

**IN THE COURT OF ADDL. CIVIL JUDGE & JMFC
AT SRIRANGAPATNA**

DATED THIS THE 13th DAY OF NOVEMBER 2013

:PRESENT:

**Smt. A.G. SHILPA, B.A., L.L.B.,
ADDL. CIVIL JUDGE & JMFC.,
SRIRANGAPATNA.**

O.S. No. 460/2013

Plaintiff:- Ramakrishna S/o late Boraiah, Aged about
45 years, R/at Hosa Anandur Village,
Belagola Hobli, Srirangapatna Taluk.
(By Sri. N.K.Shivaramu, Advt.)

V/S

Defendant :- R.Raju S/o Rajashetty, Aged about 63
years, R/at Hosa Anandur Village,
Belagola Hobli, Srirangapatna Taluk.
(By Sri. B.S.Ananthapadmanabha Adv.,)

PARTIES TO I.A. NO.I.

APPLICANT : Ramakrishna

V/S.

OPPONENT : R.Raju

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ORDERS ON I.A.I FILED UNDER ORDER 39 RULES 1 AND 2 CPC

The plaintiff has preferred an application under Order 39 rules 1 and 2 r/w sec. 151 of CPC praying to grant temporary injunction restraining the defendant or anybody on his behalf from interfering peaceful possession and enjoyment of suit schedule property and not to obstruct the plaintiff to put up construction over suit schedule property until disposal of the above suit.

2. The gist of application is as follows:-

The plaintiff submits that, his mother Smt. Subbamma was in possession and enjoyment of a vacant site measuring 90 x 45 feet bearing janjar No. 144, property No. 133, situated at Hosa Anandur Village, Belagola Hobli, Srirangapatna Taluk since last 30 years without any interruption till her lifetime. All panchayath records was changed and continued in Subbamma's name and tax was paid to the said property. The plaintiff further submits that, his mother Subbamma died on 19.04.2011 leaving behind plaintiff and her children Smt.Nagamma, Shankara, Lokesh, Swamy, Shivakumar to succeed her estate as legal heirs. The plaintiff contend that, Subbamma during her lifetime sold a vacant site east-west 53 feet, north-south 45 feet in the said property to one Ramesh S/o late Kuntegowda of Hosa Anandur Village through a registered sale deed dated 03.10.1992 for valuable consideration of Rs.12,000/- and retain remaining property towards eastern side bearing No. 144/1A and property No. 133. The plaintiff asserts that, after death of Subbamma, plaintiff with consent of his brothers and sisters got changed khatha of suit schedule property to his name and thereby he is in lawful possession and enjoyment of suit schedule property. Subsequently he applied for licence to Belagola grama panchayath to put up construction which was

granted on 11.06.2013 and therefore plaintiff has stocked construction materials, and at the same time the plaintiff has put up fence all around the suit schedule property in order to protect it from strangers. The plaintiff further alleged that, defendants with rowdy elements in the village and taking advantage that, he belongs to schedule caste initiated a criminal atrocity case against plaintiff which is pending before Hon'ble Addl. District & Sessions Judge at Mandya, and at same time, the defendant having no title or interest in the suit schedule property illegally prevented him and labours to carry out construction. Hence, the plaintiff further assert that, he complained to Belagola grama panchayath to measure suit schedule property in accordance with the assessment copy and licence issued to him, and later the panchayath authorities visited the spot after due notice to defendant directing him to produce necessary documents if any in respect to suit schedule property and to be present in person on 15.10.2013.

The plaintiff further assert P.D.O. sought for K.R.Sagar police help to provide protection in order to measure the suit schedule property for necessary action against defendant and his supporters for illegal interference. The plaintiff further alleged that, as per the request of PDO, police constable came to the spot to control the defendant and to prevent his illegal acts, but the defendant did not allow even the police constable to give protection to panchayath authorities in respect to carry out measurement and other acts according to law. The plaintiff alleged that defendant interfered with his possession and enjoyment and tried to remove the fence, construction materials in order to cause

loss, damage, injustice and injury to plaintiff, hence this application is filed.

3. On the other hand, the defendant has filed his objection stating that, the plaintiff on the strength of ex parte temporary injunction with the help of K.R.Sagar police and panchayath authorities came to defendant's land on 20.09.2013 at 11.00 p.m., and damaged its fence, trees and removed toilet in his property. Subsequently the defendant complained to Circle Inspector, Srirangapatna who visited the spot and came to know that, there is no injunction order obstructing the plaintiff from putting up construction and thereby recalled his men from the spot and advised the plaintiff not to interfere with defendant's possession.

