

IN THE COURT OF THE CIVIL JUDGE & JMFC
HEGGADADEVANAKOTE

PRESENT

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)
Civil Judge & JMFC.,
Heggadadevanakote

Dated: 12th day of February 2021

O.S.No.111/2020

Plaintiff/s : Dasachari S/o.Late Puttaswamachari,
Aged about 56 years, R/o.Shravananahalli
Village, Bilikere Hobli, Hunsur Taluk.
(By Sri.G.N.Narayanagowda, Advocate)

V/s

Defendant/s : 1. Smt.Lakshamma W/o.Late Kempalingachari,
Aged about 70 years,
2. Basavarajachari S/o.Late Kempalingachari,
Aged about 45 years,
3. Brahmalingachari S/o.Late Kempalingachari,
Aged about 42 years,
4. Revannachari S/o.Late Kempalingachari,
Aged about 39 years,
5. Manjachari S/o.Late Kempalingachari,
Aged about 36 years,
6. Jilendrachari S/o.Late Kempalingachari,
Aged about 33 years,
All are R/o.Annuru Village,
Kasaba Hobli, H.D.Kote Taluk.
(By Sri.M.N.R., Advocate)

Applicant : Dasachari (Plaintiff)

V/s

Opponents : Smt.Lakshamma & Others (Defendants)

ORDER ON I.A.No.I FILED UNDER ORDER 39
RULE 1 AND 2 OF C.P.C.

This instant application is filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., to restrain the defendants from interfering in the suit schedule property.

2. The plaintiff has filed affidavit in support of his application deposing that, the suit schedule property bearing land Sy.No.10/49 measuring to an extent of 2.00 acres situated at Annuru Village, Kasaba Hobli, H.D.Kote Taluk, is purchased by him through Registered Sale Deed, dated 01/06/2007 from its previous owners, and the property was delivered to him followed by transmission of his name in the revenue records *vide* M.R.No.H82/11-12. The plaintiff is paying property tax on the suit property. The defendants having no right or interest over the suit property on 08/06/2020 trespassed into the suit land and caused interference in the possession and enjoyment of the plaintiff over the suit property. It is alleged that, the defendants by trespassing into the suit property took away the wooden bricks, which were stored on the land, without the notice of the plaintiff. The defendants have interfered in the cultivation of the suit property by the plaintiff. The plaintiff was able to mitigate the interference by the defendants. However, without the assistance of the Court, he couldn't

further restrain the defendants from interfering into the suit land. It is stated that, the plaintiff has *prima-facie* case, the balance of convenience tilts in his favour and if the injunction is not granted, irreparable loss would be caused to him. On the above grounds, the plaintiff prayed to allow the application.

3. The defendants appeared and filed written statement. They filed memo to treat written statement as also objection to I.A.No.1. The defendants denied every averments of the plaint. According to defendants, the plaintiff is in illegal possession of suit property after forcefully evicting the defendants from their lawful possession using his money and muscle power on the basis of fake Sale Deed relied upon by him. The defendants also denied the alleged interference as set up by the plaintiff. It is stated that, the defendants have questioned the plaintiff's claim over the suit property before the Additional Civil Judge and J.M.F.C., H.D.Kote in O.S.No.263/2013 for the relief of declaration and possession, which ultimately came to be dismissed. Aggrieved by the said judgment and decree, the defendants have preferred an appeal before the Hon'ble Senior Civil Judge and J.M.F.C., H.D.Kote in R.A.No.14/2020 on 06/03/2020. As a counter to the appeal filed by the defendants, the plaintiff herein has instituted this present suit.

4. It is stated that, the land bearing Sy.No.10/49 measuring 3.00 acres situated at Annuru Village is self-acquired property of Late Kempalingachari S/o.Puttachari, i.e., the husband of defendant No.1 and father of rest of the defendants herein. The above land was granted in favour of Late Kempalingachari by the Government by issuance of Grant Certificate in LND-1-77/72-73, dated 19/05/1972. The possession of the land was handed over to him on 22/07/1978. After the said grant, the said Kempalingachari and defendants were in peaceful possession and enjoyment of the above property. Due to financial scarcity after the demise of Late Kempalingachari on 04/12/2000 the defendants herein sold an extent of 1.00 acre out of 3.00 acres of land Sy.No.10/49 in favour of one Rajesh. After parting with 1.00 acre of land, the defendants are in possession and enjoyment of the rest of the 2.00 acres of land.

5. The plaintiff is the husband of sister of defendant No.1 and he was in in-charge of the family affairs of the defendants after the demise of Sri.Kempalingachari. The plaintiff had command over all the family affairs of the defendants. The plaintiff had suggested to defendants not to raise any loan and loose the above land Sy.No.10/49 to the

extent of 2.00 acres, which was left by Late Kempalingachari. He had given assurance that, he would meet marriage expenses of daughter of defendant No.1. The plaintiff had lent Rs.88,000/- on 01/06/2007 and suggested the defendants to mortgage the above property to him for a period of 5 years on good faith. He had also assured that, he would give back the mortgage papers upon repayment of money lent after 5 years. Since the defendants were illiterate and unaware of what was going on, they executed Mortgage Deed on 01/06/2007 at his command. The plaintiff had never interfered in the peaceful possession and enjoyment of the defendants over the above property. It is stated that, the plaintiff went on postponing to receive the money he lent to defendants, though the defendants every now and then asked him to clear the mortgage by receiving the loan amount. However, he did not respond and defendants raised suspicion. When the defendants enquired with the elders and also the Revenue Authorities regarding the said mortgage, but to their dismay they came to know that, the plaintiff got executed Sale Deed in his name in guise of mortgage. Realizing the deceitful act of the plaintiff, the defendants issued a Legal Notice to the plaintiff on 25/03/2013. Though the legal notice was served on him, but the plaintiff failed to reconvey the mortgage by receiving the

