

KAMS510017362021



**IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC.,
NANJANAGUDU**

Present: Sri. Kishor Kumar M.,
B.A. LL.B.,
I Addl. Civil Judge & JMFC., Nanjanagudu

Dated this 25th day of July, 2023

O.S./143/2021

Between:

Sri. Shivananda,
S/o. Subbappa,
Aged about 45 years,
R./at Valagere Village,
Kasaba Hobli,
Nanjanagudu Taluk. & Another

....Plaintiff

(By Sri **M.Basavarajappa**, Advocate)

And:

Sri. Maalingaiah,
S/o. Late Chikkabasavaiah,
R./at Harathale Village,
Kasasba Hobli,
Nanjanagudu Taluk.

.....Defendants

(By Sri **M.J.Sethu Rao**, Advocate)

Parties to I.A.No.I

Sri. Shivananda

....Applicant/plaintiff**V/s.**

Sri. Maalingaiah

.....Opponent/defendant**Orders on I.A.No.I**

The applicant/plaintiff has filed this application under Order XXXIX Rules 1 and 2 of C.P.C seeking an order of temporary injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property, till disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of I.A.No.I and stated that, he has filed the present suit for the relief of perpetual injunction. The plaintiff in his affidavit stated that, he has purchased the suit schedule property from one Ningamma, W/o. Late Madappa vide Sale Deed dated: 26.02.2020 for Rs.2,88,000/-. Since then, he is in possession and enjoyment of the same as its absolute owner and khata of the same has been mutated to his name vide MR.H.19/2019-20. The defendant without having any kind of right, title or interest over the suit schedule property, is trying to interfere with the possession and enjoyment of the plaintiff over the suit property. In this regard, on 23.01.2021, the plaintiff has approached the concerned police, but the police have advised to approach

competent court of law with an endorsement dated: 14.02.2021. Hence, without finding any alternative, he has filed this suit.

3. The plaintiff in his affidavit further stated that, he has prima-facie case, the balance of convenience lies in his favour and he will be put to untold hardship if the temporary injunction as prayed for IA No.I is not granted. Accordingly, the plaintiff prays to allow I.A. No.I as prayed for.

4. In response to the suit summons, the defendant entered appearance before this court through his counsel. Defendant has filed objections to instant I.A., wherein he submitted that, contents of written statement may also be treated as objections to I.A.No.I. The defendant in his objections denied that, he has interfered with the plaintiff's possession over the suit property. On the other hand, the plaintiff is trying to encroach his land. Moreso, the plaintiff can get his land measured and fixed boundaries by the surveyor. Hence, amongst other grounds defendant prays for dismissal of I.A.No.I.

5. I have heard the arguments of learned counsel for plaintiff and defendant. Perused the entire records. In the facts and circumstances of the case, the points that arise for my consideration are:

- 1. Whether there exists prima facie case in favour of the plaintiff?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**

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

4. What order?

6. My answer to the above points is 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:

:-: R E A S O N S :-:

7. **Points No.1 to 3:-** Points No.1 to 3 are inter-related; hence, I have discussed them together for the sake of brevity and to avoid the repetition of the facts. The plaintiff has filed this suit for the relief of perpetual injunction restraining the defendant from causing interference with their possession and enjoyment over the suit schedule property. As I have already narrated in brief as to what the case of the plaintiff's is and as to what the defense of the defendant is. Hence, it is not required to reproduce the same again in detail.

8. The case of the plaintiff is that, he has purchased the suit property through registered sale deed dated: 26.02.2020. Accordingly, mutation entries of suit property has been entered in his name vide MR No.H19/2019-20. From the date of sale, he is in possession and enjoyment of the suit property. Since, the defendant has interfered with his possession, he has lodged a

complaint against him before the jurisdictional police. The concerned police have given an endorsement stating that, since, the matter is civil in nature directed him to approach the competent court of law.

9. Per contra, defendant contends that, the plaintiff tried to encroach upon certain portion of defendant's land time and again. The defendant has told the plaintiff to get his land measured by survey officials and fixed the boundaries. The plaintiff is adamant in nature and filed this false suit.

