

IN THE COURT OF THE ADDL. CIVIL JUDGE
CHANNAPATNA.

Present: Smt. Usharani B.N.,
B.A., LL.B., L.L.M.,
Addl. Civil Judge and JMFC.,
Channapatna.

Dated this the 5th day of July, 2023

O.S.No.40/2023

Plaintiff/s: 1. Smt. B.S. Rekha

(By Sri.M.M., Adv.)

V/s.

Defendant/s : Sri. Hanumantha

and Others

(By Sri R.V.K., Adv.)

I.A.NO.I

Applicant: : Smt. B.S Rekha

V/S

Respondents : Sri. Hanumantha
and Others

U/O XXXIX RULE 1 AND 2 R/w Sec.151 OF CPC

The plaintiff has filed this application seeking temporary injunction against the defendants, followers or hire laborers from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of this suit.

SCHEDULE

The properties situated at Thittamaranahalli Grama panchayath, Mangalavarapet Village, Kasba Hobli, Channapatna Taluk, Ramanagara District bearing K No.27/1/542 measuring E-W 50feet, N-S 30 FEET, and K No. 27/2/542 measuring E-W 50 Feet, N-S 25.9 “feet, and K.No. 25/1-2/542 measrring E-W 50 F eet, N-S 90 feet both the properties are situated side by side hence common boundary as fallows. boundary as fallows.

East By : 25 feet road,

West By : land of Channamma now owns by others,

North by : Vacant site of Lingamma now Babu S/o late Ramanna

South By : Vacant site bearing No.27/3/542
belonged to

2. In support of the application the plaintiff has filed affidavit stating that, he has filed this suit for the relief of the permanent injunction against the defendants, he is fully conversant with the facts of the case, due to avoid the repetition of facts the plaintiff may read the part and parcel of this affidavit. He is the absolute owner of the suit schedule property being purchased through registered sale deed dated 03.03.1994, the Katha has been made out in his name he is paying the Kandayam to the concerned authority. The defendants are nothing to do with the suit schedule property the vendor who is the third defendant and Sathyanarayana has lost all manner of right and title when they sold the suit property in favor plaintiff in the year 1994. Earlier the suit property was part of land bearing Sy.No.542 of Mangalavarapete. The defendant Nos 1,2 along with their brothers for conversion of Sy. No 542 into residential purpose. The District Commissioner Bengaluru rural district converted the land Sy.No 542 through an order No.B.D.ALN (CHA) 15/1993-94 and 16/1993-94 into residential purpose. On the basis of said conversion order the defendant no.3 and Sathyanarayana got the

converted land into Thittamaranahalli Grama panchayath and assigned panchayatha numbers as the suit properties also assigned K.No.25/1/542, 25/1-2/542 the suit schedule property, and then khatha have been made out in CMC. In view of Govt order and resolution of Zilla panchayath Ramanagara all the records of suit properties as well adjescent properties sent to CMC Channapatna, he has applied for entering my name. Endorsement produced herewith. The DC has passed orders converting the Sy.No. 542 into residential purpose defendant No.3 had lost all manner of right and title over the suit schedule property, the DC Bangalore rural district has sent the records of conversion order to the Thashildar Channapatna to effect necesssary changes with respect to revenue records of sy No.542, but the Thashildar till today has not made any changes in the RTC of sy No.542. According to the rules and regulations of land revenue act 1963 it is bounden duty of concerned Thashildar to effect the necessary changes in the revenue records as well as the survey sketch, but the Thashildar has not followed the orders of the DC Bangalore rural district, Still the RTC depicts 00-19 guntas in the name of Channamma who is the mother of defendant No.1 to 3. After the conversion of Sy.No.542

defendant No.1 to 3 as well as Channamma has sold remaining measurement of land in Sy. No. 542 to various person and have not retained a single piece of land in Sy.No 542. But the defendant taking undue advantage of still mentioning the name of Channamma in RTC of revenue records are continuously obstructing the peace full possession and enjoyment of the plaintiff over the suit property. The plaintiff applied of change of katha in CMC Channapatna but the defendants have filed objections and halted the katha proceedings of the plaintiff. The defendant also with dire consequences being made hectic attempt to disposes the plaintiff from the suit schedule property, the defendants have attempted to change of katha in the revenue documents to alienate the suit property hurriedly. About 7 days back he lodged complaint before the jurisdictional police but instead of talking necessary action against the defenants for thier high handedness have issued NCR. He is the lonely ladey he has no support for the interference of this court he has approached this court against the onslaught of the defendants. Hence this application. He has established prima facie case, the balance of convenience lies in his favour and he is entitle for the TI as prayed in the IA. If this court please to grant

TI there is no hardship caused to opposite side on the other hand he will be put irreparable loss and injury . Hence, prays to allow the application.

