

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE &
JMFC., AT HEGGADADEVANAKOTE.**

PRESENT : SRI. SURESHA.S.N B.A., L.L.B,
Addl. Civil Judge & JMFC
Heggadadevanakote

Dated:- 26th day of August 2022

O. S. No.330/2019

PLAINTIFF/s : Smt. Nagamma and another

- V / s -

DEFENDANT/s: Sri.Umesh and another

I. A. No.1

APPLICANT/S: *Smt. Nagamma and another*
..... (Plaintiffs)

 V/s

OPPONENT/S: Sri.Umesh and another
..... (*Defendants*)

ORDERS ON I.A. NO.1 UNDER ORDER 39 RULE 1
AND 2 OF CPC

The present I.A. No.1 is filed by the plaintiffs U/o 39
Rule 1 & 2 of CPC seeking for an order of temporary
injunction by restraining the defendants from interfering

with the peaceful possession of plaintiff over the suit schedule property till pending disposal of the suit.

2. In the affidavit accompanying with IA No.1 it is contended that, the suit schedule property bearing Sy. No.29/1 measuring 1 acre situated at B Matakere village is the ancestral property of plaintiffs, and they got changed the khatha of the said property through MRH No.2/2016-17 dated 25.08.2016 after the death of husband of plaintiff No.1 and father of plaintiff No.2 by name Javarappa. The plaintiffs are in possession and enjoyment of the said property. The defendants without having any right, title over the suit property are trespassing the suit property and causing obstruction to the peaceful possession of plaintiffs. In spite of advice by the elders of panchayath, the defendants did not stopped their illegal interference. On these grounds, the plaintiffs have filed this suit for permanent injunction along with this application for interim order of temporary injunction against the defendants.

3. After service of summons defendants appeared through their counsel, and filed written statement along with memo. The contents of w/s may be treated as objections to the said application. The defendants in their objection have completely denied the averments of the plaint. The defendants admitted that the suit schedule property belongs to the family of plaintiffs. But contended that, the plaintiff without the knowledge of defendants falsely got khatha of the suit land, even though they lost their legal right, title and possession of the suit property in view of registered mortgage deed dated 08.04.1958 obtained by the grand father of defendant No.1 Muddappa S/o Devarajappa of Katwal village, Kandalike Hobli. The said mortgage deed executed by Dasaiah @ Yadachaiah is not at all redeemed till date in respect of suit property. The said mortgagor Dasaiah @ Yadachaiah was the grand father of husband plaintiff No.1. The said Dasaiah purchased the said land under registered sale deed in the year 1947 and mutated to his name vide MR No.3/47-48.

The plaintiff not at all mentioned the source of their alleged title in the plaint. The plaintiffs are not at all in possession and enjoyment of the said property. The said mortgage dated 08.04.1958 for 3 years. As 30 years was over, hence the mortgagor or his legal heirs loses the right, title over the said property. The mutations are concocted by the plaintiffs. The said illegal mutations are challenged by the defendants in RA No.158/19 before Asst. Commissioner at Hunsur against the plaintiff, which is pending adjudication. The defendant No.1 also issued legal notice to plaintiffs dated 09.05.2019, since they are interfered with the said mortgaged suit land. The plaintiffs have suppressed the clear title of the suit land and mortgage deed. Hence, on these grounds prays to dismiss the application of plaintiffs.

4. Heard the argument on both side.

5. From the above material the following points arise for my consideration are as follows:

- i. Whether the Plaintiffs have made out a prima facie case?
- ii. Whether the balance of convenience lies in favour of the Plaintiffs?
- iii. Whether irreparable loss and injury would be caused to the plaintiffs if Temporary Injunction is not granted?
- iv. What Order?

6. My answers to the above points is 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

7. Point No.1 to 3: These points have been taken up together for common discussion to avoid repetition as they involve common questions of facts and are interconnected.

