

**IN THE COURT OF THE ADDL.CIVIL JUDGE &
JMFC.,
AT T.NARASIPURA**

: PRESENT :

**Smt. Anitha Kumarie S, B.Sc., LL.M.,
ADDL. CIVIL JUDGE & JMFC,
T.NARASIPURA**

DATED THIS THE 27th DAY OF MAY, 2021

O.S.No.80/2020

Plaintiffs : Smt. B.M. Manjulamma & others

(By Sri. M.D., Advocate)

V/s

Defendants : Sri. Channegowda & another

(By Sri. B.M.N., Advocate)

PARTIES TO IA.No.II and III

Applicant: Smt.B.M. Manjulamma....1st plaintiff

V/s

**Opponents: Sri. Channegowda & another
....Defendants**

COMMON ORDER ON IA.No.II and III

The applicants/plaintiffs have filed 2 applications
U/o 39 Rule 1 and 2 of C.P.C. praying to pass an order of

exparte ad-interim Temporary injunction restraining the defendants and their henchmen, their servants or their legal representatives or anybody acting on behalf of them from interfering with the plaintiff's peaceful possession and enjoyment and also alienating the pliant/application "A" and "B" schedule properties in the interest of justice and equity.

2. The suit summons served on the defendants through RPAD, the counsel for the defendants has appeared before the Court and filed objection to the said interim applications and prayed to dismiss the same.

3. Heard the learned counsels for the both parties and perused the materials placed on record.

4. Now, the Points that would arise for the consideration of this court on IA No.2 are as under:-

1. *Whether the plaintiffs prove that the prima facie case in their favour?*
2. *Whether the balance of convenience lies in their favour?*
3. *Whether the plaintiffs prove that they would be subject to loss and hardship in the event of not allowing the I.A.?*
4. *What Order?*

5. The findings of this court on the above points are as under:-

Point No.1: In the Affirmative

Point No.2: In favour of the plaintiff's

Point No.3: In favour of the plaintiff's

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

6. The Points that would arise for the consideration of this court on IA No. are as under:-

1. *Whether the plaintiffs prove that the prima facie case in their favour?*
2. *Whether the balance of convenience lies in their favour?*
3. *Whether the plaintiffs prove that they would be subject to loss and hardship in the event of not allowing the I.A.?*
4. *What Order?*

7. The findings of this court on the above points are as under:-

Point No.1: In the Affirmative

Point No.2: In favour of the plaintiff's

Point No.3: In favour of the plaintiff's

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

REASONS

8. POINT NO.1 to 3 in IA NO.2 and 3:-

As these points are interconnected with each other, taken up together for consideration in order to avoid the repetition of facts.

The plaintiffs have filed the above suit against the defendants for the relief of declaration of title and consequential relief of permanent injunction in respect of the plaint "A" and "B" schedule properties. The Plaintiff has contended in the annexed affidavits of IA No.2 and 3 that her husband had purchased the landed property bearing Sy.No.1485, extent 1 acre 16 guntas out of 1 acre 24 guntas of Bannur village for valuable consideration from the defendants under the registered sale deed dated 08.09.1998. In the said land bearing Sy.No.1485 to the extent of 0-06 guntas was acquired and utilized for the formation of the Mysuru – Malavalli state Highway. The remaining 0-02 guntas of the land in the above said survey number was again purchased by her husband from the defendants under the regd. Sale deed dated 13.11.1998 for valuable consideration. In the said sale deed dated 13.11.1998 there is a clear

recital in respect of earlier sale deed dated 08.09.1998 referred above and 0-06 guntas has been acquired for the formation of the road i.e., Mysuru- Malavalli Main road and remaining 0-02 guntas of land has been sold and further there is clear recital to the effect that there is no land remaining in the said survey number. The recitals of the sale deeds dated 08.09.1998 and 13.11.1998 executed by the defendants clearly shows that excluding 0-06 guntas utilized for the road, the remaining 1 acre 0.18 guntas is entirely has been purchased by her husband. In view of the sale deeds referred above the katha of the land bearing Sy.No.1485, extent 1 acre 0.18 guntas of Bannur village was changed in the name of her husband and accordingly he was enjoying the plaint/application "A" and "B" schedule properties as the absolute owner in title and possession along with other plaintiffs.

