- Defendant

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

REASONS

7. Point No.1: The plaintiff has described 'A' and 'B' schedule properties in the application filed by the plaintiff under order 39 rule 1 and 2 CPC. The plaintiff has stated that he is the owner of suit 'A' schedule property and defendants are the owner of 'B' schedule properties. The

defendants have got surveyed the land and sketch was prepared by the surveyor in this behalf. Now the defendants are trying to sell their land for their needs, the plaintiff is not having any objections for alienation by defendants, but the defendants on basis of the false survey sketch prepared by the surveyor selling the properties where in the garden land of the plaintiff is coming, the garden land belonging to plaintiff is not shown in the survey sketch. Under these circumstances if the defendants wants to alienate the property belonging to plaintiff on the basis of survey sketch, by depicting the land of defendants and by including the garden land of plaintiff, the plaintiff will be put to heavy irreparable loss and legal injury and so many dispute would arise. On these allegations the plaintiff sought to allow the application by granting order of temporary injunction restraining the defendants from alienating the application schedule properties. On the other hand, defendants have contended that the plaintiff filed suit for a relief of permanent injunction with respect to 'A' schedule property only. The defendants have admitted partially true with respect to conducting and measuring the land by survey department, but contended as incorrect to say that wrongful survey is conducted and false sketch is prepared, basing on the false sketch the defendants are intending to sell the suit 'B' schedule property. The defendants also contended that plaintiff has appeared and participated while measuring the suit of 'B' schedule property by survey department. But the plaintiff has not whispered or objected

on the spot and endorsed the same by affixing his signature in the Mahazar drawn by the survey officer as same was correct and Legal. After filing the suit, the plaintiff got measured his land surveyed on 2.7.2013 for the purpose of selling his land to the very same purchaser to whom the defendants want to sell 'B' schedule property. On these contentions, the defendants sought to dismiss the application.

8. On perusal of plaint, the plaintiff filed the suit against the defendants for a relief of permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the 'A' schedule property. The plaintiff has sought the relief of Temporary injunction to restrain the defendants from alienating the application schedule properties. In the application 'A' and 'B' schedule properties are mentioned. 'A' schedule property belongs to plaintiff and 'B' schedule property belongs to defendants. Further on perusal of order sheet dated 8.11.2012, even though exparte Temporary injunction was granted by this court on 9.11.2012 with respect to suit schedule properties and on perusal of order sheet dated 6.8.2013 an exparte T.I. which was granted to suit schedule properties was confined to 'B' schedule property only. But no relief is sought in the plaint with respect to 'B' schedule property. Further para No.2 of the plaint, the plaintiff has categorically and unequivocally admitted that the suit 'B' schedule property belongs to the defendants. As the plaintiff admits that the 'B' schedule property belongs to the

defendants and as no relief is sought for by the plaintiff in respect of 'B' schedule property, the plaintiff has no locus standi to seek discretionary relief of injunction. Moreover when it is the case of plaintiff that he is not in peaceful possession of the 'B' schedule property or that he is having any semblance of right in suit 'B' schedule property. No doubt the plaintiff has stated that his garden land is included in defendant property, but no prayer is sought for by the plaintiff in regard to this aspect and whether the garden land is included or not, it has to be proved by cogent evidence. Under these circumstances, the plaintiff has not made out prima-facie case against the defendants. In view of above discussion I answer this point in negative.

9. Point No.2 and 3:- The balance of convenience is not in favour of plaintiff and if T.I. is granted to application 'B' schedule property only irreparable loss and legal injury would be caused to the defendants. In view of above discussion, I answer these two points in negative.

10. Point No.4:- In view of above discussion on point no. 1 to 3, I proceed to pass the following:-

: O R D E R :

The Application filed by the plaintiff
under order 39 Rule 1 and 2 CPC is
hereby dismissed.

No order as to costs.

(Dictated to the Stenographer on line computer, and then corrected by me and pronounced in the Open Court this the 7th day of November, 2015)

**(Chaitra A. M.),
Prl. Civil Judge and JMFC,
Srirangapatna.**

Order pronounced in the Open Court
(Vide Separate Order)

: ORDER :

The Application filed by the plaintiff under order 39 Rule 1 and 2 CPC is hereby dismissed.

No order as to costs.

JMFC,
Prl. Civil Judge and
Srirangapatna.