3. The defendants have filed written statement to the suit and filed memo and prays to treat the written statement as objection to 39 R 1 and 2 of CPC and contended that, the plaintiff has not approached with clean hand and he suppressed the true and material facts from the preview of this court, on that score itself the suit of the plaintiff is liable to be dismissed. The plaintiff is not entitled for any of the relief as against these defendants in respect of the suit schedule property. The boundaries in respect of the suit schedule property as furnished by the plaintiff is incorrect. There was one Venkatadasaiah. Now Venkatadasaiah is no more. One deceased Channamma is the wife of said Venkatadasaiah. Said Venkatadasaiah had six issues by name Hanumanthaiah the first defendant herein, Vishaka the 2nd defendant herein, Venkatesha the 3rd defendant herein, Venkatappa, Madduramma @ Mahalakshmi and Sathyanarayana. Among them Venkatappa is no more. Sofaras Sathyanarayana is concerned he found missing about 15 years back. The

land bearing Sy.No.542 of Mangalavarapet was originally Chkkayalagaiah. Venkatadasaiah, the father of the defendants 1 to 3 was tenant under Chikkayalagaiah in Sy.No.542, measuring 1 acre 24 guntas situated at Mangalwarpet. After induction of tenancy Act, said Venkatadasaiah made an application in prescribed form before the land grant committee, Channapatna seeking for grant of occupancy right in respect of said 01 acre 24 guntas of land his favour. The above representation has been registered as LRF No.13/79-80. Based on the said representation made by Venkatadasaish, after confirming the possession of Venkatadasaiah over said 01 acre 24 guntas, the land grant committee has granted the said land in favour of Venkatadasaiah, as per the document produced herewith by considering the said Venkatadasaiah has occupant of said 01 acre 24 guntas tenancy right has been granted in favour of said Venkatadasaiah in the said proceedings on 20.08.1986 as per the copy filed herewith.

4. Subsequently pursuant to the above occupancy right granted in favour of Venkatadasaiah, the mutation has been accepted into the name of

Venkatadasaiah, khatha has been made out into the name of Venkatadasaiah and he has been shown as khatedar and person in possession and enjoyment of the said 01 acre 24 guntas. Said Venkatadasaiah was in possession and enjoyment over the said 01 acre 24 guntas of land till his death. During the life time of Venkatadasaiah he has purchased another extent 15 guntas of adjacent land in the same survey number from one Chikkayalagaiah son of Doddaputtaiah in the same survey No. by virtue of the registered sale deed dated 15.07.1970 and the same is evidenced by the copy of the registered sale deed produced herewith. Thus Venkatadasaiah became absolute owner of 01 acre 39 guntas of land in Sy. No.542 of Mangalavarpet. Subsequently after the death Venkatadasaiah his wife Channamma along with her children including defendants 1 to 3 sold that 15 guntas of land (purchased by Venkataadasaiah from Chikkayalagaiah) by virtue of a registered sale deed dated 23.06.1990 in favour of V.B.Srikantaiah and retained 1 acre 24 guntas of land with them.

5. After the death of Venkatadasaiah his sons Hanumanthaiah the 1st defendant, Venkatappa, Venkatesha the 3rd defendant herein and Sathyanarayana

have partitioned 07 guntas each out of total extent of 01 acre 24 guntas. Subsequently all the above shares have converted their 07 guntas each from agriculture purpose to non agriculture purpose. Thereafter, sold the converted portion of 28 guntas. In the remaining retained land of 36 guntas again the four sons of Venkatadasaiah have partitioned 04 guntas each equally and subsequently the above four sharers have sold their portions of 04 guntas each and retained 20 guntas with them. These defendants after the death of Venkatadasaiah have made representation before the Tahsildar seeking for khata of that 20 guntas in Sy.No.542 but the Tahsildar instead of making the khata has issued an endorsement bearing No.RRT/CR/802/2020- 2021 on 10.01.2022 on the ground that, already mutation has been accepted and asked these defendants to prefer appeal before the competent forum. Subsequently one Madduramma @ Mahalakshmi who is the daughter of Venkatadasaiah preferred an appeal before the Assistant Commissioner, Ramanagara Sub Division, Ramanagara in RA.No.240/2021-2022, which came to be allowed by directing the Tahsildar Channapatna, to make enquiry in the above matter U/sec.129 of KLR Act 1964 and to make the khata by