10. The plaintiff contended that her husband died on 15.08.1999 leaving behind him the plaintiffs as his successors in interest to succeed the plaint/ application "A" and "B" schedule properties and other family properties as class-I legal heirs. In view of the inheritance of the plaint/application "A" and "B" schedule properties by the plaintiffs being the successors in interest, the khatha was changed in to the name f first plaintiff's name in INH.No.36/2000-01 in respect of the

plaint/application "A" and "B" schedule properties totally to the extent of 1 acre 18 guntas by the revenue authorities. In spite of khatha was made to the extent of 1 acre 18 guntas, in RTC column No.9 only 1 acre 0.16 guntas came to be entered in her name. Whereas, in the RTC column no.9 in spite of having no land remaining for the defendants in Sy.No.1485, a false entry to the extent 0-08 guntas has been made in the name of the 1st defendant. The defendants being the father and son knows very well that they are not in possession of any portion of land in plaint/application "A" and "B" schedule survey number. In spite of having no right or possession, misusing the false entry made in the RTC colluding with the revenue authority obtained a separate survey number and RTC as Sy.No.1485/2 to the extent of 0-08 guntas behind the back of the plaintiffs.

11. The plaintiff contended that the defendants made a false application before the survey department of T.Narasipura Taluk to fix the Haddubastu for false Sy.No.1485/2, extent 0-08 guntas. The notice of survey department of T.Narasipura Taluk, a legal notice dated: 05.02.2020 was caused through my counsel to the Tahasildar, Survey Supervisor of T.Narasipura Taluk and DDLR of Mysuru to stop the survey stating that there is no land for the defendants to fix the Haddubastu. Due

to the illegal khatha and RTC obtained by the defendants, the land purchased by the husband of first plaintiff was given new survey number as 1485/1, extent 1 acre 0.16 guntas instead of 1 acre 0.18 guntas, The above facts shows that the defendants without having any semblance of right much less possession under the guise of false RTC entry claiming the plaint/application "A" and "B" schedule lands and attempting to dispossess the plaintiffs from the plaint/application "A" and "B" schedule properties by fixing the boundary stone colluding with the survey department. In spite of resistance by the plaintiffs at the spot, the defendants colluding with survey officials and influencing the Bannur police have fixed the boundary stones in the plaint/application "A" schedule land to the extent of 0-08 guntas. Which shows that only on the basis of false revenue RTC entry which is not a document of title, the defendants are claiming the plaint/ application "A" and "B" schedule properties without having any semblance of right much less possession over the same. The defendants are denying the title deeds executed by them and also title of the plaintiffs and thereby unlawfully interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint/application "A" and "B" schedule properties. In the month of February 2020 the defendants are started interfering with the peaceful

possession and enjoyment of the plaint/ application “A” and “B” schedule properties and attempted to dispossess the plaintiffs and also trying to alienate the same. Hence, the above suit has been filed along with accompanied applications No 2 and 3 under order XXXIX Rule 1 and 2 CPC. Hence prayed the to allow the applications.

12. Per contra, the counsel for the defendants has filed objection to the applications filed for granting temporary injunction as is not maintainable either on law or on facts. The suit as is brought is not maintainable either in law or on facts the same is liable to be dismissed when the main suit is not maintainable the question of granting injunction does not arise at all. The khatha in respect of Sy.No.1485/1 extent 1 acre 0.16 guntas is standing in the name of 1st plaintiff and illegal khatha standing in the name of 1st plaintiff in respect of Sy.No.1485/2 extent 0-02 guntas. Only to dispossess the defendants from the property which are in their possession the application is filed. The plaintiff has suppressed the real facts regarding the property purchased by deceased B.L.Anand and its exact location and boundaries of the same. By furnishing false boundaries they are claiming the property in possession of the defendants. It is admitted that on 08-09-1998 the defendants have sold land bearing Sy.No.1485 extent 1

acre 16 guntas in favour of deceased B.L.Anand. It is denied that an extent of 0-06 of land is acquired for formation of Mysuru-Malavalli State Highway. It is admitted that on 13.11.1998 Late B.L.Anand purchased an extent of 0-02 guntas in Sy.No.1485 from defendants. It is further denied that as on the date of filing of this suit khatha is made in the name of 1st plaintiff to the extent of 1 acre 18 guntas in Sy.No.1485.

