

KAMS510017332021



**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./140/2021

Between:

Smt. Mahadevamma @ Chennajamma,
D/o. Madappa @ Guddappa,
Aged about 65 years,
R./at Valagere Village,
Kasaba Hobli,
Nanjanagudu Taluk. & Another

....Plaintiffs

(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

Smt. Mahadevamma

....Applicant/plaintiff No.1

V/s.

Sri. Maalingaiah

.....Opponent/defendant

Orders on I.A.No.I

The applicant/plaintiff No.1 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 No.1 has sworn to an affidavit in support of I.A.No.I and stated that, they have filed the present suit for the relief of perpetual injunction. The plaintiff No.1 in her affidavit stated that, herself and plaintiff No.2 have purchased the suit schedule property from Madappa @ Guddappa vide Sale Deed dated: 17.06.1971 for Rs.1,000/-. Since then, they are in possession and enjoyment of the same as its absolute owners. The defendant without having any kind of right, title or interest over the suit schedule property, is trying to interfere with the same. In this regard, on 20.03.2021, the plaintiffs have approached the concerned police and a panchayath has been convened. But all went in vein. Hence, this suit.

3. The plaintiff No.1 in her affidavit further stated that, she has prima-facie case, the balance of convenience lies in her

favour and she will be put to untold hardship if the temporary injunction as prayed for IA No.I is not granted. Accordingly, the plaintiffs pray for allow the IA 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 No.1 in his objections contends that, Sy.No.99 has many blocks. Recently, those block numbers have been cancelled and they have combined together and the process of giving new survey number is in progress. Also, he has disputed the correctness of the boundaries furnished in plaint schedule. Hence, amongst other grounds defendant prays for dismissal of I.A.No.I.

5. I have heard the arguments of learned counsel for plaintiffs 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 plaintiffs?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether the plaintiffs 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 plaintiffs have 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 plaintiffs' is and as to what the defense of the defendant is. Hence, it is not required to reproduce the same again in detail.

8. It is the case of plaintiffs that, they have purchased the suit property from one Madappa @ Guddappa through registered sale deed dated: 17.06.1971 for valid consideration of Rs.1,000/-. From the date of purchase, they are in possession and enjoyment of the suit schedule property. Now, the defendant is interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

9. Per contra, the defendant in his written statement contends that, in column No.12 of the R.T.C. extract of suit property for the year 2008-09, no extent mentioned in the name of plaintiff No.1 and only 1 gunta of land shown in the name of father of plaintiff No.1 by name Madappa @ Guddappa. The plaintiffs have not produced any documents to show that, they

are in possession of 3 acres 13 guntas of land. The defendant has disputed the correctness of boundaries and description of the suit property. The defendant further contends that, he has 2 acres of land in Sy.No.99 and he is using the public passage situated towards western side of suit property for ingress and egress to his property. Recently, the revenue department has widened the said passage and made it convenient for public. The plaintiff with an ill-intention to encroach the said passage attempted to fence the said road. The defendant has protested against the said illegal activity of the plaintiffs. Hence, the plaintiffs have brought the present suit.

10. Learned counsel for defendant Sri.M.J.S. vehemently argued that, though 3 acres 13 guntas of land in Sy.No.99/27 stands in the name of plaintiff No.1, but, in column No.12, the name of plaintiff is not mentioned and only 1 gunta of land shown in the name of father of plaintiff No.1. The R.T.C. extracts bearing Sy.No.99/27 produced by the defendant are related to the year 2008-09 and 2021-22.

11. The plaintiffs have produced original sale deed dated: 17.06.1971, which discloses that, the plaintiffs have purchased the suit property from Madappa @ Guddappa. The schedule of sale deed reads as follows : 3 acres 13 guntas of land in Sy.No. 99 of Valagere village, Kasaba Hobli, Nanjanagud taluk bounded by East - land of Puttappa, West – Oni, South – road and North – land of Puttadevamma. The plaintiffs have produced R.T.C. extracts of Sy.No.99/27 for the year 1976-77 to 1999-2000. In old R.T.C. extracts, the name of Madappa @ Guddappa found place in column No.9 and 12 to the extent of 3 acres 14 guntas.

The plaintiffs have also produced Aakar bandh extract of Sy.No.99. The plaintiffs have produced mutation register extract bearing No.T14/2015-16, wherein mutation entries in respect of 3 acres 13 guntas in Sy.No.99 have been entered in the joint names of plaintiffs. In the said MR extract, 1 gunta of land entered in the name of Madappa @ Guddappa in Sy.No.99. The plaintiffs have also produced survey sketch of Sy.No.99/27, wherein, it is shown that, 3 acres 14 guntas of land in Sy.No.99/27 is in the possession of plaintiffs and the property of plaintiffs shown as B2 in the sketch.

12. As discussed above, the plaintiffs have produced original sale deed dated: 17.06.1971 to prove their possession. The R.T.C. extract of suit property for the suit year has been produced by the plaintiffs, wherein the names of plaintiffs found place in column No.9 and 12. In column No.12 of the R.T.C., the extent is mentioned as 3 acres 13 guntas against the names of plaintiffs. It is not the case of defendant that, he is in possession of suit property. Of course, as contended by learned counsel for defendant, in column No.12 of R.T.C. extract for the year 2008-09, the names of plaintiffs are not mentioned. The earlier R.T.C. extracts of suit property right from 1976-77 to 1999-2000 show that, the name of Madappa @ Guddappa found place in column No.9 and 12 to the extent of 3 acres 14 guntas. Hence, by relying upon the one year R.T.C. extract it cannot be said that, the plaintiffs are out of possession of suit property. Even, in the R.T.C. extract produced by the defendant also, the extent is not mentioned in column No.12 against the name of defendant. By relying upon the said R.T.C. extracts, it cannot be said that, the

plaintiffs and the defendant are not in possession of their respective lands. It could be a wrong entry in the R.T.C. extract. The plaintiffs have produced original sale deed, in accordance with sale deed, mutation entries have been entered in their name and R.T.C. extract prepared in their name vide MR No.T14/2015-16.

13. The description, extent and boundaries as mentioned in the plaint schedule are in consonance with the sale deed schedule. The documents produced by the plaintiffs' prima-facie prove their possession over the suit property.

14. Learned counsel for defendant would submit that, the plaintiffs are attempting to fence the public pathway situated towards western side of suit property. No documents or photographs are produced by the defendant to show that, the plaintiffs are making an attempt to fence the pathway or the defendant has given complaint against the plaintiffs to the concerned authority seeking suitable action. In the absence of documents, it cannot be said that, the plaintiffs are making attempt to fence the public pathway said to be situated towards western side of suit property. If really, the plaintiffs try to block the pathway/way situated towards western side of the property, the defendant can complain to the concerned authority. But, on that basis the possession of the plaintiffs cannot be disturbed by the defendant. As per the provisions of Section 133 of Cr.P.C., if really, the plaintiffs try to obstruct to the way, the defendant can report the alleged unlawful obstruction or nuisance to Executive Magistrate and seek removal of such unlawful obstruction or

nuisance from any public place or from any way, which is used by the public.

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

applicants/plaintiffs is deserved to be allowed, in the result, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiffs/Applicants 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 plaintiffs 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