It is further submitted that, the plaintiff does not place proper documents to show the manner of acquiring the property. Since the plaintiff has caused loss and damage to the property of defendant on the strength of ex parte temporary injunction order, defendant prays to reject I.A.No.1.

4. Heard the arguments.

5. The points that arise for my consideration are as follows:-

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and injury if T.I. is refused?
4. What Order?

6. My findings to the above said points are as under;

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

Point No.4 : As per final order,

for the following;

: R E A S O N S :

7. **Point No.1:-** At the outset, the plaintiff assert that originally suit schedule site measure east-west 90 feet and north-south 45 feet bearing janjar No. 144 and property No.133 at Hosa Anandur Village within limits of Belagola grama panchayath and it belonged to his mother Subbamma who sold east-west 53 feet and north-south 45 feet with a hut measuring 10 x 10 feet in favour of one Ramesh under a registered sale deed dated 30.10.1992 for a valuable consideration and retained the remaining property towards eastern side. The relevant sale deed is produced.

8. What is pertinent to note is if plaintiff has sold east-west 53 feet and north-south 45 feet with a hut measuring 10 x 10 feet out of total extent 90 x 45 feet, the remaining portion on eastern side must be 37 feet as claimed by plaintiff in the suit. Whereas the plaintiff own document registered sale deed dated 30.10.1992 read the total extent of original site measures east-west 80 feet and north-south 45 feet out of which Subbamma has sold east-west 53 feet and north-south 45 feet with 10 x 10 feet hut.

9. The learned counsel for defendant vehemently argued that the plaintiff is making an imaginary claim and suit schedule property is not at all in existence, and plaintiff is not able to show in what manner and how Smt. Subbamma acquired the vacant site. He further submits that, plaintiff's wife is a panchayath member and on strength of it, plaintiff has fabricated a false case against defendant and he is claiming the property in possession and enjoyment of the defendant. The learned counsel for defendant further argued that, plaintiff's revenue documents does not show his correct boundaries.

10. On the other hand, the learned counsel for plaintiff vociferously argued that, the defendant is not able to produce atleast one document to show he is having right or title over the suit schedule property bearing Sy. No. 144/A, but plaintiff has produced patta book, licence granted by Belagola grama panchayath, tax receipts, and demand register extracts to show his possession and enjoyment over the suit schedule property.

11. The learned counsel for defendant emphasized upon the documents obtained by defendant under right to information act. It is the same demand register extract for the suit schedule property janjar No. 144, coming in the name of Subbamma W/o Boraiah. It is argued that, plaintiff with the help of his wife being the member of panchayath has illegally mentioned the entry in panchayath demand register extract as 37 x 45 feet. Further the learned counsel emphasized on the construction licence vide No 94/2013-14 obtained by defendant from police sub-inspector

K.R.Sagar Police Station under right to information act. It is said to have produced by the plaintiff before the police in respect to suit schedule property. Its boundaries are described as;

East : vacant site of Srinivas

West : House of Ramesh

North : Road

South : House of Raju

The above said document is the same zerox copy of licence produced by plaintiff with plaint vides No. 94/2013-14. It is apparently seen an insertion is made to the boundaries of suit schedule property as, "East: Government beelu land and vacant site of Srinivas".

12. The defendant has produced copy of registered sale deed to show he is in possession and enjoyment of the site bearing No. 105 measuring east-west 120 feet and north-south 80 feet. The defendant has produced registered sale deed and revenue documents to show that he is possession and enjoyment of the land bearing khatha No. 105 measuring east-west 170 feet and north-south 80 feet, 'F' Block, khatha No. 452 measuring east-west 86 + 126/2 and north-south 140 + 108/2 describing its boundaries.

13. The defendant also produced the letter of PDO dated 17.10.2013 addressed to police sub-inspector, K.R.Sagar for protection to carryout measurement in accordance with the assessment and licence issued in favour of plaintiff. The proceedings of President and PDO in this regard are produced.

The plaintiff has obtained an ex parte temporary injunction order on 24.10.2013. It is alleged by defendant that, plaintiff on the strength of ex parte temporary injunction with his associates has caused damage to the properties of defendant in khatha bearing No. 105/1. In this regard a FIR is registered on 20.09.2013 against plaintiff and others on the file of Cr.No.259/13 for the offence punishable under section 143, 447, 427 r/w sec. 149 of I.P.C.

14. In this case on hand, at this stage plaintiff does not produce proper documents to show the correct boundaries of suit schedule property. The defendant denied correctness of boundaries mentioned in the plaint. The defendant asserts that, plaintiff is claiming over the land in his possession. Both the sides' revenue documents are produced to show their possession and enjoyment of the respective properties. All these facts clearly go to show that, facts are not so clear with regard to prima facie title in favour of plaintiff. The defendant has denied the title of plaintiff. The question of title is also an essential ingredient to determine the lawful possession and enjoyment of a land. Who is in actual possession of the alleged land, whether its boundaries are correct or whether land is in existence, all are matter of trial. A prima facie case in favour of plaintiff is not made out. Therefore I answer Point No.1 in the negative.

