

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

Present: **Dinesh B.G.**, B.Com., LL.B.,
Civil Judge & JMFC., T.Narasipura.

Dated this the 22nd day of April 2016

O.S. No.336/2015

PLAINTIFF/S: **Smt. Bhagya**,
Aged about 35 years,
W/o. M.M.Murthy,
R/at Muguru Village and Hobli,
T.Narasipura Taluk,
Mysore District.

[By **Sri. G.R.S.**, Adv.]

.Vs.

DEFENDANT/S: **1. Smt. Cinkamma @
Shankamma**,
Aged about 45 years,
W/o. Shambhulinganayaka,
and others.

All are r/at Muguru Village and Hobli,
T.Narasipura Taluk,
Mysore District.

[By **Sri. M.D.**, Adv.]

I.A.No. I

Applicant/s : **Smt. Bhagya** Plaintiff

Vs.

Opponent/s : **Smt. Cinkamma @ Shankamma &
Others....** Defendants

ORDER ON I.A.No. I UNDER O.39 R.1 & 2 OF C.P.C.

The application has been filed by the plaintiff seeking ad-interim of temporary injunction Order restraining the defendants from putting up illegal construction over the suit schedule property.

2. The plaintiff has sworn to an affidavit stating that she is the owner of suit schedule site bearing assessment No.2168 measuring 30 X 12 comprising of petty shop being run by her husband and remaining vacant space is used for storing stock, firewood and agricultural implements. A country tiled house of the defendants is situated on the North of the suit schedule property. Defendants have illegally opened an additional door on the southern wall of their house even though they have main door on the northern side. Defendants are trying to put up steps, water tank and platform (Jaguli) by encroaching the northern portion of the suit schedule property. Plaintiff has made out prima facie case and balance of convenience lies in her favour. If injunction is not granted, she will be put into much hardship and loss. Hence, she prays to allow the application.

3. The defendant No.3 has filed objection, which has been adopted by defendant Nos.1 and 2. They have denied the plaintiff's right, title and possession of the plaintiff over the suit schedule property. They have taken the contention that father-in-law of defendant No.3 namely Maniyana Lingaiah had four sons namely Mahadeva, Puttarachaiyah, Shambhulingaiah @ Shambhulinganayaka and husband of defendant No.3 namely

Maniya @ Maniyanayaka. During lifetime of father-in-law, there was partition among Maniyana Lingaiah and his four sons under the panchayath paluparikath dated 25.11.1971.

4. In the said partition, a four pillared country tiled thotti house was also divided into four shares. Said house was bounded on East and South by main road, West by house of sons of Kunnanadasanayaka i.e., Muthanayaka and Biligirinayaka, and North by open space now galli is situated. In the said house, northeast $2\frac{1}{2}$ ankana portion was given to the share of Puttarachanayaka, southeast $2\frac{1}{2}$ ankana portion was given to Mahadevanayaka, southwest $2\frac{1}{2}$ ankana portion was given to Maniyanayaka and northwest $2\frac{1}{2}$ ankana portion was given to Shambhulinganayaka. In addition, the southern side vacant site of the said house was given to the share of Mahadevanayaka, who had expired one year after his marriage and his wife is settled at S.Megadahalli village. Puttarachanayaka died as a bachelor. The entire house and southern side vacant site has been in possession and enjoyment of families of Shambhulinganayaka and Maniyanayaka. The khata of the country tiled thotti house has been made out in the name of sons of 1st defendant namely Rajanna and Mahesha to the extent of 14 X $29\frac{1}{2}$ feet to the half portion and remaining half portion of the house property stands in the name of 3rd defendant.

5. The plaintiff and her family members have no right in respect of the suit schedule vacant site, which absolutely belongs to defendants. Plaintiff has not made out prima facie

and there is no triable case and balance of convenience does not lie in her favour. Hence, it is prayed to dismiss the application.

6. Heard on both sides.
7. The following points that arise for consideration:
 1. *Whether the plaintiff has made out prima-facie case and balance of convenience lies in his favour?*
 2. *Who will be put to hardship and irreparable loss?*
 3. *What Order?*
8. My answers to the above points are as under:

Point No.1: In the **affirmative**.

Point No.2: **The plaintiff.**

Point No.3: As per the final Order for the following:

REASONS

9. **Point Nos.1 and 2:** Plaintiff has filed the suit for permanent injunction in respect of suit property measuring 12 X 30 feet. It is admitted fact that a country tiled thotti house of defendants is situated on the North of the suit schedule property. Plaintiff claims to be owner of the suit schedule property. The demand register extracts show that earlier suit schedule property was standing in the name of husband of plaintiff and subsequently khata has been made out in the name of plaintiff. It appears the husband of plaintiff was granted license on 11.01.2000 by Muguru Grama panchayath for construction of

