

KARN220003712024



**IN THE COURT OF PRL. CIVIL JUDGE & JMFC, AT
CHANNAPATNA.**

Dated: This 18th September 2024

:- PRESENT :-

SRI. YOGESHA K B.A.L. LL.M., PGDHRM
Prl. Civil Judge & JMFC,
Channapatna

OS.NO.49 OF 2024

BETWEEN:

A.S. ANKEGOWDA,
S/O LATE SHIVALINGAIAH,
AGED ABOUT 42 YEARS,
R/AT AVVERAHALLI VILLAGE,
HONNANAYAKANAHALLI DAKHALE,
MALURU HOBLI,
CHANNAPATANA TALUK,
RAMANAGARA DISTRICT.

... PLAINTIFF

AND

1) SRI. C. CHANDRU,
S/O LATE CHIKKALINGAIAH,
AGED ABOUT 45 YEARS,

- 2) SRI. K. ANKEGOWDA,
S/O LATE ANKEGOWDA,
AGED ABOUT 62 YEARS
- 3) SRI. CHANNEGOWDA,
S/O LATE ANKEGOWDA
AGED ABOUT 45 YEARS
- 4) SRI. K .LOKESHA
S/O LATE ANKEGOWDA
AGED ABOUT 40 YEARS

ALL ARE R/AT AVVERAHALLI VILLAGE,
HONNANAYAKANAHALLI DAKHALE,
MALURU HOBLI,
CHANNAPATANA TALUK,
RAMANAGARA DISTRICT.

... **DEFENDANTS**

ADVOCATES.

1. SHRI. K.T.T.ADV. FOR PLAINTIFF
2. SHRI. K.T.V.ADV. FOR DEFENDANTS

**ORDERS ON I.A.No.II FILED UNDER ORDER XXXIX
RULE 1 AND 2 OF C.P.C.**

The plaintiff has filed I.A.No.II under Order XXXIX Rule 1 and 2 of CPC praying to restrain the 1st defendant and his agents or anybody claiming under him from putting up any construction over 'B' schedule property pending disposal of the suit.

2. In the affidavit annexed to the I.A.No.II, the plaintiff has contended that, he has acquired the suit property by inheritance through order passed him M.R.No.H17/2011-12. The RTC of suit property is standing in his name. The suit A schedule property was acquired by his father through family arrangements. After his death this plaintiff succeeded the suit A schedule property. Due to the sickness and lakh of labours plaintiff is unable to cultivate the suit A schedule property. In the month of July 2023, the defendants colluding each other intended to evict the plaintiff from the suit property. As such they encroached the northern and southern portion of suit A schedule property. The said encroached portion is shown as suit B and C schedule properties. After came to know the illegal acts of defendants this plaintiff by calling upon the Panchayath questioned the defendants. But the defendants were denied the encroachment and stated that, after measurement if any encroachment is found they will live the encroached area. As such this plaintiff applied for survey of property. In the survey it was found that the defendants have encroached the suit B and C schedule properties which are part and parcel of A schedule property. Thereafter this plaintiff requested the defendant to vacate the encroached portion. However they did not obey their promise. Hence, this plaintiff has lodged a complaint to the police station against the defendants. But now action was taken by the police. The defendants are very

powerful persons in the village. Without the order of this court the plaintiff cannot resisted the act of defendants. Hence, for all these reasons it is prayed to allow the application.

3. The defendants by filing a memo have adopted the Written statement as objection to the IA No.2. In the objection the defendants have denied the assertion found in the affidavit appended to the IA No.2. It is contended that, the their property is situated towards southern and northern side of suit A schedule property. They have not encroached the suit B and C schedule properties. The legal heirs of deceased Doddachannegowda are not made as parties to this suit. This defendants No.1 is the son of deceased Chikkalingaiah. The plaintiff is the son of deceased Shivalingaiah. During the life time of Chikkalingaiah and Shivalingaiah partition was effected. As per the said partition in the year 1968 the revenue records were duly changed in their name.

4. It is asserted that the aspect of partition and allotment share in the family of plaintiff and defendants is not disclosed by the plaintiff. The father of plaintiff Shivalingaiah and one Lingegowda together sold the property in favour of father of defendant No.2 to 4 in survey No. 188/2 measuring east west 12 gaja and north to south 17

gaja. The defendant No.1 has not encroached $1\frac{3}{4}$ guntas in A schedule property. The B schedule property is belongs to this defendants. This defendants having $7\frac{1}{4}$ guntas as per his Revenue records. Out of the said $7\frac{1}{4}$ guntas for 4 guntas separate boundaries is there as like the remaining $3\frac{1}{4}$ guntas of land is having separate boundaries. The plaintiff has given false boundaries to the B schedule property only to grab the property belongs to defendant No.1.