taking into consideration of all the records and the possession over the land in question. Subsequently pursuant to the order passed by the Assistant Commissioner in RA.No.240/2021-2002 The Tahsildar Channapatna took the matter as RRT(DIS) 273/2021-2022 and after the due survey through the Taluka Surveyor confirmed that, these defendants and the daughter of Venkatadasaiah by name Madduramma and Mahalakshmi, the Tahsildar passed the order on 28.02.2022 to make the khata of 19 guntas of land in the name of Channamma wife of late Venkatadasaiah, and the same is evidenced by the copy of the orders passed the Assistant Commissioner and Tahasildar filed Pursuant to the said order the mutation has been accepted by the Tahasildar vide MR No.T75/2021-2022 and khata has been made out into the name of Channamma wife of Venkatadasaiah and Channamma is shown as khatedar and the person in possession over the said 19 guntas of land. The above facts are established by the survey and recent mutation field. At this juncture of time the plaintiff without disclosing the above true facts from the purview of this court has come up with this false and frivolous suit by making reckless allegations against these defendants who are the lawful

owners and in possession and enjoyment over 19 guntas of land in Sy.No.542 of Managalavarpet, Channapatna Taluk to get wrongful gain and to defeat and deprive the right of these defendants over the said 19 guntas of land in Sy.No/542. With this explanations these defendants hereby denied all other allegations which have not been specifically denied are hereby denied as false and the plaintiff is put to strict proof of the same. Viewed from any angle, the suit of the plaintiff is not maintainable either in law or on facts and the same is liable to be dismissed. The plaintiff is not entitled for any of the relief in the instant matter as against these defendants, in respect of 19 guntas of land in Sy.No.542 of Mangalavarapet Village. These defendants hereby denied all other allegations which are not been specifically denied are hereby denied as false. No such suit schedule property is in existing in that 19 guntas of land in Sy. No. 542. Even though the plaintiff without proper identification of his alleged suit schedule property by furnishing the wrong boundaries as come up with the present false suit to get wrongful gain. Before instituting this false suit the present plaintiff by creating the scene managed to got registered a criminal case as against these defendants in collusion with the local police with an

intention to create evidence to this false and frivolous suit that facts has been suppressed by the plaintiff deliberately on that score itself the present suit is liable to be dismissed for suppression of true facts. Hence prays to dismiss the application.

6. Heard and perused the materials on record.

7. Defendants counsel filed written arguments along with decision of **Hon'ble Alahabad High court. (full bench), 1972 SCC online All 244 : 1972 All LJ 1037 (FB) : AIR 1973 All 116 (FB), Ganesh V/s Sri. Ram lala ji Maharaj Birajman Mandir and others.**

8. The following points arise for my determination;

1. Whether the plaintiffs have made out a prima-facie case in his favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the irreparable loss or injury will be caused to the plaintiffs if temporary injunction is not granted?
4. What order?

9. My findings on the above points are as under;

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 .

10. Points 1 to 3 :- These points taken together for the sake of convenience and avoid repetition.

11. As postulated by the provision under Order XXXIX Rule 1 and 2 of CPC, it is not required to go into the merits of the case while entertaining the application but the Court has to examine as to whether (i) the plaintiff has a prima facie case to go for trial (ii) the protection is necessary from that species of injuries known as irreparable before his legal right can be established; and (iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.

12. It is settled principle of law that injunction or interim orders are issued not on grace or on default of

any person. Interim orders are granted on the basis of the case made out prima facie in the pleadings and that in the interest of justice such interim order is necessary in order to prevent abuse of process of law to prevent wastage or to maintain the situation as on the date or from recurrence of certain incident which were existing as on the date of presenting such application out of which the proceeding is arising.

13. Prima facie case means bona fide dispute requiring determination without pre-judging the case. In order to find out whether there exists any prima facie case in favour of a party or not, it would be enough if it could be established that there was a seriously arguable question and it is not necessary that the point be proved to the hilt at that stage.

14. The plaintiff has produced Sale Deed dated.03.03.1994, E.C, Demand register extract, Encumbrance certificate, Xerox copy of Kandaya Recript, Official Memorandum, Property details, Municipal Acknowledgement. Tahasildar Endorsement, requisition given DC, Tahasildar and Sub-Divisional Officer, Ramanagara, letter given to Commissioner, Channapatna.