13. It is the contention of the defendant that land bearing Sy.No.1485 total extent 1 acre 25 guntas which include 0-01 guntas of karab land is the ancestral property of the 1st defendant and the khatha in respect of 1 acre 24 guntas was standing in the name of 1st defendant on 08-09-1998 the defendants have sold an extent 1 acre 16 guntas in favour of B.L.Anand through registered sale deed boundaries for the said extent is east by field channel and land of defendant, land of Jayaramu S/o Chikkarasegowda, west by land of Manchidevegowdana Marigowda, north by land of Chikkarasigowdana Hucchegowda, South by road. Again on 13.11.1998 the defendants have sold an extent of 0-02 guntas in Sy.No.1485 in favour of B.L.Anand @ B.L.Goregowda through registered sale deed bounded on east by land of Manchidevana Mayigowda, West by Field channel, North by Road, South by Field channel and land of Chikkathimmegowda, towards northern

side of road 1 acre 0.16 guntas is sold, towards southern side 0-02 guntas is sold the recital incorporated in the sale deed dated 13.11.1998 that 0-06 guntas is acquired for formation of road but on verification the land is not acquired in Sy.No.1485 for information of road. There is no documents to show that 0-06 guntas of land is acquired for formation of road.

14. The recital wrongly incorporated in the sale deed based on the said recital the plaintiffs are claiming that an extent of 0-06 guntas is acquired for formation of road as per the sale deed khatha in respect of 1 acre 16 guntas in Sy.No.1485 situated towards northern side made in the name of 1st plaintiff. The 1st plaintiff ought to have got khatha changed into her name to the extent of 0-02 guntas towards southern side. The defendants submitted an application for conducting of measurement of properties and accordingly Haddubastu is conducted in respect of Sy.No.1485 and land is podded as 1485/1 extent 1 acre 16 guntas, 1485/2 extent 0-08 guntas and accordingly Durasthu was conducted.

15. The plaintiff is not entitle to get khatha changed into her name towards northern side of road Sy.No.1485/2 because the said property retained by defendants and towards northern side of road as per

sale deed dated 08.09.1998 and khatha is made in the name of plaintiff no.1 to the extent of 1 acre 16 guntas. The plaintiffs have to claim an extent of 0-02 guntas towards southern side of road but they are claiming towards northern side of road.

16. The entries are inserted in the name of 1st plaintiff only on 17.03.2020 during the pendency of this case and falsely mentioned that as per INH No.36/2000-01 khatha is made. It is wrong on the part of the revenue authority as on the said date khatha in respect of Sy.No.1485/2 extent 0-08 guntas was standing in the name of 1st defendant before changing the khatha revenue officer not conducted enquiry and not conducted spot inspection, not issued any prior notice. The said mutation proceedings is challenged before Assistant Commissioner, Mysuru Sub-Division, Mysuru based on illegal entries the plaintiffs are not entitle for any reliefs. Even the boundaries furnished are false. It is further submitted that in Sy.No. 1485 property is not acquired for formation of road. Even after execution of sale deed towards northern side of road the defendants have retained 0-08 guntas of land. The act of the plaintiff no.1 to get khatha to the extent of 0-02 guntas is illegal towards northern side of road. It is further submitted that the sale deed got prepared by the husband of 1st plaintiff and wrongly mentioned the word

that 0-06 guntas of the property is acquired for formation of road. It is submitted that as on the date of execution of sale deed there was an existing road and the said road is in existence from time immemorial. Based on the recital in the sale deed the plaintiffs are asserting that an extent of 0-06 guntas is acquired for formation of road. The said recital wrongly got it typed by late B.L.Anand. The plaintiffs have not made out prima-facie case and balance of convenience is not in their favour if this application is not dismissed the defendants will be put to irreparable loss and injury which cannot be compensated. If the application is not dismissed the amounts to dispossess the defendants from the properties. Hence, prayed to dismiss the applications.

