

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

Dated : This the 21st day of November 2020

Present

Sri. N.S.Kulkarni.,
B.Com., LL.B Spl.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S 87/2015

Plaintiffs :- Sri. Veerabhadraiah
Since dead by his Lrs
(a) Smt. Gowramma and others

(By Sri. B.D., Advocate)

V/s

Defendants:- Smt. S.B.Mangala and others

**(Defendants 1 to 6 and 8 – Exparte)
(D.7 Sri. S.S.N., Advocate)**

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**Orders on I.A No.1 filed by the plaintiff
U/o 39 Rule 1 and 2 of CPC**

The Plaintiff has filed application to restrain the defendant No.7 in any way implementing otherwise as to the compromise decree in O.S 335/2007 with respect to the suit schedule property in Sy.No.77/1 of “A” schedule property.

2. In the affidavit on I.A sub-joined with the application, the plaintiff deposed that, the defendants intersay in a suit for partition have got a compromise decree before this court in O.S 335/2007 and in that process, they have got my land 8 1/2 guntas included in the compromise decree clandestinely. He has filed the suit for declaration of title and for consequential relief of permanent injunction and the compromise decree is not binding on him. He came to know about such compromise only when his sister filed this suit in O.S 345/2012 before this court for partition. That in the 1st week of January, he has got the certified copies and instituted this suit. The defendant No.7 who claims that in the partition he got the share of entire Sy.No.77/1 and their by attempting to implement the compromise decree and sell away the property in entire extent including 8 1/2 guntas. Hence, he is prayed to allow the application.
3. The defendant No.7 has filed memo stated that, to treat his written statement as objection to the above application. The suit of the plaintiff is not maintainable, created and to be dismissed. He

has admitted the contents of para No.3 of the plaint. He has denied the contents of the para No.4 of the plaint as it is false and it is only concerning to the blood relations and they are created. He has admitted the contents of the para No.5, 6 and 7 of the plaint. He denied the contents of the para No.8 in the plaint as false and created. He denied the contents of Para No.9 as false and plaintiff is not the owner and in possession as per Sy.No.77/01 measuring 8 acres 8 guntas as per M.R's. He has also denied that, the land belongs to Smt.Sharadamma and Shivarudramma. He denied that, the decree in O.S 335/2007 as false and not binding and obtained by fraud. Similarly, he has denied the contents of para No.10, 11 and there is no cause of action to the plaintiff. The plaintiff has not paid the proper court fee. The suit of the plaintiff is not maintainable. One Veeraiah had got wife Gowramma and they have six children. Doddabhadraiah is dead and his son is Chennaveeraiah the plaintiff. The late.Rudraiah's wife is Chennabasamma, they have got seven children. The plaintiff has not added

Sharadamma as a party to this suit. The sons of Bhadraiah are defendants 1 and 2. The sons of Sannamma are defendants 5 and 6. One Raju is dead. The heirs of Bhadrakallama are Puttaveramma and Chikkabhadramma and genealogy is produced. The suit "A" schedule property is belonging to Veeraiah and Sri.Bhadraiah and his sons have filed this suit against Rudraiah and his grand sons in O.S 335/2007, which was ended in compromise. As per the mutation entry, the defendant No.7 got Sy.No.77/01 measuring 37 guntas. Later on, the said 7th defendant became the absolute owner and in possession as per the registered decree before the Sub-registrar. The father of plaintiff Cheenaveeraiah had got properties and the sister Savaradamma and plaintiff and his brothers have filed suit in O.S 345/2012 and this suit property was not added. The father of plaintiff has only obtained decree for his share and also the sister Savaradamma. The sister of plaintiff has not added the suit property in the suit either to the father of the plaintiff or to the plaintiff as they were not having share. Hence, the plaintiffs are

not entitled to any share. The plaintiff has not stated how he became the owner and entitled to declaration. The plaintiff has created the sketch and filed this suit. Though the plaintiffs were having knowledge along with defendant No.2 of the O.S 335/2007 they have filed this suit and only to work of limitation the plaintiff has not stated the compromise decree. Hence, the present suit is not in time. The suit filed and the compromise in O.S 335/2007 as per law. Hence, plaintiff is not entitled to any relief. It is further submitted that, the defendant No.7 is the owner of Sy.No.77/01 measuring 37 guntas, which has been acquired through the compromise and he is the absolute owner and in possession and looking after the agricultural activities. Accordingly, the plaintiff has filed the false suit to harass the defendants. Hence, prayed to dismiss the interim application with heavy costs.

