

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

PRESENT: SRI.MAHENDRA.M B.A, LL.B.,
Prl. Civil Judge & JMFC,
Channapatna.

Dated this 16th day of December 2020

O.S. NO.111/2019

PLAINTIFF : Smt.Jayamma,
-V/s-

DEFENDANTS : Smt.Ningamma & Others,

I.A.No.II

APPLICANT/
PLAINTIFF : Smt.Jayamma,
W/o Late Siddaramegowda,
Aged about 65 years,
R/at: Agrahara Varagarahalli Village,
Virupakshipura Hobli,
Channapatna Taluk.

(By Sri.S.S., Advocate)

-V/s-

OPPONENT /
DEFENDANTS:

1. Smt.Ningamma,
W/o Late Kempananjegowda,
Aged about 70 years,
2. Smt.Mallika,
W/o Late Nanjegowda,
Aged about 48 years,
3. Sri.Nanjegowda,
S/o Late Nanjegowda,
Aged about 21 years,

All are R/at Thotadamane,
Krishnapura Village,
Virupakshipura Hobli,
Channapatna Taluk,

(By. Sri.J.T.P., Advocate)

ORDERS ON I.A No.II FILED U/O XXXIX RULE 1 AND 2

R/w Sec.151 OF CPC BY THE PLAINTIFF

I.A. No.I is filed by the learned counsel for the plaintiff U/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction in favour of the plaintiff and there by temporarily restraining the defendants, their agents, servants or any body acting on their behalf from interfere with the plaintiff possession over the suit schedule property till the disposal of the suit.

2. The plaintiff sworn to an affidavit in support of the application wherein she has stated that, the plaintiff and her family members are in possession and enjoyment over the suit schedule property. After the death of husband of the plaintiff she got suit schedule property to her name. The Khatha and other documents stands in the name of plaintiff. The defendants have no right or authority to interfere with the possession of the plaintiff in respect of suit schedule property. The defendants have interfere with possession and enjoyment of the plaintiff in respect of suit schedule property. **With these averments the plaintiff has sought for allowing the I.A. No.II.**

3. The defendants have appeared through their counsel, and filed objection to I.A. No.II and contended that, the contents of the affidavit are wrong. The earlier the plaintiff filed the same suit in O.S.No.134/2015 for the relief of permanent injunction and the same was dismissed and again the plaintiff filed false suit against the defendants. The plaintiff is not entitled to any relief from this court. This suit is filed intentionally after the death of Kempananjegowda husband of the defendant No.1 and grand-father of defendant No.2 and 3. **Hence, prayed that dismiss the I.A. No.II filed by the plaintiff with cost.**

4. Now the following points arise for consideration of this court:-

POINTS

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if I.A. No.II is not allowed?
4. What order?

5. Heard the learned counsels appearing for the parties and perused the materials on record.

6. The findings of this court on the above said 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 the final order
for the following:-

REASONS

7. **POINT NO.1:-** The learned counsel for the plaintiff vehemently argued before the court that, the suit schedule property was granted in favour of Subbegowda, the same was sold in favour of Lingegowda under registered sale deed dtd.23.12.1940. The said Lingegowda sold the same in faovur of Channegowda on 21.12.1956. The said Channegowda is in possession and enjoyment over the suit schedule property. The said Channegowda died long back leaving behind two sons by name Javarayigowda and Siddaramegowda. After the death of Javarayigowda the husband of the plaintiff managing the affairs of the joint family and he was in possession and enjoyment over the suit schedule property. Now the plaintiff is in possession and enjoyment over the suit schedule property. The defendants are interfere with plaintiff peaceful possession and enjoyment over the suit schedule property. **Hence, the defendants as to be temporarily restrained till the disposal of the suit.**

8. Per contra the learned counsel for the defendants argued that, the husband of the 1st defendant late Kempananjegowda is the absolute owner of the property bearing Sy No.604 and same is granted by the Tahasildar and Khatha is standing in the name of husband of the defendant No.1. The defendants are possession and enjoyment of the property in Sy No.604 measuring 1.20 guntas from more than 40 years. The plaintiff is seeking injunction without possession. The R.S.A No.715/2013 is pending before Hon'ble High Court of Karnataka. **Hence, I.A. No.II as to be rejected.**

9. Keeping in view the rival contentions raised by the parties, now, this court proceed to discuss that what is meaning of the word **prima-facie case**. It is well **settled** that the plaintiff has to make out a prima-facie case to get the relief of injunction. In other words, the court must be satisfied that there is a bonafide dispute raised by the plaintiff, and there is a strong case for trail which needs investigation and decision on merits and on the facts before the court there is a probability of the plaintiff being entitled to the relief claimed by the plaintiff. This view of this court receives support from the law declared by **the Hon'ble Apex Court in the decision reported in AIR 1993 SC 276 between Dhalpath Kumar V/S Prahalad Singh**. Keeping in view this meaning of the word 'prima-facie case' once again this court perused the entire case of the plaintiff. It must be noted that

this court have already stated about the contention raised by the plaintiff in the preceding paragraph of this order itself. In the view of this court, when the plaintiff alleges that she is in possession and enjoyment over the suit schedule property, and when the defendants denies the contention of the plaintiff, then, it becomes clear that dispute has to be investigated by this court. Keeping in view this fact, now this court proceed to discuss the documents produced by the plaintiff.

