

**THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
CJM AT RAMANAGARAM**

Dated : This the 21st day of September 2016

Present

Smt. M.ANITHA.,
B.Sc., LL.B.,
Prl. Senior Civil Judge & CJM,
Ramanagaram.

O.S 441/2013

Plaintiff : Sri.H.N.Kempaiah

(By Sri. M.G.M., Advocate)

V/s

Defendants : Sri.A.H.Rajanna and others

(D-1 Sri. S.L., Advocate)
(D-3 Sri. M.Y.M., Advocate)
(D-4 to 6 Sri. L.S.B., Advocate)

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**ORDERS ON I.A-2 FILED BY THE PLAINTIFF U/O 39
RULE 1 AND 2 R/W SEC.151 OF CPC AND ON THREE
I.A'S ALL FILED U/O 39 RULE 4 OF CPC RESPECTIVELY
BY THE DEFENDANT NO.1, DEFENDANT NO.4 AND
DEFENDANTS NO.5 AND 6**

As on the date of filing of the suit, the plaintiff has moved two applications both U/o 39 Rule 1 and 2 of CPC. I.A No.2 is filed seeking an order of temporary injunction restraining the defendants, their agents or anybody claiming under them from alienating any portion of the suit schedule property, pending disposal of the suit.

2. In the affidavit appended to I.A No.2, the plaintiff deposed that, he is the absolute owner and have been in peaceful possession and enjoyment of the suit schedule property. He acquired the suit schedule property in the division between himself and his brother. The katha has been made out in his name. Earlier his father Narashimaiah and his brothers got divided during the year 1970 and in such division the suit schedule properties and other extent of the land in the same survey number was given to the share of his father. He has been cultivating the suit schedule property and growing crops and also paying Kandaya regularly. He got the portion of the suit schedule property converted for Non-agricultural purpose. The 1st defendant is known to him and he said that he would assist him in getting the order of conversion as he is well versed in that matter. Thus, the defendant No.1 obtained General power of attorney from him. Since, the defendant No.1 has acted adverse to his interest, he has cancelled the General power of attorney through registered deed dated 31.10.1996. The 1st defendant has no subsisting right or interest in the suit schedule property as on 31.10.1996. The defendants have no manner of right, title or interest nor in

possession of any portion of the suit schedule property. But, since three months the defendants No.2 to 6 have been coming near the suit schedule property and have been trying to alienate the same. The defendants No.2 to 6 claims that, they have sale deeds alleged to have been executed by the 1st defendant. He made enquiries and came to know that, after cancellation of the power of attorney the 1st defendant has executed the sale deed describing himself as power of attorney holder. None of the sale deeds binds on plaintiff as they have all coming into existence after cancellation of the power of attorney. The defendants No.2 to 6 have not derived any valid right or title much less possession by virtue of such illegal documents. The defendants No.2 to 6 claims that, they got the katha mutated to their name and therefore they are entitled to proceed with construction. Since the defendants could not able to construct, they are trying to disposes the property jointly or severally so as to defeat the right of the plaintiff. If the defendants alienate any portion of the suit schedule property, he would suffer irreparable loss as it would leads to multiplicity of litigation. The defendants are very powerful and influential persons. Wherefore the order of temporary

injunction is necessary. No prejudice will be caused to the defendants, if an order of injunction is granted. The balance of convenience lies in his favour. Hence, it is prayed to allow the application.

3. As on the date of the suit, this Court granted the exparte order of temporary injunction as prayed in I.A.2 and it is being extended from time to time. The defendant No.1, 4, 5 & 6 who entered appearance through their counsel have filed respective applications all Under order 39 Rule 4 of CPC to vacate the said order of exparte injunction.

4. In the affidavit filed in support of his said application, the defendant No.1 prayed to read the contents of his written statement as part and parcel of his affidavit. Besides, he deposed that, plaintiff executed a General power of attorney authorizing him to sell the property by carving out site and which he had done long back. He along with his associates invested the money and obtained the power of attorney in his individual name, for valuable sale consideration and acted further in getting the land converted for Non-agricultural purpose and after getting approval has formed a layout and sold the sites to several individuals. The