4. In view of rival contentions of the parties, the following point emerge for consideration:-

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

2. Whether the plaintiff will be put to irreparable loss and injury in the event, if an order of temporary injunction is denied?

3. What order?

5. Having heard the arguments of both the counsels. I have scrutinized both the applications in the background of necessary materials. Now, answer of the court on the Points is as under for the reasons herein after assigned:-

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

REASONS

6. **Points 1 and 2:-** As these two points are interconnected, I wish to treat them collectively and that would avoid repeated discussion.

7. The advocate for the plaintiff has filed this application to grant injunction restraining the defendant No.7 from implementing the compromise decree. The prayer made in the plaint are that, the plaintiffs are the owners. Hence, for declaration of title in the schedule B property which is a portion of schedule A property. Further, the plaintiff has prayed to declare that, the

compromise decree dated 03.10.2010 in O.S 335/2007 with respect to suit item No.1 of Sy.No.77/1 measuring 37 guntas being in entire extent allotted to the share of defendant No.1, which included 0-8 ½ guntas of the land of plaintiff is not binding on the plaintiff and for permanent injunction restraining the defendant and interfering with possession and also for permanent injunction restraining the defendant No.7 from getting any register document or revenue entries in 8 and ½ guntas in “B” schedule property of Sy.No.77/1. The suit schedule “A” property is 37 guntas and suit schedule “B” property is 8 and ½ guntas in an extent of 37 guntas of “A” property both are having different boundaries. It is the case of the plaintiff that, the cause of action arose in January 2015 when the plaintiff, defendant No.2 in O.S 345/2012 against sister and Sy.No.77/1 mentioned as Sy.No.77/3 as one of the suit property and when the plaintiff applied for certified copy and also demanded for necessary action from the defendants in respect of 8 and ½ guntas in “B” property complied at Sangabasavanadoddi village were parties are

residing. It is the case of the plaintiff that, one Kurudadeveeraiah is the ancestor who had three sons and all are deceased and they have left behind the legal representatives. Doddabhadraiah had three sons i.e., late.Gangaiah, Veerupaladevaru and Chandrappa. They are not consent to the suit property but they are related. This branch is divided to that of plaintiff Chennaveeraiah and defendants branch Rudraiah. It is further stated that, Chennabasamma had three sons, Shivarudraiah is not a party to the suit and Veerabhadraiah is the plaintiff and Veerappa died unmarried.

8. Late.Rudraiah had four daughters and two sons. The dispute in the suit between the plaintiff Veerabhadraiah and plaintiff junior paternal uncle Rudraiah's legal heirs. The plaintiff direct sister Savaradamma filed in O.S 345/2012 before this court for partition and separate possession against this plaintiff and his another brother Shivarudraiah with respect to 11 items of the suit schedule properties. Out of which, 77/3 is mentioned as 28 guntas of land pending for

adjudication. This suit is for 77/1 measuring 37 guntas. The plaintiff in the 1st week of January 2015 came to know that, defendant No.7 trying to get mutation in Sy.No.77/1 for 37 guntas of Kethunahalli on the basis of the compromise decree. It is the inter say between defendant themselves in O.S 335/2007 and the compromise entered on 30.08.2013 in which Sy.No.77/1 the plaintiff has got title and possession and enjoyment as per the sketch of 8 and ½ guntas of land and the remaining land to the extent of 28 and ½ guntas belong to one Sharadamma and Shivarudramma, daughters of Rudraiah. Therefore, he has applied for certified copy of the compromise decree, which is fraudulently obtained by the defendants and the decree accepted on 30.08.2013 and entire extent is allotted to share of defendant No.7. But, as per the Survey sketch and possession of plaintiff to an extent of 8 and ½ guntas is belonging to him to the East property of Sharadamma and Shivarudramma, West by property of plaintiff in Sy.No.78/3, North by property of plaintiff in the same Sy.No.78/3 and South by land of Krishnappa. Therefore, this

boundary is included in the compromise decree. Accordingly, defendant No.7 is not entitled to the said property. Except the plaintiff, no other persons have got the right. The plaintiff was not a party to the suit of O.S 335/2007. Hence, the plaintiff has produced the documents i.e., certified copy of RTC's, mutation entries, Survey sketch and certified copy of order sheet, plaint, valuation slip, amended plaint, W/s of defendants, certified copy of the decree and copies of I.A U/o 6 Rule 17 in O.S 335/2007. Hence, the advocate for the plaintiff has argued that, the plaintiff has got prima-facie case, balance of convenience and irreparable loss will be caused to the plaintiff if the defendant No.7 implements the compromise decree, which is not at all binding on him and he is not a party and his Survey number is added. Accordingly, they have taken the fraudulent decree. Hence, prayed to grant the interim stay against the defendants, he has made out the case from documents plaint, compromise decree and sketch.