10. In light of the arguments canvased by the learned counsel for the parties, this court as carefully perused the documents produced by the parties to the suit. **The list of documents of the plaintiff consist of** genealogical tree affidavit, death certificate of Siddaramegowda, computerized RTC in respect of suit schedule property which is standing in the name of plaintiff, mutation register extract in M.R. No.H87/2017-18 it reveals that, Khatha mutated in to the name of plaintiff in respect of suit schedule property, police complaint, police endorsement, death ceremony card of Kempananjegowda, 7 photos, xerox copy of order passed by the Assistant Commissioner in R.A. No.183/2001-02, xerox copy of judgment in O.S.No.162/2000, xerox copy of judgment in R.A. No.119/2012, xerox copy of Writ Petition No.24739/2001, rough sketch, xerox copy of sale deed dtd.23.12.1940, xerox copy of sale deed dtd.21.12.1956, computerized RTC in respect of suit schedule property which

is standing in the name of husband of the plaintiff, photos and CD.

11. **The documents produced by the defendants** consist of the certified copy of order passed in O.S.135/2014 on I.A.I u/o 39 rule 1 and 2 the same was rejected, studio receipt, 5 photos and CD, hand written RTC and computerized RTC in respect of Sy No.604 which is standing in the name of husband of the defendant No.1, xerox copy of survey sketch, xerox copy of Akar Band, tax paid receipt, studio receipt, 17 photos and CD, certified copy of order sheet in RSA. No.715/2013, xerox copy of survey tippani in respect of Sy No.604, xerox copy of application for grant, xerox copy of spot inspection, xerox copy of crop certificate and boundary certificate.

12. The power to grant a temporary injunction is at the discretion of the court. This discretion, however should be exercised reasonable, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

13. In order to assertion the prima-facie case this court as carefully perused the materials on record, the plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of suit schedule property. The documents produced by the plaintiff it reveals that, the khatha in respect of suit schedule property standing in the

name of plaintiff. This court draw the presumption u/Sec.133 of Karnataka Land Revenue Act regarding revenue entries in respect of suit schedule property. The defendants are taken defense in respect of Sy No.604 not for suit schedule survey number. The husband of the defendant already filed the suit in respect of suit schedule property in O.S.No.162/2000, the same was dismissed, thereafter the defendants challenged the judgment and decree passed in O.S.No.162/2000 before Hon'ble Senior Civil Judge at Ramanagara, in R.A No.119/2012 the same also dismissed.

14. The defendants filed one document i.e., boundary certificate it reveals that, the boundary mentioned in the said document and boundary mentioned in the suit schedule are deferent. The defendants are produced the documents in respect of Sy No.604 and 597/2 not for Sy No.568/1P1. The prima-facie prove that the plaintiff is in possession over the suit schedule property. **Hence these observations this court has answered the point No.1 in the Affirmative.**

15. Point No.2 and 3 :- These two points are taken together for discussion since they require common discussion.

16. This court feel it is correct to perused the **order 39 rule 1 and 2 of code of Civil Procedure** here itself for the convenient sake. The same reads as follows:-

Cases in which temporary injunction may be granted-
where in any suit it is proved by affidavit or otherwise-

- a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*
- b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors,*
- c) that the defendants threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,*

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise cause in injury to the plaintiff in relation to any property in dispute in the suit) as he court things fit, until the disposal of the suit or until further orders.

17. A careful reading of the object of order 39 it becomes clear that the court has to strike a delicate balance between two conflicting interests. In the present case this court come to the conclusion that the balance of convenience lies in favour of the plaintiff and if the injunction is not granted the plaintiff will be put to inconvenience and irreparable loss and injury. **With these observations this court answer the point no.2 and 3 in the Affirmative.**

18. Point No.4:- For the above discussion on point No.1 to 3 this court proceeds to pass the following :-

O R D E R

I.A.No.II filed by the plaintiff
Under Order-XXXIX Rule-1 and 2 R/w
sec.151 of CPC., is hereby allowed.

The defendants are hereby
restrained from interfering in the
possession of the plaintiff over the suit
schedule property till disposal of the
suit or on till further orders.

No order as to cost.

(Dictated to the Stenographer and transcribed by her,
Order corrected and signed by me, then pronounced by me in
the Open Court on this the 16th day of December-2020).

Sd/-
Prl.Civil Judge & JMFC.,
Channapatna.

Order pronounced in open court
(Vide Separate Order sheet)

O R D E R

I.A.No.II filed by the plaintiff
Under Order-XXXIX Rule-1 and 2 R/w
sec.151 of CPC., is hereby allowed.

The defendants are hereby
restrained from interfering in the
possession of the plaintiff over the suit

**schedule property till disposal of the
suit or on till further orders.**

No order as to cost.

Sd/-

**Prl.Civil Judge & JMFC.,
Channapatna.**