loan amount of Rs.88,000/-. However, the plaintiff on 12/05/2013 trespassed into the suit land with goons and asked defendants to vacate the land on the strength of Sale Deed dated 01/06/2007 and forcefully dispossessed them. It is stated that, defendant No.6 was a minor and the plaintiff got his signature on the said Sale Deed by fraudulent means. It is further stated that, the other daughters of defendant No.1, i.e., Sumithra and Gayithri have not signed the said Sale Deed though they were major. The defendants had instituted suit against the plaintiff in O.S.No.263/2013 for the relief of declaration and possession. The suit came to be dismissed and aggrieved by which the defendants have preferred an appeal before the Hon'ble Senior Civil Judge, H.D.Kote in R.A.No.14/2020, which is pending for consideration. The defendants have further taken contention that, the plaintiff has given wrong boundaries to the suit property. The plaintiff has not come to the Court with clean hands, since he suppressed the litigation in O.S.No.263/2013 and R.A.No.14/2020. Amongst other grounds, he prayed to dismiss the application.

6. I have heard the learned counsel for plaintiff and defendants.

7. The points that arise for my consideration are:-

1. Whether the plaintiff proves that he has prima-facie case in his favour?
2. Whether the plaintiff proves balance of convenience in his favour?
3. Whether the plaintiff proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

8. My answer on the above points are 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 final order for the following:-

REASONS

9. **POINT NO.1 TO 3:-** Both the plaintiff and defendants have filed necessary documents in support of their contentions. The copy of Registered Sale Deed, dated 01/06/2007 would reveal that, the defendants herein have executed Registered Sale Deed in respect of suit property bearing land Sy.No.10/49 to the extent of 2.00 acres (out of 3.00 acres) situated at Annuru Village, in favour of plaintiff followed by transmission of his name in the revenue records more particularly R.T.C. on the basis of Mutation Order No.29/2006-07. The R.T.C. of land Sy.No.10/49 discloses that, the property totally measuring 3.00 acres and out of which 1.00 acre is standing in the name of Rajesh S/o.Ningamma.

The defendants admit that, they have alienated an extent of 1.00 acre in favour of said Rajesh through Registered Sale Deed. The plaintiff is shown to be in possession on the strength of the Sale Deed to an extent of 2.00 acres of land Sy.No.10/49. After the Phodi proceedings vide M.R.No.H82/11-12, new land survey number is allotted with respect to an extent of 2.00 acres in the name of plaintiff as Sy.No.10. These documents *prima-facie* discloses that, the plaintiff is in possession of the suit property on the strength of the Registered Sale Deed, dated 01/06/2007.

10. According to the defendants, the plaintiff involved himself in fraudulent act and got executed Registered Sale Deed, dated 01/06/2007 from the defendants on the guise of execution of Mortgage Deed for a period of 5 years in respect of suit property. The defendants have suffered defeat in O.S.No.263/2013 filed by them against the plaintiff for the relief of declaration and possession in respect of the suit property. Aggrieved by the said judgment and decree, he has preferred an appeal before the Hon'ble Senior Civil Judge, H.D.Kote in R.A.No.14/2020, which is pending for consideration. In this regard, he has filed the copies of the judgment and decree in O.S.No.263/2013 and appeal memo in R.A.No.14/2020 and other allied documents. The defendants in order to show that, the land Sy.No.10/49 to

the extent of 3.00 acres was granted in favour of Late Kempalingachari, has produced a copy of Grant Certificate in Form No.I. Though, it *prima-facie* shows that, the land Sy.No.10/49 was granted in favour of Late Kempalingachari, but the defendants failed to establish their claim in O.S.No.263/2013. The appeal preferred by them is pending for consideration. The defendants still need to establish their claim by proving the burden casted on them. More important aspect to be noted herein is that, the defendants admit that, the plaintiff is in possession of the suit schedule property, but illegally. Whether the plaintiff is in possession of the suit property legally or illegally is a matter of trial and can't be considered at this stage. The only thing the Court needs to see is the *prima-facie* case of the plaintiff. On perusal of the documents on record produced by the plaintiff, there appears to be *prima-facie* case in favour of the plaintiff. The plaintiff has passed through the litigation in O.S.No.263/2013. If the injunction is not granted, irreparable loss would be caused to him. The balance of convenience tilts in his favour since the documents produced by him *prima-facie* shows his case. As such, the plaintiff is successful in proving all the ingredients for grant of injunction. Hence, I answer Point No.1 to 3 in the **Affirmative.**

11. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

The application filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., is hereby allowed.

The defendants or anybody acting on their behalf are restrained from interfering in the possession of the plaintiff over the suit property till the disposal of the suit.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **12th day of February 2021**).*

(MD SHAIZ CHOUTHAI)
CIVIL JUDGE & JMFC.,
H D Kote