

**KAMS410032182021**



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., AT  
K.R.NAGARA**

Dated this the 19<sup>th</sup> day of November 2022

**PRESENT :- SMT. PAVITHRA R, B.A., L.L.B.,**  
Prl. Civil Judge and JMFC,  
K.R.Nagara.

**O.S./373/2021**

Plaintiff : J.Somashekhara Shetty,  
S/o. Late T.Javaraiah,  
Aged about 67 years,  
R/at Thondalu Village,  
Kasaba Hobli, Hunsur Taluk.

Now R/at No.531, Giridarshini  
Extension, Alanahalli post,  
T.Narasipura Main Road, Mysuru.

**(Rep. By Sri. R.K., advocate)**

V/s

Defendant : N.Gowdappa,  
President, Marikambha temple,  
Aged about 70 years,  
R/at Vinayaka Badavane,  
K.R.Nagara Town,  
Mysuru District.

**(Rep. By Sri. K.R., advocate)**

**PARTIES TO IA-1**

Applicant : J.Somashekhara Shetty  
V/s  
Opponent : N.Gowdappa

**ORDER ON IA-I U/O 39 RULE 1 AND 2 R/W SEC. 151  
OF CPC FILED ON 24.09.2021**

The plaintiff has made an application with a prayer to grant temporary injunction restraining the defendant and anybody on his behalf from interfering with the possession of the plaintiff over the plaint schedule property pending disposal of the suit.

**2.** In the accompanying affidavit the plaintiff has stated that he is the absolute owner and in possession over the plaint schedule property bearing assessment No.5148/3499A situated at Cheeranahalli Main Road, Vinayaka Badavane, 3<sup>rd</sup> cross, K.R.Nagara town, measuring East to West 60 feet (4 feet left by the

plaintiff as a passage on his western side. In revenue records mentioned as 56 feet) and North to South 20 feet, K.R.Nagara Town, bounded on East by: Road, West by: Passage and Marikamba temple, South by: Property of Puttaswamy (J.Panduranga Shetty) and North by: Road, as the same is the self acquired property of his father T.Javaraiah. During the life time of his father he executed Will in favour of his children. On 03.09.1988 the beneficiaries of the Will succeeded to the said properties after the death of T.Javaraiah. The said Will was adjudicated in OS 38/1994 on the file of Civil Judge and JMFC, Hunsur. Khatha in respect of said properties have been changed in favour of beneficiaries of the Will. That the defendant is the president of Marikambha temple (Maramma temple) situated at western side of the plaint schedule property. The defendant is unnecessarily interfering with the plaintiff's possession by not allowing the

plaintiff to put up compound within the measurement of boundaries of the plaint schedule property with an intention to grab the plaintiff's property. On 01.04.2019 and 01.08.2021 defendant continued his interference to the plaintiff's possession. That the plaintiff has prima-facie case and balance of convenience lies in his favour. If this application is not allowed he will be put into irreparable loss and injury. Hence, prays to allow the application.

**3.** Counsel for defendant has filed written statement along with memo to consider the same as objection to IA-1. The defendants contend that the suit is bad for non-joinder of necessary parties i.e., other trustees and administrative body members of the Vinayaka Badavane, Sri Marikambha Seva Prathishtana Seva Trust. He further submits that Sri Marikambha temple exists since 70 years. The entire property shown in engineer sketch belongs to temple

bearing No.3831, assessment No.2661/B measuring 95+66/2 X 128+86/2 acquired by registered gift deed date 03.07.1972 executed by Manikyam Modaliyar S/o Rangaswamy Modaliyar and other trustees. Above property belongs to temple and the same is recorded in assessment khatha of the Town Municipality, K.R.Nagara. Towards the eastern side of temple there is a conservancy galli measuring 13 feet connecting Arjunahalli Road to Vinayaka Badavane 3<sup>rd</sup> cross. The temple has been developed with the funds and residential house for the welfare of the priest and during the month of April a fair is organized by the trust and thousands of people will gather to offer prayer. The plaintiff having knowledge of all these facts has filed this suit only to harass the defendant. The plaintiff has not produced any document to prove his possession and not approached the police if

interference is made by the defendant. Hence, prays to dismiss the application.

**4.** Heard both sides and perused the materials available on record.

**5.** The points that would arise for consideration of the Court are:

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will suffer irreparable injury if the prayer for interim injunction is disallowed?

