

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

PRESENT

SRI. SARFARAZ HUSSAIN KITTUR, B.A., L.L.B. (HONS), L.L.M.,
Additional Civil Judge & JMFC
Heggadadevanakote.

Dated: 28th day of October 2015.

O. S. No.292 of 2013

PLAINTIFF/s : Shivananjappa & another

V/s

DEFENDANT/s: M.B.Shivananda & Others

I. A. NO.IX

APPLICANT/S: M.Sadhashivappa(2nd Plaintiff)

V/s

OPPONENT/S: M.B.Shivananda & Others(Defendants)

ORDERS ON IA NO.IX

This IA dated 14.10.2015 is filed under Order XXXIX Rule 1 and 2 of CPC by plaintiff No.2 seeking an order of temporary injunction against the defendant No.3 to restrain her from interfering with plaintiff's peaceful possession of IA schedule property and also to restrain her from carrying out any construction in the IA schedule property.

2. It is the case of the applicant/plaintiff No.2 that IA schedule property is their ancestral property. That certain portions of the said property have been alienated by them and one such portion measuring 2guntas was sold to V. Nanjegowda i.e., the uncle of

defendant No.3 on 24.07.1978. Subsequent to the demise of her uncle, the defendant No.3 came in to possession of the said land that was sold to her uncle. Later, defendant No.3 started interfering in plaintiffs' remaining portion of the land by trespassing into it. The plaintiffs got issued a legal notice dated 03.12.2004 in this regard and the defendant No.3 stopped her interference. But from 10 days prior to the date of this application, defendant No.3 trespassed into the land belonging to plaintiffs and started putting up a construction. On these grounds the plaintiff No.2/applicant filed this IA.

3. Defendant No.3 filed her objections to this IA 16.10.2015, wherein she denied the averments made by the plaintiffs/applicants. The defendant No.3 disputed the possession of the plaintiffs and also their right over the schedule properties. It is stated that though the Sale is admitted by the plaintiffs, they have suppressed the real facts. That there exists no property that belongs to the plaintiff and there is no question of interference. That defendant No.3 is the absolute owner in possession of the property measuring 02guntas gifted to her by her uncle vide Gift Deed dated 14.08.1989. That she is residing in a house constructed over the said property and she is altering her house within the said property. That plaintiffs have not specified how much of the property was sold by them and have not mentioned the boundaries in the plaint. That defendant No.3 has spent huge amount of money for alteration of her residential house and the plaintiffs have filed the application only to harass her. On these grounds, the defendant No.3 prays for dismissal of the IA.

4. The following points arise for consideration:

- i. Whether the Plaintiff has made out a *prima facie* case?
- ii. Whether the balance of convenience lies in favour of the Plaintiff?

- iii. Whether irreparable loss and injury would be caused to the plaintiff if Temporary Injunction is not granted?
- iv. What Order?
5. Heard both sides.
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: On perusal of the plaint, the plaintiffs have filed this suit for declaration and consequential relief of permanent injunction. They claim to be in possession of suit schedule 'A' and 'B' properties and allege interference on part of the defendants. In plaint para No.4, it is averred that they had sold certain portions of land in suit 'A' schedule property to the defendants No.1 to 16 more than 15years ago and now they cannot say how much extent was sold by them to the each of the defendants and that they do not have any document to that effect. In the objections filed by defendant No.3, it is stated that the plaintiffs have admitted the Sale but have suppressed the real facts and that there is no such property in existence that belongs to the plaintiff.

8. From these rival contentions, following facts can be culled out that are important:

- A. That plaintiffs state that they had sold certain land to the defendant No.3's uncle. Defendant No.3 states that the said property was gifted to her by her uncle.

- B. The Plaintiffs admit the ownership of defendant No.3 to the extent that was purchased by their uncle. However, the plaintiffs claim that there was certain portion that was retained by them and the defendant No.3 has trespassed into the same and is putting up a construction, which means the possession is not with the plaintiffs as claimed by them.
- C. Defendant No.3 states that she is doing the alteration work. Three photos were produced by the plaintiffs. On perusal, it appears that in the place of the shed in photo No.1, there is a house like structure being constructed as appearing in photos No.2 and 3. Looking at the photographs, the construction does not appear to be just an alteration of a house, but it appears to be a whole new construction.

9. In view of the above facts and circumstances and considering the nature of relief sought in the suit, it appears that there are questions that require to be adjudicated at the time of trial. For now it is necessary to protect the property pending adjudication of the case and to pass appropriate order to protect the interest of both parties. Therefore an order of status quo appears to be appropriate in this case. However, it is also important to note that defendant No.3 claims to have spent a lot of money to carry out the construction work and may suffer loss to the extent of the construction material collected. Therefore, it is proper to direct the plaintiff to lead his evidence expeditiously. Accordingly, I answer point No.1 to 3 in the **affirmative**.

10. **Point No.4:** In view of the above discussion and answers to the Points No.1 to 3, I proceed to pass the following:

ORDER

The IA No.IX dated 14.10.2015 filed by the plaintiff No.2 is allowed in part.

The parties are directed to maintain status-quo with respect to IA schedule property pending disposal of the suit.

The plaintiff is directed to lead evidence as expeditiously as possible.

*(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in open **court on 28th day of October 2015)***

(SARFARAZ HUSSAIN KITTUR)
Additional Civil Judge & JMFC
Heggadadevanakote