8. Perused the IA, supporting affidavit, objections, pleadings, documents produced by the plaintiff.

9. It is the case of plaintiff that, the suit schedule property is the ancestral property of plaintiffs, and they got changed the khatha of the said property through MRH No.2/2016-17 dated 25.08.2016 after the death of husband of plaintiff No.1 and father of plaintiff No.2 by name Javarappa. The plaintiffs are in possession and enjoyment of the said property. The defendants without having any right, title over the suit property are trespassing the suit property and causing obstruction to the peaceful possession of plaintiffs.

10. On the other hand, defendants in their objections admitted that the suit schedule property belongs to the family of plaintiffs. But contended that, the plaintiff without the knowledge of defendants falsely got khatha of the suit land, even though they lost their legal right, title and possession of the suit property in view of registered mortgage deed dated 08.04.1958 obtained by the grand father of defendant No.1 Muddappa S/o Devarajappa of

Katwal village, Kandalike Hobli. The said mortgage deed executed by Dasaiah @ Yadachaiah is not at all redeemed till date in respect of suit property. The said mortgagor Dasaiah @ Yadachaiah was the grand father of husband plaintiff No.1. The said Dasaiah purchased the said land under registered sale deed in the year 1947 and mutated to his name vide MR No.3/47-48. The plaintiff not at all mentioned the source of their alleged title in the plaint. The plaintiffs are not at all in possession and enjoyment of the said property. The said mortgage dated 08.04.1958 for 3 years. As 30 years was over, hence the mortgagor or his legal heirs loses the right, title over the said property. The mutations are concocted by the plaintiffs. The said illegal mutations are challenged by the defendants in RA No.158/19 before Asst. Commissioner at Hunsur against the plaintiff, which is pending adjudication. The defendant No.1 also issued legal notice to plaintiffs dated 09.05.2019, since they are interfered with the said mortgaged suit land. The plaintiffs have suppressed the clear title of the suit

land and mortgage deed.

11. At this stage the plaintiffs have placed RTC extracts, MR extract and tax paid receipts. On perusal of the said documents the name of the present plaintiff is appearing in the said documents which are placed by plaintiffs. On the basis of said grounds and documents the plaintiffs filed the suit against the defendants for permanent injunction in respect of the suit schedule property.

12. It is settled law that the very intention of granting temporary injunction is to be maintain the state of things as it is. This well settled legal preposition can be born out from the ratio laid down by the **Hon'ble High Court of Karnataka reported in 1999 (1) KLJ Page No.577 Smt.Rathnamma V/s B.A.Srinivasa Gupta and Others** where in it is held that:

“CPC 1908- Order 39 R.1 & 2 -Temporary injunction grant of finally purpose of the temporary injunction which is only preventive relief, is to preserve property

is dispute till legal rights of parties are settled. It is issue to keep things in status-quo pending litigation, so that suit is not rendered infructuous by unilateral acts of party. Where a party seeking temporary injunction has satisfied the court that there is question of law or fact to be tried in the suit, that courts interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from with holding injunction will be greater than that which is likely to arise from granting it, parties entitled to relief.

13. Further, it is settled ratio laid down in **ILR 2004 KAR 4076, Fakirasab vs. Syedusab and others**, wherein it is held that:

“CPC 1908, Order 39 R 1 & 2- object of, While considering an application for grant of temporary injunction, that right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.

14. Further, the ratio laid down in **ILR 2007 KAR 1214. Smt.T.K.Gowramma vs. C.K.Raviprasanna** wherein it is held that:

“CPC 1908 -Order 39 R 1 & 2 temporary injunction, the relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour for the trial.

15. Looking to the backgrounds facts of the case, I am of the considered opinion that to maintain the status-quo the defendants are restrained from interfering with the peaceful possession of plaintiffs in the suit schedule property. Hence, I answered Points No.1 to 3 in the Affirmative.

16. Point No.4: In view of my answers to the above points and the reasons assigned therein, the following:

ORDER

The I.A. No.1 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants are restrained from interfering with the possession of plaintiffs in the suit schedule property in any manner, till disposal of the suit.

No order as to costs.

*(Dictated to the Stenographer directly on computer, typed by her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **26th day of August 2022**).*

(SURESHA S.N)
Addl.Civil Judge & JMFC
Heggadadevanakote