15. **Point No.s 2 and 3** :- All these points are taken together for common discussion to avoid repetition of facts.

In this case, the plaintiff could not make out a prima facie case at this pre-trial stage. The plaintiff asserts that, he has obtained

licence to put up construction in the suit schedule property and defendant is illegally interfering with his possession.

16. The documents produced by defendant go to show that, it is the plaintiff who has approached police for protection. The first information reports vide Cr.No. 259/13 clearly goes to show that case is registered against plaintiff for the offence punishable under section 143, 447 and 427 r/w sec. 149 of I.P.C. for criminal trespass and mischief caused in respect to the land bearing Sy. No. 105/1 on 29.10.2013. Further the learned counsel for defendant has emphasized upon the legal notice issued by plaintiff to defendant claiming 105/1 and 105/2.

17. The learned counsel for plaintiff has relied upon a decision reported in 2013(3) KCCR 2614 between Byrahanumaiah and Others v/s Govindgowda. It is held as follows;

“With all the materials on record, it is clearly seen that the averments made in the plaint appears to be more genuine and acceptable with reference to documents produced not only by the plaintiff, but also by defendants. In that view of matter, the court below has rightly come to the conclusion that, plaintiff has made out prima facie case that he has been in possession of the suit property even prior

to 26.07.1997, the date when the sale deed was executed in his favour.”

18. In the present case on hand, the plaintiff who claim temporary injunction to restrain defendant not to obstruct him from putting up construction in the suit schedule property, the police records clearly goes to show allegations of plaintiff demolished the structures belonging to defendant on the strength of temporary injunction order. However the plaintiff had obtained only order restraining the defendant not to interfere with his possession and enjoyment of suit schedule property, but not to meddle with anybody's property. On the other hand, the plaintiff has filed an application Under Order 39 Rule 2(A) r/w sec. 151 of CPC against defendant to take action for having obstructed the plaintiff to carry out building work granted by this court on 23.10.2013 and thereby caused damage and injury to his property. The nature of damage and injury is not forthcoming in his affidavit. When title and existence of property is in dispute and materials on record do not make out a prima facie case, the balance of convenience is not seen in favour of plaintiff. Therefore decision relied by plaintiff is not relevant to the facts and circumstances of this case on hand.

19. The learned counsel for defendant relied upon a decision reported in 2001 (1) KCCR 189 between P.S.G. Krishnan v/s Jyothy Narayan Das and others it is held as follows;

“ The trial Court in a suit for injunction and other reliefs found a prima facie case in favour

of plaintiff but permitted construction to be put up by defendant on certain conditions – One of them being to demolish the building without pleading equitable considerations in case the suit was decreed. The plaintiff appealed contending with the prima facie case being held in his favour the Court should have granted temporary injunction against the defendant. The defendant contended that the balance of convenience is in his favour, as he would lose heavy interest on the loan secured by him for construction.

Held: It is no doubt true that the defendant has obtained loan from an institution and that by itself cannot be a ground for ordering construction with no equity. On the other hand, it is safe to issue injunction restraining him from putting up construction with condition on the plaintiff which would rather meet the ends of justice. It is in the interests of both the parties to maintain status quo and they are to be prevented from alienating or parting with possession or creating third party rights. In addition, the plaintiff must be directed to file an undertaking to make good the interest liability of the defendants in the event of losing his case."

The dictum of law laid down supra is aptly applicable to the case on hand. Though the plaintiff has obtained licence for construction from the concerned grama panchayath is no ground to permit plaintiff to put up construction by way of granting temporary injunction as sought in his application. If the parties are allowed to destroy and cause injury to each other or their respective properties, the situation may become more irreversible by the time this court passes final orders. In order to work out equity, it is appropriate recall-exparte temporary injunction order. In the result, the temporary injunction issued restraining the defendant from interfering plaintiff possession and enjoyment of suit schedule property is hereby vacated. I answer Point No.s 2 and 3 in negative.

20. **Point No.4** :- In the light of discussion made above, I proceed to pass the following:-

: O R D E R :

I.A. filed by the plaintiff under Order 39
Rules 1 and 2 CPC is hereby rejected.

(Dictated to the Typist-copyist on line computer, corrected by me
and pronounced in open court on this the 13th day of November 2013)

(A.G. SHILPA)
Addl. Civil Judge & JMFC,
Srirangapatna.