4. What Order?

**6.** Findings to the above points are as under:

Point No.1 to 3: In the negative

Point No.4 : As per the final order for the following:

## **REASONS**

**7. Point No.1 to 3:** As these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts and reasons. This is a suit filed by the plaintiffs against the defendants for the relief of permanent injunction. The present application is preferred by plaintiff to restrain the defendant and anybody on his behalf from interfering with the plaintiff's possession over the plaint schedule property pending disposal of the suit. The plaintiff in order to substantiate his application produced following documents.....

i) Photograph of plaint schedule property.

ii) Property tax register standing in the name of Somashekhara Shetty S/o T.Javaraiah to an extent 20X56feet of site entire extent for the year 2002-03 to 2007-08.

iii) Tax paid receipt dated 08.07.2014.

iv) Confirmation letter dated 14.03.2019 issued by Chief-Officer, Town Municipality, K.R.Nagara for property No.5148/3499/A to an extent East to West 56 feet and North to South 20 feet issued in favour of plaintiff.

v) Sketch issued by Chief-Officer, Town Municipality, K.R.Nagara for above said property showing east to west 56 feet and north to south 20 feet bounded on east by: road, West by: maramma temple, north by: road and south by: property of Puttaswamy.

vi) Encumbrance certificate form No.16 showing no alienation of plaint schedule property to an extent 20X56 feet for the period 01.04.2015 to 23.02.2019.

vii) Encumbrance certificate form No.16 showing no alienation of plaint schedule property to an extent 20X56 feet for the period 01.04.2019 to 18.02.2021.

viii) Tax demand extracts in respect of plaint schedule property in the name of plaintiff for the year 2018-19 dated 21.02.2019 and 14.03.2019.

ix) True copy of the registered Will wherein Sy.No.71/2 to an extent 0.02 guntas out of 0.06 guntas leaving government road in 0.10 guntas bounded on east by: road, west by: Maramma temple, north by: house under hudko scheme and south by: Ramashetty's house situated at Kanthnahalli Village, K.R.Nagara Taluk which has been allotted to the plaintiff by his father.

x) True copy of death certificate of T.Javaraiah.

**8.** On perusal of above documents and pleadings prima-facie it reveals that the defendant has seriously disputed the plaintiff's title over the plaint schedule property and also there is dispute with respect to identification of plaint schedule property. It is the

allegation of the plaintiff that the defendant is not letting the plaintiff to put up compound within the measurement of boundaries of the plaint schedule property with an intention to grab the plaintiff's property. The plaintiff's case is based on Will under which plaint schedule property fell into the hands of plaintiff. It is relevant to note that the property details mentioned in the Will is a survey number land and the plaint schedule property is an assessment land. There are no documents to show the exact construction of building in the plaint schedule property as per the orders of the local authority which will actually throw light in identifying the exact extent and boundaries of the plaint schedule property. Though there is document to show that building to an extent east to west 56 feet and north to south 20 feet bounded on east by: road, West by: Maramma temple, north by: road and south by: property of Puttaswamy, there is

mention of passage to an extent 4 feet towards western side of the plaint schedule as contended by the plaintiff. In this situation the plaintiff has not filed any documents to show the existence of passage towards the western side of his house. There is a serious dispute with respect to title of the plaintiff and description of the property. When there is such allegation against the plaintiff, granting of temporary injunction is not proper since it requires a detailed trial. It is true that the defendant has not produced piece of documents. But the defendant has specifically denied the title and show cased that there is boundary dispute between the property mentioned in plaint and written statement.

**9.** However, the plaintiff cannot take advantage of the fact that the defendant has not produced the documents since the burden to establish above three is on the plaintiff. From the above discussion at this

juncture the plaintiff has failed to establish prima-facie case and balance of convenience does not lie in his favour. If this application is not allowed no prejudice and hardship will be caused to the plaintiff. Thus, court answers the **Point No.1 to 3 in the Negative.**

**10. Point No.4:** For the foregoing reasons assigned in the above points, the court proceeds to pass the following:

**ORDER**

I.A. No.1 filed by the plaintiff under order 39 rule 1 and 2 r/w Sec. 151 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected, signed and then pronounced by me in the open Court on this the 19<sup>th</sup> day of November 2022)

**(PAVITHRA R)**  
Prl. Civil Judge and JMFC,  
K.R.Nagara.