

KAMS410002462021

O.S./60/2021

IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT**Smt. Gayatri. B.Com., L.L.M., (IPR)****Addl. Civil Judge & JMFC, Krishnarajanagara.****DATED 30TH DAY OF AUGUST 2021****O.S./60/2021**

PLAINTIFF : B.Ramegowda S/o Late. Biligowda,
Aged about 65 years,
R/at Byadarahalli Village,
Hebbalu Hobli, K.R.Nagar Taluk,
Mysuru District.

-V/s-

DEFENDANT : Sri. B.C.Mahadeva S/o B.S.Chikkaiah,
Aged about 54 years,
Byadarahalli Village,
Hebbalu Hobli, K.R.Nagar Taluk,
Mysuru District.

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 R/W 151 OF
C.P.C

Applicant/plaintiff has filed I.A. No.1 U/o 39 R-1 and 2 R/w 151 of C.P.C. against defendant, restraining defendant, his servants, his agents and other persons acting through him from interfering into his peaceful possession and enjoyment over the application schedule property in the interest of justice and equity.

2. Per contra, learned counsel for respondent/defendant has filed detailed objections praying for dismissal of I.A. with exemplary cost, in the interest of justice and equity.

3. Heard and perused.

4. The following points arise for this court's consideration.

1) Whether the applicant proves that he has got a prima-facie case on hand?

2) Whether the applicant proves that the balance of convenience lies in his favour?

3) Whether the applicant further proves that, it will cause untold hardship and irreparable damages to him, if the present application is not allowed?

4) What order?

5. This court findings on the above points for consideration are as under:

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

6. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the

repetition of facts these points are taken up together for common discussion.

7. Applicant/plaintiff has filed present suit for the relief of permanent injunction against defendant submitting, that he is the absolute owner in possession of the suit schedule property. It is submitted by applicant/plaintiff that suit schedule properties were purchased by him from Shivanna S/o Chikkegowda through a registered sale deed on dated 09-04-2018 by virtue of said sale deed, he is in peaceful possession of the suit schedule properties bearing Sy.No. 169/6, 169/7, 169/5 and Sy.No. 169/11 as per the schedule for properties in the plaint. Present application has been filed by the applicant/plaintiff seeking the relief of temporary injunction against the defendant restraining him from interfering into his peaceful possession and enjoyment over the application schedule properties.

8. Per contra, respondent/defendant has filed his detailed objections contending, that present suit filed by the plaintiff is not maintainable either in law or on facts same is frivolous, misconceived by suppressing true facts as such prayed for dismissal of application. It is the contention of defendant, that the written statement schedule property which is also the suit schedule property was handed over to one Shivanna, out of trust and along with an agreement of re-conveyance from said Shivanna by the respondent/defendant. As a result of said

agreement between the parties as to the re-conveyance of the suit schedule property from one Shivanna by the defendant of the present suit schedule properties there are 2 agreements of sale documents executed by said Shivanna along with his wife Smt. Shylaja in favour of defendant. The respondent/defendant based upon the alleged agreement of sale executed by Shivanna and his wife has filed a suit for the relief of specific performance of contract before Hon'ble Senior Civil Judge, K.R.Nagar. Wherein, the Hon'ble Court has passed an order on I.A. No.1 restraining the 4th defendant in the said suit who is applicant/plaintiff in the present suit from alienating the application schedule property in O.S. 38/2018.

9. The fact of execution of agreement of sale is admitted by the plaintiff, learned counsel for applicant/plaintiff at the time of arguing the matter has submitted that presently applicant/plaintiff is in possession of the suit schedule properties. At no point of time the fact of execution of alleged agreement for sale is denied by them. They are also ready to abide by the order passed by Hon'ble Senior Civil Judge, K.R.Nagar, in O.S. 38/2018. Learned counsel for defendant has not come forward to argue on present I.A. But, however it is contended by the respondent/defendant in his objection statement that at no point of time applicant/plaintiff is in peaceful possession of the suit schedule properties as alleged by him. Applicant/plaintiff in support of his suit has produced documents such as certified copy of the sale deed to show the

fact of purchase of application schedule property by him from Shivanna. He has also produced the certified copy of sale deed of his vendor along with RTC's and MR documents with a tax paid receipt. On perusal of these documents clubbed with the photographs and CD, it is clear that applicant/plaintiff is in peaceful possession of the application schedule property. Applicant has got a prima-facie case on hand. In a suit for bare permanent injunction it is settled principal that only the fact of possession has to be looked into.

10. There are certain essential conditions for applicant/plaintiff to get granted the relief of temporary injunction in his favour those being

Firstly, that there is a prima-facie in favour of the plaintiff i.e., there is a serious question to be tried in the suit and that on the facts before the Court there is a probability of his being entitled to the relief asked for by him.

Secondly, that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before this legal rights can be established on trial, and

Thirdly, that the comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it.

11. Applicant/plaintiff has also produced a copy of acknowledgement issued by PSI, K.R.Nagar as a proof to show that at the time when respondent/defendant has interfered into

his peaceful possession over the application schedule property. He has approached the jurisdictional police station to restrain the defendant from doing illegal acts against him. In respect of the present application, applicant/plaintiff has satisfactorily established a fact of having prima-facie case on hand. Applicant has also made out sufficient grounds to show that balance of convenience lies in his favour. Moreover, upon perusal of the documents those produced by the applicant, it is clear that if the present application has been dismissed. It is the applicant/plaintiff who is put to untold hardship and irreparable injuries.

12. Learned counsel for defendant has produced certified copies of plaint, order sheet and other documents in O.S. 38/2018. It is admitted fact that Hon'ble Senior Civil Judge has passed an order against this applicant/plaintiff restraining him from alienating the application schedule property. This fact also makes it clear that the applicant/plaintiff is in peaceful possession and enjoyment of the application schedule property. Moreover, if present application is allowed, there is no any inconvenience or hardship that is caused to the other side. Hence, this court without further discussion holding applicant entitled for the relief sought for through present application, proceeds to answer these points accordingly.

13. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

Application filed by applicant/plaintiff U/o 39 R-1 and 2 R/w 151 of C.P.C. is hereby allowed with cost.

Further, defendant, his agents, his servants and any other person acting under him are hereby restrained from interfering into applicant/plaintiff's peaceful possession and enjoyment over the application schedule property until disposal of present suit.

[Dictated to the Steno, transcribed by her. Corrected and pronounced by me in the Open Court on this the 30th day of August 2021]

(Gayatri)
Addl. Civil Judge & JMFC.,
K.R.Nagar.