10. The plaintiff has produced original sale deed dated: 26.02.2020, which discloses that, the plaintiff has purchased the suit property from Smt. Ningamma and her children for valid consideration of Rs.2,88,000/-. The schedule of sale deed reads as follows : 35 guntas of dry land in Sy.No. 257/1 of Valagere village, Kasaba Hobli, Nanjanagud taluk bounded by East - land of Nagachari, West - Land of Guddappana Prasad, South - road and North - land of Lawyer Nagaraju. The plaintiff has produced R.T.C. extract of Sy.No.257/1 for suit year, wherein it can be seen that, the name of plaintiff found place in column No.9 and 12. The plaintiff has also produced acknowledgement and endorsement issued by Rural Police, Nanjanagudu. The plaintiff has also produced copy of complaint given to Tahasildar, Nanjanagud dated: 09.03.2021, wherein, he complained that, the defendant is interfering with his possession and enjoyment over the suit property.

11. The defendant has produced copy of petition given to Tahasildar, Nanjanagudu dated:07.04.2021, wherein the defendant alleged that, the plaintiff and others have removed the Haddubastu bandu stones of Sy.No.99, Block 8 and endorsement issued by Office of Tahasildar dated: 12.08.2021.

12. Learned counsel for defendant Sri. M.J.S. would submit that, towards the southern side of suit property, there is a road and when the plaintiff attempts to close the said road, the defendant has lodged a complaint against him. But, the said contention is not taken in the written statement. Further, I have perused the petition of the defendant addressed to the Tahasildar, Nanjanagud dated: 07.04.2021, wherein, nowhere it is alleged that, the plaintiff has made an attempt to close the road situated towards southern side of his property. Hence, it can be said that, the said defense is taken for the sake of contention only and the said contention is not substantiated by any document/proof.

13. Learned counsel for plaintiff would submit that, the plaintiff has given complaint against the defendant to the Tahasildar on 09.03.2021. After knowing the said fact, the defendant has given false petition to the Tahasildar on 07.04.2021. Of course, the plaintiff's petition to the Tahasildar is dated: 09.03.2021 and the defendant's petition to the Tahasildar is dated: 07.04.2021. The defendant in his written statement nowhere specifically disputed the correctness of description, boundaries and extent of suit property. It is not the case of defendant that, he is in possession of suit property. His

only contention is that, the plaintiff is trying to encroach upon the certain portion of defendant's land.

14. The documents produced by the plaintiff at this stage, prima-facie proves his possession over the suit property. The description, extent and boundaries as mentioned in the plaint schedule are in consonance with the sale deed schedule. The name of plaintiff found place in column No.9 and 12 of the R.T.C. extract. The documents produced by the plaintiff further discloses that, he has given complaint against the defendant to the concerned police and the police have issued an endorsement stating that, the matter is civil in nature and directed the parties to approach competent court of law.

15. In this suit the applicant/plaintiff made out a prima-facie case in support of the right claimed by him. The court is satisfied that, there is a bonafide dispute raised by the applicant, that there is an arguable case for trial. The documents produced by the plaintiff at this stage show that, he is in possession of suit property. The defendant in his written statement nowhere claims any right, title or interest over the suit property. The applicant further satisfied the court that, he will suffer irreparable injury if the prayer is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The plaintiff in his plaint pleaded that, the defendant is interfering with his possession over the suit schedule property. If, defendant succeeds in his attempt of interfering with his

possession, then the plaintiff will be put to untold hardship and injury.

16. In the facts and circumstances of the case, this court is of the opinion that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite parties by granting it. By considering the facts and circumstances of the case, I answer Point No.1 to 3 in the '**Affirmative**'.

17. **Point No.4:-** For the foregoing reasons and discussions stated therein the application filed by the applicant/plaintiff is deserved to be allowed. In the result, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff/Applicant u/Order XXXIX Rules 1 & 2 of CPC is hereby **allowed**.

The defendant is hereby restrained by way of temporary injunction from interfering with the possession and enjoyment of the plaintiff over the suit schedule property, till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on the computer, typed by her and corrected by me and then pronounced by me in the open court on this the **25th day of July, 2023**).

Sd/-

(Sri.Kishor Kumar M.)

I Addl. Civil Judge & JMFC,
Nanjanagudu