15. The defendants have not produced documents.

16. In support of the submission made by the learned counsel for the plaintiff, he has relied upon the sale deed and e-katha to substantiate his case. The boundaries of the suit schedule property are not correct and the plaintiff has not approached this court with clean hands.

17. I have given anxious consideration to the submissions made by the respective parties and have gone through the documents produced in support of their contentions. It is the case of the plaintiff that, he has purchased the suit schedule property from defendant No.3 for valuable consideration. On the other hand, it is bone contention of the defendants that, there is no such property exists in the 19 guntas of land belongs to the defendants and the plaintiff without mentioning proper identity of the property filed the false suit.

18. It is pertinent to note that the plaintiff has produced the registered sale deed, the defendants have not disputed the said sale deed of the plaintiff for the suit schedule property. It is apparent from record which has

been furnished by the plaintiff. The main grounds on which the defendants have sought for rejection of the application is that, 01 acre 24 guntas of land granted in the name of the defendants' father Venkatadasaiah, further during the life time, he has purchased another extent 15 guntas of adjacent land in the same survey number from one Chikkayalagaiah S/o Doddaputtaiah in the same survey No. by virtue of the registered sale deed dated 15.07.1970. Thus, Venkatadasaiah became absolute owner of 01 acre 39 guntas of land in Sy.No. 542 of Mangalawarapet. Subsequently after the death their father, their mother Channamma along with her children including defendants 1 to 3 sold that 15 guntas of land in favour of V.B. Srikantaiah and retained 1 acre 24 guntas of land with them. Subsequently all the above shares have converted their 07 guntas each from agriculture purpose to non-agriculture purpose. Thereafter, sold the converted portion of 28 guntas. In the remaining retained land of 36 guntas again the four sons of Venkatadasaiah have partitioned 04 guntas each equally and subsequently the above four sharers have sold their portions of 04 guntas each and retained 20 guntas with them. Pursuant to the Tahasildar order, the mutation has been accepted by the vide MR No.

T75/2021-2022 and khata has been made out into the name of Channamma W/o Venkatadasaiah and Channamma is shown as khatedar and the person in possession over the said 19 guntas of land excluding 01 gunta of karab. On the other hand, the plaintiff has also made an allegation against the defendants that they being made hectic attempts to dispossess the plaintiff from the suit schedule property and attempted to change katha to alienate the suit schedule property. It, prima facie appears that the suit of the plaintiff is not vexatious.

19. It is noteworthy to state that, the plaintiff has purchased the suit schedule property from defendant No.3 through registered sale deed. If at all an injunction has not been granted as against the defendants, the plaintiff would be put to irreparable hardship and inconvenience which cannot be compensated in terms of money. The fact as to whether the suit schedule property exist in 19 guntas or not or the boundaries mentioned is incorrect to be adjudicated upon during the course of trial. It is also to be adjudged upon to ascertain as to whether 1 acre 24 guntas was granted in the name of defendants' father and in total, he had 1 acre, 39 guntas of land. Hence, prima facie has been made out by the

plaintiff to grant an equitable relief. **Accordingly, point No.1 is answered in the Affirmative.**

20. Point No. 2 & 3 :- These points are taken up together for common discussion as they are interlinked to each other and also in order to avoid repetition of the facts so also for the sake of convenience and brevity.

21. The second test applicable to assess whether the relief could be granted or not is to ascertain whether the balance of convenience lies in favour of the applicant or in favour of the opponent. Since the relief of an interim injunction is all the same an equitable relief, the Court shall also consider whether the comparative mischief or inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it, which means that the balance of convenience is in favour of the plaintiff seeking the relief. Thirdly, the test which requires to be applied is whether the applicant suffers irreparable loss or injury if no relief is granted or the opponent as the case may be.

22. On perusal of the pleadings and the documents relied upon by the respective parties, if at all the

injunction has not been granted as against defendants, the plaintiff would be put to irreparable loss and hardship which cannot be compensated in terms of money. Viewed from any angle, the plaintiff would be put to comparative hardship and inconvenience if at all the injunction is refused.

23. It is to be noted that, it is settled law that the Court cannot conduct mini trial venturing upon to decide the case on merits while entertaining the interim application. Thus, the contentions raised by the defendants with regard to non-existence of suit schedule property within 19 guntas and other defence could be adjudged during the course of trial. Under the facts and circumstances of the case, it is just and necessary to grant injunction restraining the defendants from causing any interference to the peaceful possession of the plaintiff. **Accordingly, the point No. 2 and 3 are also answered in the Affirmative.**

24. It is needless to state that the observations made herein is only with respect to the adjudication of the present application filed U/O XXXIX Rule 1 and 2 of CPC., and the same shall not be construed as an expression on merits of this case.

