

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

PRESENT

SRI. SRINATHA.J.N. B.A.L, L.LB,
Addl. Civil Judge & JMFC
Heggadadevanakote

Dated: 6th day of April 2021

O. S. No.238 of 2020

- PLAINTIFF/s :
1. M.R.Radhakrishna
S/o Late.Kappanna @ Ramarao,
Aged about 89 years,
R/o House No.160,
9th Cross,
Paramount Garden,
Kanakapura Road,
Bengaluru.
 2. Chandrashekhar.M.R
S/o M.R.Radhakrishna,
Aged about 52 years,
R/o House No.160,
9th Cross,
Paramount Garden,
Kanakapura Road,
Bengaluru.
 3. Anjalidevi. M.R
D/o M.R.Radhakrishna,
Aged about 47 years,
R/o House No.350,
K.H.B Colony,
Basaveshwara Nagara,
Bengaluru.

4. Anitha M.R
D/o Radhakrishna,
Aged about 50 years,
R/o House No.105,
2nd stage,
Kandaya nagara,
Shreerampura,
Mysuru.

E.T.Madhukumar (GPA holder)
S/o Late.Thimmappa,
Aged about 34 years,
R/o Eregowdanahundi village,
Hullahalli hobli,
Nanjanagudu taluk,
Mysuru district.

(By Sri.G.R.S, Advocate)

V/s

- DEFENDANT/s: 1. Abdul Rehaman
S/o Late Adam Khan,
Aged about 59 years.
2. Sannaswamy
S/o Gopalaiah,
Aged about 43 years.
3. Siddaiah
S/o late Cheluvaiah,
Aged about 54 years.
4. Nazeer ,
Aged about 49 years.
5. Raju S/o Huchaiah,
Aged about 42 years.
6. Devaraju S/o Shivanna,
Aged about 40 years.

7. Somesha S/o Ningaiah,
Aged about 45 year.
All are
R/o Magge (K.R.Pura)
N.Belthuru post,
Antharasanthe Hobli,
H.D.Kote taluk.

(By Sri.M.C.D.K, Advocate)

I. A.No.1

APPLICANT/S: Sri. E.T.Madhukumar (GPA holder of
plaintiff)

V/s

OPPONENT/S: Sri.Abdul Rehaman and others (Defendants)

**ORDERS ON IA.I UNDER ORDER 39 RULE 1 AND 2 OF CPC DATED
03.11.2020.**

- 1.** The present I.A No.I dated 03.11.2020 is filed by the plaintiff U/o 39 Rule 1 & 2 of CPC seeking for an order of temporary injunction against the defendants and their agents restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till pending disposal of the suit.
- 2.** It is the case of the plaintiff that the suit schedule property originally granted vide LNDRH76/1972-73 in the year 1975 in favour of 1st plaintiff and plaintiff No.2 to 4 are children of 1st plaintiff. Plaintiff gave a GPA holder to one Madhukumar. Plaintiff further stated that

defendants have no interest over the suit schedule property. The GPA holder Madhukumar on 21.02.2019 given a representation to Tahasildar for Durasthi of suit schedule property as per the LND CR 677/2019-20 and suit schedule property is pending for pody work. When the 1st plaintiff working in the Central Government Department, the 1st plaintiff executed the GPA one Sundar Das for doing the agriculture work and 1st plaintiff put a signature on stamp papers subsequently the GPA cancelled by the 1st plaintiff. In this regard on 10.10.2011 issued notice to the one Sundar Das and subsequently the 1st plaintiff doing the agriculture activities and plaintiff further submits that, defendants colluded with revenue department and created documents intention of grab the suit schedule property and further stated that 1st defendant filed a suit before this court in O.S. No.122/2013 against the 1st defendant for permanent injunction and said suit was pending for consideration.

- 3.** Plaintiff stated that defendants interfering the suit schedule property continuously in this regard plaintiff filed a complaint before the Beechanahalli police station and given a NCR No.223/20 and subsequently on 22.10.2010 defendants interfering to the suit schedule property assault the GPA holder, in this regard GPA holder filed a compliant against the defendants in H.D.Kote Police Station and give a NCR No.90/2020. 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.

- 4.** After service of summons defendants appeared through their counsel. defendant no.1 filed a written statement and defendant no.2 to 7 filed a memo adopt the written statement of defendant no.1. and defendant no.1 filed separate objection to I.A.No.1 and defendant further contended that written statement consider as part and parcel of the statement of objection. The contention of the defendants It is stated that, the application is not maintainable and further stated that the plaint schedule property is wrong boundary and incorrect Survey number originally belongs to the plaintiff No.1. Defendant further contended that plaintiff no.1 executed an agreement written statement schedule property on 01.05.1985 one Puttamadaiah for sum of Rs.12,000/- as full and final consideration, and plaintiff no.1 put the said Puttamadaiah is in possession of the written statement of the schedule property. The said puttamadaiha based on oral permission and on agreement made over dated 31.05.1985 in favour of the 1st defendant by receiving sum of Rs.20,000/- and Puttamadaiah was put the 1st defendant in possession of the written statement of the schedule property. From the agreement made over dated 31.05.1985 he was in possession and doing agricultural activities in the written statement property. The 1st defendant based

on the said agreement personally contact the 1st plaintiff many time to register the sale deed in his favour but plaintiff did not executed any sale deed. And further contended that, one Raju S/o Siddaiah interfering the 1st defendant peaceful possession and written statement schedule property. In this regard defendant No.1 filed a injunction suit against the Raju in O.S.No.122/2013 before this court and pending for consideration and further contended that i.e., original agreement dated 01.05.1985 and agreement made over dated 30.01.1985 was misplaced and 1st defendant failed to trace the same and further submits that the 1st defendant filed a suit in O.S.No.91/2020 against the plaintiffs including the said Puttamadaiah for the relief of declaration and mandatory injunction before the Hon'ble Senior Civil Judge & JMFC., H.D.Kote said suit is pending for consideration. Hence, he prays for dismiss the I.A.