house in the suit schedule property. Plaintiff appears to have made payment of tax in respect of suit schedule property. The contention of the defendants that one Maniyana Lingaiah had four sons, namely Mahadeva, Puttarachaiah, Shambhulingaiah @ Shambhulinganayaka and Maniya @ Maniyanayaka – 2nd defendant, of them Mahadeva and Puttarachaiah are no more and the Shambhulingaiah is the husband of 1st defendant and there was partition among Maniyana Lingaiah and his four sons on 25.11.1971 are not seriously disputed by the plaintiff. The fact that four pillared country tiled thotti house originally belonged to Maniyana Lingaiah is also not disputed. The facts that defendants are enjoying the country tiled house and khata of half portion of the house property in janjer No.859 to the extent of 14 X 29 ½ feet in the name of sons of 1st defendant and remaining half portion in janjer No.859 to the extent of 14 X 29 ½ feet in the name of 3rd defendant are not in dispute. The fact that said Mahesha - the son of 1st defendant and his wife and daughter are residing separately on the southwest corner of the house opening the door towards southern side and another son of 1st defendant namely Rajanna and his family members are residing on the northwest corner of the house and the 3rd defendant and her family members are residing on the eastern side of the house are also not disputed by the plaintiff.

10. The plaintiff has claimed that she is in possession and enjoyment of the suit schedule property as a absolute owner. From the photographs, it is seen that husband of plaintiff is running a petty shop in a portion of suit schedule property,

which is not disputed by the defendants. It was argued by counsel for the defendants that plaintiff has not placed documents of title to establish the ownership of the suit schedule property and the documents particularly recitals of partition deed and sale deed dated 28.06.1941 are evident to show that suit schedule property belongs to defendants. As rightly argued by counsel for plaintiff, since this is the suit for bare injunction, there is no need to go into the title of the plaintiff over the suit schedule property and it may be sufficient to consider the lawful possession on the date of suit. That apart, this is not a stage to go into the merits of the case whether or not the plaintiff has got the title over the suit schedule property. At this juncture, what is to be looked is prima facie possession of the plaintiff over the suit schedule property. The demand register extracts and photographs prima facie establish the plaintiff's possession over the suit schedule property.

11. The defendants have claimed that the suit schedule property belongs to them, but they have not made available prima facie materials to show that they are in possession and enjoyment of the suit schedule property. The demand register extracts placed by the defendants show their right and possession over the house properties bearing khata No.482 totally measuring 29 ½ X 20 feet, which has been divided into two portion each measuring 14 X 29 ½ feet and the said properties are standing in the names of sons of defendant Nos.1 and in the name of defendant No.3. But, the demand register extracts relied upon by the defendants do not mention the existence of site property in

the said janjer number and it appears said documents are relating to house property.

12. The certified copy of registered sale deed dated 28.06.1941 shows that late Maniyana Lingaiah i.e., father-in-law of defendant Nos.1 and 3 and father of defendant No.2 had purchased the four pillared house property from one Lingappa son of Subbappa. The boundaries mentioned in the sale deed show that four pillared country tiled house and adjacent vacant site on the southern side up to the main road belonged to said Subbappa and he sold the four pillared thotti house in favour of said Maniyana Lingaiah. According to counsel for defendants, said house along with adjacent vacant site on the southern side was sold in favour of father of 2nd defendant. In other words, it is their case that suit schedule property was also purchased under the said sale deed. But the sale deed mentions that only four pillared thotti house property was sold and right of easement of way on the southern side of the house was conferred under the sale deed. The sale deed prima facie does not reveal that the adjacent vacant site on the southern side was also sold along with the house property. The partition deed dated 25.11.1971 being unregistered and partition in presente cannot be looked into for want of sufficient duty and penalty. That apart, there are no materials to show as to whether or not said partition deed is acted upon. However, this is not the stage to decide the merits of the case whether the defendants have right and title over the vacant site situated on the South of their house i.e., suit schedule property over which the plaintiff has claimed her right. Whether

the plaintiff has right over the property; or whether the defendants have right and title over the suit schedule property, that are required to be adjudicated on merits. At this juncture, the materials prima facie establish that plaintiff is in possession and enjoyment of the suit schedule property. The plaintiff has made out prima facie case.

13. The defendants have admittedly opened the door on the southern side of the house property situated on the North of suit schedule property. The photographs produced at the time of filing of this suit show that no steps were put up to the southern side of the door, whereas the photographs placed by the defendants show that defendants have erected steps to the southern side of the door. The plaintiff has claimed that defendants are going to put up water tank and platform (Jaguli). Till the rights of the parties are adjudicated over the suit schedule property, it is just and necessary to maintain the property in dispute in tact. Otherwise, it will lead to multiplicity of the proceedings. No hardship or injury will be caused to the defendants if defendants are restrained from putting up further construction such as water tank and platform. Hence, I answer the point No.1 in the **affirmative** and the point No.2 is **the plaintiff**.

14. **Point No.4:** In view of my findings, I proceed to pass the following:

ORDER

I.A.No.II under Order 39 Rule 1
& 2 of C.P.C., is allowed.

Defendants are restrained from
putting up any structure on the suit
schedule property till pending
disposal of the suit.

[Dictated to the Stenographer, transcribed by him, corrected and then
pronounced by me in the Open Court, on this 22nd day of April 2016]

(**DINESH B.G.**)
Civil Judge & JMFC., T.N.Pura