5. It is asserted that, on 16.05.1967 the father of plaintiff Shivalingaiah and one Lingegowda together sold the property in favour of father of defendant No.2 to 4 in old survey No. 188/2 measuring east west 10 gaja and north to south 17 gaja. In view of the sale of suit B and C schedule properties the plaintiff is not in possession of the said properties. These defendant have not encroached the said properties has alleged by the plaintiff. Hence, for all these reasons it is prayed to dismiss the application with cost.

6. Heard the arguments of both side. Perused the materials placed before this Court.

7. Upon hearing arguments and on perusal of materials placed on record the following points arises for consideration.

1. Whether the plaintiff has made out a prima facie case?
2. Whether the plaintiff has balance of convenience in his favour?
3. Whether plaintiff would suffer irreparable injury if the prayer for temporary injunction is not granted?
4. What order?

8. This court answers to the above points is as follows

POINT No.1:	In the Affirmative
POINT No.2:	In the Affirmative
POINT No.3:	In the Affirmative
POINT No.4	As per final order

for the following;

∴ REASONS ∴

9. **POINT No.1:-** According to the plaintiff the suit A schedule property is originally belongs to his father. The defendants are the adjacent land owners of this plaintiff. According to the plaintiff already the defendants have encroached the suit A schedule property and the said encroached portion is shown in the suit B and C schedule properties. The defendants have taken contention that the father of plaintiff and this plaintiff were sold the suit B and C schedule properties in favour of the father of defendant

No.2 to 4. To substantiate this contention the defendants have produced the xerox copy of sale deed dated 15.05.1967 and 30.03.2015. I have perused the documents produced by the plaintiff. On perusal of the Revenue records of suit properties, it appears that the suit A schedule property measuring 6 guntas is in existence. As like it appears that the land of defendants is also existed. The said properties could be easily identified by the Revenue officials. Though the defendants have contended that the plaintiff and his father were sold the suit B and C schedule properties in favour of defendant Nos.2 to 4 father, it cannot possible to come to conclusion that the plaintiff has no 6 guntas of land in his name. Whether the plaintiff has no such extent of land or not is to be decided only after full fledged trial. Further, whether the suit B and C schedule properties are comes within the boundaries of sale deeds alleged to executed by the plaintiff and his father in favour of defendants is to be decided only after full fledged trial. At this moment on careful perusal of the records submitted by the both parties it appears that there exists the lands claimed by the plaintiff and defendants. Whether the defendants have encroached the land of plaintiff is to be determined after completion of evidence, if required this court will take the assistance of the surveyor to find out the encroachment if any or not. On careful perusal of the materials available on record along with pleadings of the parties, I am of the considered opinion

that the plaintiff has made out prima facie case. Therefore, I answer the Point No.1 in the **Affirmative**.

10. **POINT No.2:-** To see the balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

11. The plaintiff has taken contention that the defendants are trying to put up further construction over the suit B schedule property. The plaintiff has specifically pleaded that the defendants have already encroached the portion of suit A schedule property which are shown in the suit B and C schedule properties. In this case the plaintiff has sought for recovery of possession. Admittedly, the plaintiff is out of purview of suit B and C schedule properties. In case if the plaintiff is succeeded in this suit, certainly he will be entitled for the recovery of possession as prayed. At that time, if any building or shed is found over the property which may ordered to recovery will definitely go to the possession of plaintiff. In such circumstances, if the plaintiff do not wish to get the constructed building or shed if any over the said lands, he can be suitably compensated by ordering to deliver the vacant possession by removing the construction if any made over the encroached portion by the defendants at their

cost. Therefore, at this moment if the injunction is granted certainly it would cause injustice to the defendants than the plaintiff. The plaintiff has not made out balance of convince in his favour. Accordingly, I answer the Point No.2 in the **Affirmative**.

12. **POINT No.3:-** The court should also satisfy that refusal to grant injunction would result in “irreparable injury” to the party seeking relief and he needs to be protected from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that injury must be a material one, which cannot be adequately compensated. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

13. In this case rightly or wrongly construction has come up. It is not the case of the plaintiff that the defendants are trying to reduce the value of the land. If the defendants are succeeded in their act certainly it would not cause any injustice to the plaintiff as he will be suitable compensated if he succeeded in his case. In such circumstances if the injunction is not granted no injury would be caused to the plaintiff. On the other had as the defendants are in possession of B schedule property, certainly it would case

difficult to them to use the property, because they also claiming right over the said property based on title deed. With this observation I answer the Point No.3 in the **Negative.**

14. **POINT No.4:** For the reasons stated above and findings given on point nos.1 to 3 this court proceeds to pass the following:

∴ O R D E R ∴

- I.A.No.I filed by the plaintiff under order XXXIX Rule 1 and 2 R/w sec. 151 of CPC is hereby dismissed
- Both the parties are bear their cost.

[Given under my hand and seal of this court on this 18th of September, 2024 within the premises and during the working hours of this Court and is pronounced in an open court.]

**(YOGESHA K)
PRL. CIVIL JUDGE & JMFC,
CHANNAPATANA**