5. Heard the argument on both side.

6. 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?

7. 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

- 8. Point No.1 .** Perused the IA, supporting affidavit, objections, pleadings, documents produced by the plaintiffs and defendants. In view of the averments made in the plaint and the contentions made in the written statement, it is clear that the subject matter of dispute between the parties' ownership and title of the suit schedule property.
- 9.** Per contra, the defendant contended that and relied the documents xerox copy of the agreement dated 01.05.1985 and agreement made over dated 30.05.1985, plaintiff No.1 executed an agreement written statement schedule property on 01.05.1985 one Puttamadaiah for sum of Rs.12,000/- as full and final consideration, plaintiff No.1 put the said Puttamadaiah in possession of the written statement of the schedule property. The said Puttamadaiah based on oral permission and through on agreement made over dated 31.05.1985 in

favour of the 1st defendant by receiving sum of Rs.20,000/- and Puttamadaiah was put the 1st defendant is in possession of the written statement of the schedule property. From the agreement made over dated 31.05.1985 he was in possession and he was doing agricultural activities in the written statement property. The 1st defendant based on the said agreement personally contact to the 1st plaintiff many time to register the sale deed in his favour but plaintiff did not executed any sale deed in favour of the defendant No.1.

- 10.** However, the defendants relied the documents i.e., xerox copy of the agreement to sale on 01.05.1985 and agreement made over 30.05.1985 these documents produced before this court for reference. Moreover, defendant No.1 clearly admits that i.e., original agreement dated 01.05.1985 and agreement made over dated 30.01.1985 was misplaced and 1st defendant failed to trace the same.

It is well settled law, it has to be regarded as an immovable property with in a meaning of Transfer of Property Act 1882, it has to be by means of registered instrument in case, its value exceeds Rs.100/- if it is intangible, it is required to be effected at registered instrument whatever its value. Accordingly, the transfer of Property Act 1882, transaction, by means of a registered instrument would pass title to some other person. In this case agreement to sale dated 01.05.1985 and agreement made over dated 30.05.1985, the

defendants in his written statement clearly admitted that plaintiff No.1 did not execute the sale deed in his favour based on the agreement to sale dated 01.05.1985, such being the case as per the Transfer of Property Act 1882, agreement of sale dated 01.05.1985 and agreement made over dated 30.05.1985 the defendants, these documents there is no title / ownership pass to the defendants and there is no revenue documents stands in the name of the defendants .

- 11.** This court carefully observed that material on record, suit schedule property, 1st plaintiff was acquired through based on the Saguvali cheeti in favour of the 1st defendant in the year 18.02.1975. The Plaintiff produced the Patta book, RTC, tax paid receipts, gazette notification, mutation copy these documents stands in the name of 1st plaintiff and further the plaintiff produced a computerized RTC in the year 2020-21 in column No.9 M.R.Radhakrishna S/o Kappanna and in column No.10 mode of possession is shows that LNDRH76/72. The all revenue document stands in the name of 1st plaintiff.
- 12.** It is well settled principle of law that, the question of the temporary injunction, this court can observe that, whether plaintiff has made out prima facie or not and prima facie case must not be a confused with prima facie title, prima case means includes very maintainability of suits. In this case plaintiff has made out prima facie case there is no confusion in the prima facie title. In this case plaintiffs have made out

prima facie case by producing revenue documents, and present RTC and tax paid receipts and Patta book and MR extract and more important is grant certificate, On perusal of the revenue documents produced by the plaintiffs, as on the date of the suit, plaintiff is in lawful possession and enjoyment of the suit schedule property has to be seen in the revenue documents and the revenue documents stands in the plaintiff name and accordingly, this court is of the considered opinion that plaintiff has made out a prima facie case in his favour. Accordingly, points No.1 is answered in the Affirmative.

- 13. Points No.2 and 3:** These points have been taken up together for common discussion to avoid repetition as they involve common questions of facts and are interconnected. It is a settled position of law that is a sustain a valid claim for temporary injunction the plaintiffs have not only to establish prima facie case but also to establish further balance of convenience lies in their favour and the irreparable injury would be cause to his if the temporary injunction is not granted.
- 14.** The material on record reveals that the plaintiffs are in possession and enjoyment of the suit schedule property and plaintiffs filed a complaint against the defendants and the acknowledgement copy NCR.No.90/2020 issued by the H.D.Kote Police, it is clearly disclose that the prima-facie defendants interfering the suit schedule property.

Further, the plaintiffs have established prima facie in his favour, accordingly, if the application cannot be allowed, more hardship and loss would be caused to the plaintiffs. Accordingly, one can infer the balance of convenience lies in favour of the plaintiffs. Accordingly, points No.2 and 3 are answered in the Affirmative.

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

ORDER

The IA dated 03.11.2020 filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby **allowed**.

The defendants and their agents are hereby restrained from interfering of the suit schedule property pending disposal of the suit by way of temporary injunction.

(It is necessary to add that the observations made herein above 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 her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **6th day of April 2021**).*

(SRINATHA.J.N)
Addl.Civil Judge & JMFC
H.D.Kote.