25. *The learned counsel for defendants has relied upon the decision of **Hon'ble Alahabad High court. (full***

bench), 1972 SCC online All 244 : 1972 All LJ 1037 (FB) : AIR 1973 All 116 (FB), Ganesh V/s Sri. Ram lala ji Maharaj Birajman Mandir and others.

“It will thus be seen that what the law requires is that the description of the property in suit given in that plaint must be sufficient to identify the property. If independently of the boundaries the property can be sufficiently identified, then any error or misdescription in the boundaries cannot affect either the suit or the decree passed in the suit. In the instant case, as already mentioned, no dispute at any time was raised that the suit property and the property in respect of which the decree was passed is not identifiable on the spot or it is a property different from the property which was purchased by the plaintiff from Panna Lal and for the delivery of which the suit was filed.”

I have gone through the above decision of Alahabad High court, (full bench) with great respect not applicable to the facts and circumstances of present case on hand.

26. Point No. 4 : In view of the aforesaid discussion and findings on Point Nos.1 to 3, I proceed to pass the following-

ORDER

I.A. No. I filed by the plaintiffs under Order 39 R.1 & 2 r/w.Sec.151 of CPC is allowed.

The defendants, followers or hire laborers are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit by way of granting temporary injunction.

(Dictated to the Typist copyist on online computer order corrected and signed by me, then pronounced by me in the Open Court on this the 5th day of July - 2023).

Addl. Civil Judge & JMFC.,
Channapatna

ORDER

Order pronounced in the open court

(vide separate order)

I.A. No. I filed by the plaintiffs under Order 39 R.1 & 2 r/w.Sec.151 of CPC is allowed.

The defendants, followers or hire laborers are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit by way of granting temporary injunction.

For comply of Sec.89 of CPC

Call on 02.08.2023.

Addl. Civil Judge & JMFC.,
Channapatna.

10. The defendant has not produced documents.

12. I have perused the materials available on record. The plaintiffs pleads that they are in possession of the suit property and have produced document to show they are in possession over the suit property and have produced the certified copy of the sale deed alleged to be purchased by plaintiff No.1 and the plaintiffs have produced documents prima-facie shows that the katha is standing in their names and they are paying tax to the grama panchayath.

13. The copy of sale deeds produced by the defendants shows that the husband and father of the defendant No.1 & 2 purchased the properties and as per the Will dated 16-02.2012 produced by the defendants, it is clear that the defendants' property is different from the suit

schedule property and the plaintiffs are in the possession of the suit schedule property. At this stage the plaintiffs have produced photographs to show that as to how the defendant is trying to encroach their property and in order to show the interference caused by them and documents to show the possession of the plaintiff, at this stage prima-facie it is clear that the defendants are interfering with the suit property. The plaintiff at this stage shows their possession over the suit property and the interference caused by the defendants and hence it is proper to grant any interim relief which may cause hardship and loss to the plaintiffs.

14. Upon the above grounds this court opines that the plaintiffs have made out prima-facie case to get interim relief. On perusal of the materials on record the plaintiffs have made out prima-facie case in their favour and hence the balance of convenience also lies in favour of the plaintiffs. If the T.I is not granted, then the hardship or loss will be caused to the plaintiffs when compared to that of defendants. Accordingly, I answer point Nos.1 to 3 in the Affirmative.

15. Point No.4:- As per discussion made above, I proceed to pass the following;

ORDER

I.A. No. I filed by the plaintiffs under Order 39 R.1 & 2 r/w.Sec.151 of CPC is allowed.

The defendants, followers or hire laborers are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property till disposal of the suit by way of granting temporary injunction.

Call on 15.09.2022.

(Dictated to the Typist copyist on online computer order corrected and signed by me, then pronounced by me in the Open Court on this the 22nd day of July – 2022).

Addl. Civil Judge & JMFC.,
Channapatna

ORDER

Order pronounced in the open court

(vide separate order)

I.A. No. I filed by the plaintiffs under Order 39 R.1 & 2 r/w.Sec.151 of CPC is allowed.

The defendants, followers or hire laborers are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property till disposal of the suit by way of granting temporary injunction.

For comply of Sec.89 of CPC

Call on 15.09.2022.

Addl. Civil Judge & JMFC.,
Channapatna.

