

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
AT RAMANAGARA

:PRESENT:

Smt.Anupama Lakshmi.B., B.A., LL.B.,
Addl. Senior Civil Judge & JMFC.,
Ramanagara.

O.S. No.08/2017

DATED : THIS THE 09th DAY OF JULY 2020

Plaintiff : Lakshmiddevamma

-V/s-

Defendants : Chairman and Another
Milk Procedures Co-Operative Society

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I.A No.II

Applicant : Lakshmiddevamma -- (Plaintiff)

-V/s-

Opponents : Chairman and Another -- (Defendants)

Orders on I.A No.II

Applicant/plaintiff filed the instant application under XXXIX Rules 1 and 2 R/w Section 151 of CPC., to restrain opponents/defendants from interfering with the suit schedule property till the disposal of the suit.

2. Case of the applicant as per her affidavit annexed to the application is that, the applicant is in possession of the suit schedule property bearing Sy.No.1/1A measuring 1 acre 17 guntas out of total extent of 4 acres 6 guntas. But, the opponents without obtaining licence have put-up construction in “B” schedule property. The opponents have created documents to knock off the “B” schedule property.

That the opponents without having any right, to knock off the valuable suit schedule properties are causing inconvenience to the applicant. Hence, the application.

3. Opponents/defendants filed statement of objections to IA.II. They have denied the case of applicant. Case of the

opponents is that to construct a new building for Milk Producers Co-Operative Society, application was made to the concerned Gramapanchayath and the Tahsildar, Ramanagara. After following the procedure licence was issued to construct the building. Thereafter, the building was constructed and E-Khatha is registered.

That the suit "A" schedule property is not in existence. The applicant after surveying the property when came to know that no property exists, filed the false suit to squeeze money from the opponents. Since the construction work is over and the opponents are purchasing milk in the said building, if temporary injunction is granted the opponents will suffer hardship. On the other hand, the applicant will not suffer hardship if temporary injunction is refused, since the building is constructed in the Government land. Therefore, the opponents prayed for rejection of the application with costs.

4. Heard.

5. The following points arise for my determination:

- (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 would suffer irreparable loss and injury if temporary injunction is not granted in her favour?*
- (4) *What order ?*

6. My findings on the above points are as under:

Point No.1 : *In the Negative*

Point No.2 : *In the Negative*

Point No.3 : *In the Negative*

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

REASONS

7. **Points No.1 to 3:** These points are inter connected with one another, therefore to avoid repetition and for the sake of convenience they are taken up together for consideration.

8. Plaintiff has instituted the suit for declaration of her title over the suit schedule property and for consequential relief of permanent injunction.

Case of the plaintiff is that, she is the owner in possession and enjoyment of "A" schedule property, which measures 1 acre 17 guntas. But, the defendants have trespassed over 2 guntas of land out of "A" schedule property which is "B" schedule property and are constructing building in the said land by creating documents.

9. Plaintiff has produced RTCs, encumbrance certificate, survey sketch, aakarband, mutation register extracts, copies of requisitions given by the plaintiff to the concerned authorities, copy of sale deed dated:03-04-1970, certified copy of demand register extract and photographs. As per the RTC, plaintiff is in possession of suit "A" schedule property.

10. Case of the defendants is that, they have already constructed building in Government land and they have not interfered with the suit schedule property. Defendants have produced xerox copies of building licence, application given to the Tahsildar, Ramanagara and mahazar, endorsement, notice, resolution of meeting conducted by the Vibhuthikere Grama Panchayath, E-Khatha, tax paid receipts and photographs.

As per the photographs, building of Milk Society is already constructed. Though, the plaintiff has alleged the illegal interference by the defendants in her property, the defendants have denied the said allegation.

11. In this case, Court Commissioner was appointed to measure the suit schedule properties so as to know encroachment if any made by defendants. The Court Commissioner after measuring the proprieties submitted report and sketch stating that, 0.00½ gunta of land in

schedule "A" has been encroached upon by the defendants and building has been constructed.

12. At this juncture, it is relevant to state the interim relief claimed by the plaintiff which is to restrain the defendants from interfering with the suit schedule property. As per the case of the plaintiff herself, the defendants have been putting up construction in her property. Such being the case, question of granting temporary injunction restraining the defendants from interfering with the suit schedule property does not arise. Because, already there is interference in the form of construction of building. Moreover, the plaintiff is not clear as to which suit schedule property she is claiming the relief. Therefore, when there is already a building said to be constructed in the suit schedule property, this Court is of the view that, the plaintiff has to not made out a prima-facie case and balance of convenience does not lie in her favour and she will not suffer irreparable loss as the building is already constructed.

Hence, the plaintiff is not entitled for temporary injunction.

Accordingly, **points No.1 to 3 are answered in the Negative.**

13. **Point No.4** : Based on findings in Points No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A No.II filed by the applicant/plaintiff
under Order XXXIX Rules 1 and 2 R/w
Sec.151 of CPC is rejected.

(Looking to my manuscript computerized by the Stenographer, corrected, signed and then pronounced by me in the Open Court on this the 09th day of July 2020.)

(Smt.Anupama Lakshmi.B)
Addl. Senior Civil Judge & JMFC.,
Ramanagara.