plaintiff, who is backed up by land sharks, is in the habit of filing frivolous cases and setting up false claims in order to please the 3rd party purchasers who had not been in the spot. Further the plaintiff in the earlier instant has filed one suit in O.S No.61/1999 before Civil Judge (Jr.,Dn) Ramanagara alleging interference about his alleged possession. He has appeared in the said case and filed his detailed written statement along with documents. The said suit came to be dismissed for default on 28.08.2004. The plaintiff by misleading has sold the property to one Mr.Lakshaman on 28.08.2006. The said purchaser Mr.Lakshaman after coming to know that, already sites were formed and several individual site owners are in possession of the respective sites has cancelled the sale deed by deed of cancellation dated 08.09.2006. The plaintiff has no subsisting right, title & interest in the suit schedule property as on the date of suit. The suit itself is false. Besides, the suit is barred by limitation & court fee paid is insufficient. Since, the properties already converted to Non-agricultural purpose, the court fee is to be paid on the value of converted land. Wherefore, it is prayed to dismiss the application filed by the plaintiff and to vacate the interim order.

5. In the affidavit sub-joined with his application, the defendant No.4 deposed that, the plaintiff on suppressing the material facts had obtained an order of ex parte temporary injunction and thereby creating problems at the spot. The plaintiff under the guise of the said order has given many complaints against this defendant and other purchasers. The suit itself is not maintainable and therefore the interim order granted is liable to be vacated. No hardship would be caused to the plaintiff on vacating the injunction order.

6. The defendants No.5 and 6 together filed I.A U/o 39 Rule 4 of CPC. In the affidavit filed in support of their application, the defendant No.5 deposed that, the plaintiff on suppressing materials facts has obtained an order of temporary injunction from this Court. That under the guise of said order; the plaintiff is creating problems at the spot. The suit of the plaintiff itself is not maintainable and therefore the plaintiff is not entitled for an order of temporary injunction. No prejudice will be caused to the plaintiff on vacating the interim order. Wherefore it is prayed to vacate the order.

7. Apart from filing application U/o 39 Rule 4 of CPC to vacate an order of temporary injunction, the contesting defendants prayed the Court to treat their respective written statements as objection to the I.A.2. It is the common defence of the said defendants that, plaintiff cannot maintain the suit in respect of plaint schedule property in view of the conversion effected in the year 1992 and the sites have been carved out in the suit schedule property. The jurisdictional gramapanchayath has assessed the property tax in respect of the sites formed in the plaint schedule property. After conversion of the land, the plaintiff through his General power of attorney the 1st defendant herein has formed a residential lay out based upon approved plan and on paying lay out charge to concerned panchayath. The lay out plan has been approved on 11.12.1993 by the village panchayath and taxes were paid. The plaintiff through his power of attorney i.e., 1st defendant herein has sold one site bearing plot No.154, khatha No.166 in favour of defendant No.2 for a valuable sale consideration under registered sale deed dated 31.10.1996. The 2nd defendant in turn sold the said site in favour of defendant No.3. The plaintiff has not delivered any information to the

defendant No.1 about the cancellation of the power of attorney, the defendant No.1 who is the power of attorney holder of the plaintiff, sold all the sites so formed in the suit schedule property in favour of several people. The plaintiff without impleading the purchasers of suit property has approached this court contending that, sale transaction effected by defendant No.1 in favour of several person does not bind itself, which cannot be accepted.

8. The plaintiff resists the application filed by the defendants No.5 and 6 U/o 39 Rule 4 of CPC on filing objection to the same. The objection of the plaintiff is that, the application is not maintainable. He has not creating problems as alleged. But, it is a fact that, the defendants are still trying to sell the property. Therefore it is just and necessary to reject the application.

9. In view of above rival contention of the parties, the following point arise for determination:-

1. *Whether the prima facie case and balance of convenience lies in favour of the plaintiff?*

2. *Whether the plaintiff will be put to hardship and irreparable loss on vacating the order of ex parte temporary injunction?*

3. *What order?*

10. Having heard the arguments of both the counsels at length, I have carefully scrutinized all the applications on hand in the backdrop of materials made available. Now, findings of the court on the points are as under:-

Point No.1 & 2:-	In the Negative
Point No.3:-	As per final order for the following:-

REASONS

11. **Point No.1 and 2:-** On a first flesh, let me mention the material admitted facts which are as under:-

1. The plaintiff was the erstwhile owner of the land bearing Sy.No.105/2A-1, measuring 8 acres 1 guntas, situated at Bannikuppe village, Bidadi Hobli, Ramanagara Taluk, who got the same in a family arrangement that was effected on 20.07.1990.

2. The plaintiff has executed a registered General power of attorney dated 10.03.1993 in favour of A.H.Rajanna the defendant No.1 herein.
3. The defendant No.1 has already alienated several sites in favour of various persons under registered deed of sale.
4. The defendants No.2 to 6 are the purchasers of some of the sites under registered deed of sales.

