

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.378/2014

DATED : THIS THE 27th DAY OF JULY 2020

Plaintiffs : Sri. Ravi and another

-V/s-

Defendants : President, Ramanagara Urban
Development Authority and others

* * * *

I.A.

Applicants : Sri. Ravi and another - - (Plaintiffs)

-V/s-

Opponent : Sri. Umesha - - (Defendant No.5)

Orders on I.A. filed under Order XXXIX Rules 1 and 2 of C.P.C.,

The applicants/plaintiffs have filed the present application for temporary injunction restraining the opponent/defendant No.5 or his LRs or attorney from constructing any building over the suit schedule property till the disposal of the suit.

2. The applicant/plaintiff No.1 has sworn to an affidavit annexed to the application and submitted that the suit schedule property originally belonged to Abdul Kareem Sab. But the ancestor of plaintiff Channaiah @ Channegowda had been in possession of the said property by cultivating the same. Sri.Channaiah had filed application against the children of Abdul Kareem Sab before the Land Tribunal Ramanagara and after enquiry, land to an extent of 3 acre and 20 guntas in Sy.Nos.107/1 and 108/1 was granted in favour of Channaiah. However, Channaiah had not got mutated land in Sy.No.107/1 in his name.

Channaiah had been in possession the suit schedule property after the grant of land in Sy.No.107/1 and after his death applicants had been in possession of the said property. However, the defendants No.1 and 2 without the knowledge of the applicants have acquired the property of the applicants without paying compensation or any relief to the applicants.

Meanwhile the opponent got created katha from the concerned Panchayat contending that he has purchased the suit schedule property. The opponent on the basis of created katha has been selling the property to the third parties and is constructing houses in the suit schedule property through his relatives. That the court has to finally decide whether the seller of the property to the opponent had right over the property or not. Therefore, the opponent or his LRs have to be restrained from putting up construction over the suit schedule property. Hence, the application.

3. Opponent/defendant No.5 has filed statement of objections and prayed to consider the written statement as part and parcel of the statement of objections. According to the opponent, the plaintiffs have no right over the the suit schedule property and they have no documents to show their possession over the suit schedule property. That as admitted by the witness of the plaintiffs in the cross examination, it is evident that the suit schedule property does not belong to the applicants.

That the documents produced by the applicants are created documents and the applicants have filed similar suit in the Court of Civil Judge, Ramanagara. That the plaintiff in the cross examination has admitted that he had not challenged katha standing in the name of opponent and he has also admitted that as per grant, katha has not been mutated in the name of his father Channegowda.

4. That the plaintiff has admitted that his father had died 35 years ago and thereafter also the plaintiff has not

come forward to change katha in his name. That the opponent has stated in his written statement regarding sale of sites after conversion and the applicants are aware of the said aspect.

5. That the applicants do not have any documents to prove the suit. That the present application is misconceived, as such the third parties who are constructing houses will suffer loss. Since the applicants are not in possession of the suit schedule property, they will not suffer hardship if the application is rejected. Hence, the opponent prayed for rejection of the application with costs.

6. Heard.

7. The following points arise for my determination:

- (1) Whether the plaintiffs have made out a prima-facie case?*
- (2) Whether the balance of convenience lies in favour of the plaintiffs?*
- (3) Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction is not granted in their favour?*

(4) What order ?

8. 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

9. **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.

The present suit is for declaration of title of plaintiffs over the suit schedule property and other relief. As per the case of the applicants, the Land Tribunal, Ramanagara had granted land measuring 3 acre 20 guntas in Sy.Nos.107/1 and 108/1 in favour of the ancestor of the applicants Channaiah @ Channegowda. But the said Channaiah had not got mutated land in Sy.No.107/1 in his name. However, the applicants had been in possession of the said property

till recently. But the defendants acquired the said property without giving compensation to the applicants.

10. At present contention of the applicants is that the opponent is constructing houses in the suit schedule property through his relatives. Though the applicant No.2 has stated in the affidavit that he had produced photographs to show the construction work, no such photographs are produced before the Court.

Apart from that the applicants except the certified copy of the orders passed by the Land Tribunal, Ramanagara, have not produced any document to show that they had been in possession of the suit schedule property. In this regard contention of the applicants is that their ancestor Channaiah had not got mutated katha pertaining to the said property in his name. The RTCs depict names of Mohammed Sharief Sab and Commissioner, Ramanagara-Channapanta Urban Development Authority as the persons who are in possession of the said property.

11. According to the opponent, he has purchased the property and after conversion formed layout and sold sites to third parties. As per RTCs produced by the opponent at present land in Sy.No.107/3 stands in the name of opponent and Commissioner, Ramanagara-Channapanta Urban Development Authority. But the applicants are claiming relief in respect of land in Sy.No.107/1 and as per the xerox copy of sale deed produced by the opponent he had purchased 1 acre 5 guntas of land out of 2 acre 33 guntas in Sy.No.107/1 of Jeegenahalli Village. Whether the vendor of the opponent had title to sell the property to the opponent or not cannot be decided in this application.

Be that as it may. The plaint and the affidavit of the applicant No.2 shows that defendants No.1 and 2 have acquired the suit schedule property. Apart from that it is contended that building is going to be constructed in the suit schedule property and the opponent has not denied construction of building in the land in issue. But an interim

relief has to be granted in aid to the main relief. Here the relief claimed is only declaration of title of applicants over the suit schedule property. Such being the case, this Court is of the view that, the plaintiffs have not made out a prima-facie case in their favour and balance of convenience does not lie in their favour and they will not suffer hardship if temporary injunction is refused. Therefore, I answer **Points No.1 to 3 in the Negative.**

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

ORDER

IA filed by the applicants/plaintiffs
under Order XXXIX Rules 1 and 2 R/w
Section 151 of CPC is rejected.

(Dictated to the Typist directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 27th day of July 2020.)

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