17. The plaintiffs have filed this suit for declaration and permanent injunction in respect of A and B schedule property, along with I.A.NO.2 and 3 U/o 39 rule 1 and 2 of CPC., to restrain the defendants from alienating and interfering with the suit schedule property. It is not in dispute that the 1st plaintiff's husband purchased 1 acre 16 guntas from 1st defendant under registered sale deed dated 08.09.1998 in sy no 1485, again 02 guntas in same Sy.No.1485 have been purchased by the husband of the first plaintiff is also not in dispute but the defendant contend that the

boundary and location of the said 2 guntas are in dispute. The 6 guntas which was mentioned in the registered of sale deed dated 13.11.1998 that which was acquired for formation of road is also in dispute. It is the contention of the defendant that the said Sy.No.1485 no land is acquired for formation of road he also contended that the same was entered by the plaintiff's husband by mistake. There would have been every opportunity for both parties to go through the recitals while execution of the sale deed hence the say of the defendant is unbelievable, it is also mentioned that there is no land left after selling entire extant of land in Sy.No. 1485. On going through the sale deed dated 13/11/1998 in the schedule the boundary towards eastern side land of Manchidevaiyyana Mayigowda, West by Neeruhariyuva Harani, North by Neeruhariyuva Harani than land of Chikkachamegowda, South by road than land in same survey number purchase by the plaintiff dated 8/9/1998. So it is very much clear that the said 2 guntas of land is situated towards the southern side of the A schedule property. But the said boundary is compared with the boundary to the schedule of the B schedule property there is ambiguity and not tally with it. But it is also clear from the southern side boundary to A schedule and northern side B schedule properties the said 2 guntas are situate towards the southern side

of the A schedule property. It shows that in between the said 1.16 guntas and 2 guntas of land there runs main road, though the defendant contended that the road is not formed in the said survey number but he has not mentioned under which survey Number the said road has been formed .It is also doubt created in the mind of this court what made both the parties to mention 06 guntas of land acquired for formation of road as per the recitals of the sale deeds. So there is no clarity in that aspect. It is also clear recital that there is no land left in the said survey number after purchase of 1 acre 0.18 guntas by the plaintiff and alleged 6 guntas acquired for the formation of rad when such being so khatha for the extant of 8 guntas in the same survey number is in great question. The boundary of in the sale deed and the boundaries mentioned in the plaint suit schedule property tallies with each other towards north and southern side which is greatly disputed by the defendant also by compare with the boundaries of the property furnished by the defendants it shows the "B" schedule 2 guntas next to the Mysuru-Malavalli road towards southern side of "A" schedule property as mentioned in the said sketch produced by the defendant. So it is very clear that the plaintiff is clear in the location and boundaries of the suit schedule property.

18. If the defendants are allowed to trespass in to the suit schedule property and permitted to alienate then the same may cause loss and hardship to the plaintiff. All the documents produced by the plaintiff are subject to proof and the same must be proved according to law. At this stage there is no impediment for this court to rely upon the documents produced by the plaintiff. In view of my discussion, I am of the opinion that the plaintiff has established prima-facie case in their favour. It is the plaintiff who will be put to inconvenience and loss if the defendants are not restrained as per I.A.No.II and III. It is the plaintiff who will be put to irreparable loss and injury, if the relief is not granted as prayed in I.A.No.II and III In view of the discussion made above point No.1 is answered in the **AFFIRMATIVE** and point No.2 and 3 in favour of plaintiff.

Point no. 4:

in IA.No.2 And 3 for the aforesaid reasons and discussion this court proceed to pass the following,

ORDER

The I.A.No.II and III filed by the plaintiffs U/o 39 Rule 1 and 2 of C.P.C., are hereby allowed.

The defendants and their henchmen, their servants or legal representatives or anybody acting on behalf of them are restrained from interfering with the plaintiff's peaceful possession and enjoyment and also alienating the plicant/application "A" and "B" schedule properties.

No order as to cost.

[Dictated to the Typist on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on 27.05.2021.]

(Anitha Kumarie S.)
Addl. Civil Judge & JMFC,
T.Narasipura