9. On the other hand, the learned advocate for the defendant has filed detailed written

statement and reiterated the same in his arguments. He has produced the documents i.e., Genealogy, relinquishment letter, mutation, hand written RTC's and order copy of R.A LKP and the copies of O.S 335/2007.

10. It is the case of the defendants that, it is clearly stated in written statement that, the plaintiff is not entitled to any relief as plaintiff has created the facts and there is no cause of action and he has not paid the proper court fee. He has taken the decree for 37 guntas as per the compromise and he is the owner and in possession and it is registered before the Sub-registrar. He is in possession and is cultivating the land as per the decree. It is clearly stated in page – 5 is that, the father of the plaintiff Chennaveeraiah had got properties and the Shivarudraiah brother of plaintiff and sister Savaradamma has filed a suit in O.S No.345/2012 and in that suit the said property is not included. Hence, it is not binding to this property. He has produced the decree for perusal. The plaintiff has not added the property because the suit properties were not allotted to

plaintiff or his father in the division. Therefore, the plaintiff is not entitled to any relief. He has no prima-facie case, balance of convenience, irreparable loss. On the other hand, the defendant is in possession and he is cultivating the land and also on the basis of the compromise decree before the Sub-registrar. Accordingly, prayed to dismiss the petition.

11. On perusal of the plaint, written statement of defendant No.7, interim application and after hearing both the sides and perusing the documents, the plaintiff has filed the suit for declaration of ownership and permanent injunction and also for declaring the compromise decree has not binding as it is fraudulent. But, the plaintiff has clearly admitted that, it is a registered one and the defendant has produced the documents that, it is registered before the Sub-registrar. As per the compromise decree, mutation and RTC's, the plaintiff has to prove that, he is in possession of the suit property. But, the documents are in the name of defendants. In respect of Sy.No.77/3, the plaintiff has clearly

admitted that, it is a pending for disposal and not concerned to this suit. Under these circumstance, the plaintiff has to show and prove the evidence and documents that, how the fraud is acted upon and why the registered decree is not binding. Unless and Untill the plaintiff proves at the Trial that, the decree is fradulent, she is not entitled to any relief. Moreover, the plaintiff has filed the suit for declaraiton of ownership and injunction but the defendant is in possession as per the decree and also the entries are in the name of defendant No.7. So, the plaintiff has also to prove that, why the suit properties is not included in O.S 345/2012 and what is the cause of action for this suit is to be proved at the Trial. Under these circumstance, the plaintiff has not made out any case and he has no prima facie case, balance of convenience and irreparable loss. Accordingly, the arguments of the advocate for the plaintiff is not sustainable.

12. Though the defendant has taken the defence that, the present suit property is not included in O.S 345/2012, which is between

brother and sisters of plaintiff. He has to prove that, he is not in the knowledge of said proceedings during the pendency of this suit and also has to prove that, this suit property is not concerned to that suit. Accordingly, under these circumstances, even though the plaintiff has failed to prove the implementation of the compromise decree but as the plaintiff has challenged the same and if he is successful at the Trial by leading evidence and documents that, the compromise decree is obtained by fraud and it is not binding on the plaintiff, it will cause hardship to the defendant as he is in possession and there are entries. So, both the parties are directed to maintain the status-quo of the suit properties, till disposal of the case, no hardship will be caused to both the sides. So, as to preserve the suit property intact till disposal of the rights of the parties. Accordingly, I answer the **points 1 and 2 is in the "Negative"**.

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

ORDER

I.A No.1 filed by the Plaintiff
U/o 39 Rule 1 and 2 of CPC is
dismissed.

Both the parties are hereby
directed to maintain the status-quo of
the suit property, till disposal of the
case.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 21st day of November 2020)

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