

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: 3rd day of February 2021

O.S.No.243/2018

Plaintiff/s : Ejaz Pasha S/o.Mohammed gouse @ Amir Jaan,
Aged about 48 years, R/o.R/o.No.2244,
5th Cross, Basaveshwara Road, K.R.Mohalla,
Mysuru.

(By Sri.A.T.K., Advocate)

V/s

- Defendant/s : 1. Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bengaluru.
2. Secretary,
Forest Department, Vidhana Soudha,
Bengaluru.
3. A.P.C.C.F.,
Aranya Bhavana, Malleshwaram,
Bengaluru.
4. C.C.F.,
Ashokapuram, Mysuru City,
Mysuru.
5. C.F.O.,
Bandipura Wildlife Zone,
Bandipura, Gundlupete Taluk.
6. A.C.F.,
Hediyala, Nanjanagudu Taluk, Mysuru.
7. Zonal Forest Officer,
Nugu Wildlife Zone,
Hosabeervalu, Saraguru Taluk.

(By Learned A.G.P.)

Applicant : Ejaz Pasha (Plaintiff)

V/s

Opponents : The Chief Secretary & 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 by way of installing Railway barricade by digging the trench.

2. The plaintiff has filed affidavit in support of his application deposing that, the defendants are Government Office and its Officials. It is stated that, the plaintiff is absolute owner and in possession of suit schedule item No.1 property having purchased the same from its previous owner-C.Siddalingaswamy S/o.Late Chinnaswamy, his wife-Renuka and their son-Ravikumar through Registered Sale Deed No.2305/07-08, dated 15/11/2007. Similarly, the plaintiff purchased suit schedule item No.2 property from its previous owner-N.Eshwar S/o.Late Nataraj, his wife-Hanshaveni and their children-E.Chethan and E.Chandini through Registered Sale Deed No.3625/07-08, dated 06/02/2008. On the basis of Sale Deeds above referred, the name of plaintiff is entered in the revenue records. Since from the date of purchase, the plaintiff is the absolute owner

and in possession of the suit schedule properties.

3. The defendants though have no manner of right over the suit properties, are trying to interfere by trespassing into it. It is stated that, the Forest Officials by trespassing into the suit properties are digging trench to install Railway barricade on the Eastern side of suit properties. The plaintiff requested the defendants not to dig into the suit properties, but his voice was unheard. After the purchase, the plaintiff was cultivating the suit properties. However, for about 2-3 years since his parents were unwell and were taking treatment at hospital, the plaintiff remained with them for their care and protection. During this period, the lands started growing small herbs. When plaintiff went to clean the lands, the defendants interfered. The plaintiff claimed right over the suit properties. When the defendants did not listen to the plaintiff, he made an application to Survey Department to conduct the joint survey. The defendants Forest Officials trespassed into the suit properties and began to dig the trench for installing Railway barricade. The plaintiff produced necessary photographs to evidence this fact. It is further stated that, the plaintiff has purchased properties adjacent to suit properties from his mother and brother. The plaintiff approached defendants and asked them to stop trenching till the survey take place. Though the

defendants conceded to his request orally, but did not stop trenching. The plaintiff approached concerned Village heads and higher authorities of defendants, but of no avail. The defendants threatened to book the plaintiff if he interferes in their process of digging the trench. The plaintiff approached jurisdictional Police, but it ended without any benefit. According to plaintiff, at the time of purchase of suit schedule item No.1 and 2 properties, it was mentioned in the Sale Deed as Sy.No.3/5 and 3/4 respectively. However, in the year 2011-12, it was modified to Sy.No.3. The defendants with an intention to grab the suit properties, are trying to dig the trench. Without the interference of the Court, the plaintiff will not be able to stop the acts of the defendants. Hence, this application for restraining the defendants to carryout their acts by trenching in the suit schedule property.

4. The learned A.G.P., has appeared and filed objection to I.A.No.I. In their objections, they have contended that there is no cause of action arisen to the plaintiff to file this suit and the suit is barred by law. His contention is that, the suit properties come within the jurisdiction of the forest area, hence this Court has no jurisdiction to entertain the suit. In addition to this, he claims that the defendants have not denied the ownership of the plaintiff over the suit schedule

properties. In order to prevent any conflict between human and elephants at Nugu Forest, by the order of Chief Wildlife Warden railway barricade is being set-up over 3.536 km. The defendants have not trespassed into the property of plaintiff. The plaintiff in order to grab the forest land has filed this false suit. Amongst other grounds, the defendants prays to dismiss the application.

5. I have heard the plaintiff and learned A.G.P., perused the records. The learned A.G.P. has relied upon two decisions in his support of arguments; AIR 1977 SC 2421:ILR 1978 Kar.1; ILR 2011 Kar 2044.

6. 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?

7. My answer on the above points are as follows:-

- | | | |
|------------|---|---|
| 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:- |

REASONS

8. **POINTS NO.1 TO 3:-** The plaintiff has contended that, he has purchased the suit schedule properties from its previous owner through registered sale deeds. His name is also mutated in the revenue records on the strength of sale deeds. Therefore the contention of the defendants that it is a forest land can't be considered. After purchase of the said properties the concerned authorities have mutated the names of the plaintiff in the relevant property records and those *prima-facie* establishes that the plaintiff is in possession of the suit schedule properties. The main apprehension of the plaintiff is that the defendants are trying to trench into the suit schedule property to install railway barricade. In support of their contention, the plaintiff has produced necessary documents to show that he has purchased the suit schedule properties and his name being mentioned in R.T.C.s for the year 2010-11, 2018-19 vide mutation order No.4/2007-08, 7/07-08. On the other hand, the learned A.G.P. has vehemently argued that, there is no cause of action that has arisen to the plaintiff to file this suit. The defendants have not denied the title of the plaintiff and hence the suit for declaration doesn't arise. When main relief itself can't be granted, the granting of interim injunction is an after thought. The defendants have strongly

raised contention with regard to the jurisdiction of this Court to try this matter. The Court has to find out whether the suit lands fall under the ambit of forest area or not. This fact can be decided only at the time of trial. The plaintiff has produced the correspondence letter addressed to Tahasildar, H.D.Kote, Deputy Commissioners Office, Mysuru and Forest Officials for conducting joint survey. However, there are no records to hold that the joint survey took place fixing the boundaries. Therefore the documents on record and the contentions of the defendants raise serious doubt about the situation of the suit lands. Thus, in the circumstances of this nature the Court is not bound to grant temporary injunction unless the parties prove their case during the trial. Hence, this Court answers Point No.1 to 3 in the **Negative**.

9. **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 dismissed.

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 **3rd day of February 2021**).*

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