12. In the backdrop of admitted facts extracted above, let me delve with the points for determination.

13. The plaintiff though admitted that, he has executed the General power of attorney in favour of defendant No.1 has however contended that, he has cancelled the same through a registered cancellation deed dated 31.10.1996 and informed the same to the defendant No.1. The plaintiff produced the copy of General power of attorney dated 10.03.1993 and the original deed of cancellation of said General power of attorney which is dated 31.10.1996. Since the General power of attorney dated 10.03.1993 is an

admitted document, the court can safely rely upon the contents of the same. As it could be seen from the contents of general power of attorney dated 10.03.1993 the plaintiff being the owner of the property has authorized the defendant No.1 herein to move the applications for conversion of the land, to apply to the legal authority for approval of plan, to appear before any court in respect of the matter related to the property, to engage counsel to develop the lands in any manner as he deem fit and for such other purpose contemplated in the General power of attorney. Thus it is clear from the recital of the said general power of attorney that, the plaintiff has authorized the defendant No.1 who is his power of attorney to do all those acts which are enumerated in the General power of attorney.

14. It is the statement of defendant No.1 that, based upon the said General power of attorney, he got converted the land for Non-agricultural purpose, formed the layout of sites and has alienated the sites in favour of various persons. At this point, it is significant to mention that, the defendant No.3 in his written statement has mentioned the chart showing the details of the sites, dimension of the sites, names

of purchasers of the sites and the assessment number of the sites. At this point, incidentally I may bring it on record that, several persons have already filed applications U/o 1 Rule 10 of CPC to implead them as defendants in the present suit as they are the respective purchasers of the sites formed in the plaint schedule property. In support of their applications, the proposed defendants have produced several documents consist of sale deeds, khata extracts and tax paid receipts etc., Be that as it may.

15. The plaintiff of course produced the original deed of cancellation of general power of attorney along with the plaint. But, the plaintiff has not produced an iota of document prima facie to show that, he has communicated his power of attorney i.e., defendant No.1 about the cancellation of the General power of attorney. The plaintiff himself produced the copies of certain sale deeds along with plaint, which sale deed reveals that, based upon the General power of attorney dated 10.03.1993 the defendant No.1 has already alienated certain sites under registered deed of sales. As a matter of fact, seven sale deeds are being executed on 31.10.1996. According to the plaintiff, he has cancelled the General power of

attorney on 31.10.1996. Thus prima facie it appears to the court that, as on the date of cancellation of the General power of attorney, the defendant No.1 has executed the sale deeds in favour of various purchasers. Wherefore, prima facie it appears to the court that, the defendant No.1 without having knowledge about the cancellation of the general power of attorney has executed the sale deeds in favour of defendants No.2 to 6 and some other purchasers.

16. The documents such as demand register extract and tax paid receipt reveals that, already the consent gramapanchayath entered the names of purchasers of the sites as khathedars in its records and also collected the tax from them.

17. On considering the facts and circumstances of the case and the documents produced by both the parties, it appears to the court that, general power of attorney admittedly executed by the plaintiff in favour of defendant No.1 is already acted upon. Added to this, various persons like defendants No.2 to 6 have already purchased the sites carved out in the plaint schedule property. Further, it appears to the court that, the plaintiff already defeated in his

legal battle in respect of suit schedule property. To elaborate, the plaintiff who in the earlier incident has filed O.S No.61/1999 has not obtained any relief in that suit. Wherefore, if an order of ex parte temporary injunction is confirmed, the defendants who appears to the bonafide purchasers of the sites will be put into hardship. The plaintiff is required to establish that, the suit schedule property is still an agricultural land and defendant No.1 has purposefully alienated the property after cancellation of the General power of attorney. If the plaintiff is able to establish the said fact at the time of trial, he can be suitable compensated. As such, it appears to the court that, the prima facie case and balance of convenience are not in favour of the plaintiff. It is the defendants who will be put into hardship, if an order of temporary injunction is not being vacated. Hence, I am inclined to hold the **point No.1 and 2 in the Negative.**

18. **Point No.3:-** As per final order:-

ORDER

I.A No.2 filed by the plaintiff
U/o 39 Rule 1 and 2 r/w Sec.151 of
CPC is hereby dismissed.

Three I.A's all filed U/o 39 Rule 4 of CPC by the defendant No.1, 4, 5 & 6 are hereby allowed. In the result, the exparte temporary injunction order granted on 27.08.2013 is hereby stands vacated.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 21st day of September 2016)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**