

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 3rd day of March-2022

O.S. NO.109/2021

PLAINTIFF : Smt.Beeramma
-V/s-

DEFENDANTS : Smt.Chikkamma & Another

I.A.No.I, II & IV

APPLICANT/
PLAINTIFF : Smt.Beeramma,
W/o Late Chikkamalavaiah @ Chikkanna,
Aged about 75 years,

R/at Keremegaladoddi Village,
Thattekere Dhakle,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.N.C.R., Adv.)

V/s.

DEFENDANT/S
OPPONENTS :

1. Smt.Chikkamma,
D/o Late Nagamma,
W/o Late Kencha Heggade,
Aged about 78 years,

R/at Kodamballi Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

2. Sri.S.Jayakanth,
S/o Siddalingaiah,
Aged about 48 years,

R/at Yaliyuru Village,
Virupakshipura Hobli,
Channapatna Taluk.
Ramanagara District.

(by Sri.A.B.K., Advc.,)

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

R/w Sec.151 OF CPC BY THE PLAINTIFF

The learned counsel for the plaintiff has filed I.A. No.I u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendant No.2, from alienate the suit schedule property till pending disposal of the suit.

2. The learned counsel for the plaintiff has filed I.A. No.Ii u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendants, their agents or any persons acting under them interfere with possession of the plaintiff over the suit schedule property till pending disposal of the suit.

3. The learned counsel for the plaintiff has filed I.A. No.IV u/o 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendant No.2, from alienate the suit schedule property in favour of one Kistar Chand till pending disposal of the suit.

4. The plaintiff has filed separate sworn to an affidavit in support of I.A. No.I, II and IV and stated that, the suit schedule property purchased by the plaintiff through unregistered sale deed dtd.07.02.1983 from the 1st defendant with lawful consideration. From the date of execution of sale deed till today the plaintiff is in possession and enjoyment over the suit schedule property. But the

revenue entries in respect of suit schedule property are stands in the name of 1st defendant. The 2nd defendant had getting the revenue entries since from 2015 onwards. The defendant No.2 falsely getting the sale deed from the defendant No.1 on 10.04.2015. The 1st defendant delivered the possession of the suit schedule property in favour of plaintiff at the time of execution of sale deed. The plaintiff had performing the funeral ceremony in the suit schedule property of her husband who is name of Chikkamalavaiah @ Chikkanna dtd.30.12.2017.

5. The plaintiff further submitted that, the defendants have no any manner of right, possession over the suit schedule property but they are interfere with possession of the plaintiff over the suit schedule property. The defendant No.2 trying to alienate the suit schedule property in favour of one Kistar Chand. The 2nd defendant now executed registered sale agreement in favour of said person on 03.10.2020 and tried to prevent the illegal act of the defendant No.2 which went in vain. If this application rejected the multiplicity of proceedings would arise. **Hence prayed that grant an temporary injunction against the defendants by allowing the I.A. No.I, II and IV.**

6. The defendant No.1 and 2 appear through their counsel and filed a memo and stated that written statement may be treated as objection to I.A No.I, II and IV the same are allowed. The defendant No.1 and 2 are filed separate written statement in their favour. The defendant No.1 denied the all the averements of the plaint. The defendant No.1 further contended that, the husband of the plaintiff by name Chikkamalavaiah had filed the suit in O.S No.178/2010 before this court, the said suit was

dismissed on 05.05.2020. No appeal is filed by the plaintiff or her husband. The said facts suppressed by the plaintiff. The suit schedule property belongs to defendant No.1, she sold the suit schedule property in favour of 2nd defendant. The plaintiff created the sale deed. The defendant No.1 not executed any sale deed in favour of plaintiff. The 1st defendant lodged the complaint the against the plaintiff and her family members before Channapatna Rural police station on 24.11.2014. The plaintiff and her family members given statements before the police. Now the 2nd defendant is in possession and enjoyment over the suit schedule property. The plaintiff only bad intention this suit is filed. **Hence prayed that dismiss the I.A No.I, II and IV filed by the plaintiff.**

7. The defendant No.2 has filed his written statement and specifically denied the plaint averements. The 2nd defendant contended that, he was purchased the suit schedule property from 1st defendant through the sale deed. The 2nd defendant is in possession and enjoyment over the suit schedule property. The husband of the plaintiff filed a suit in O.S. No.178/2010 against 1st defendant the same was dismissed. The plaintiff not in possession and enjoyment over the suit schedule property. The plaintiff filed false suit. **Hence prayed that dismiss the I.A No.I, II and IV filed by the plaintiff.**

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

POINTS

1. **Whether the plaintiff have made out prima-facie in her favour?**

2. Whether the plaintiff made out balance of convenience in her favour?
3. Whether this I.A. No.I, II and IV is rejected, the plaintiff will be put to irreparable loss and injury which can not be compensated?
4. What order?

9. Heard the arguments from both sides.

10. This court has perused the materials on record and answer the above said points are as follows:-

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per the final order
for the following:-

REASONS

11. **POINT NO.1:-** The learned counsel for the plaintiff vehemently argued before this court that, she was purchased the suit schedule property through sale deed dtd.07.02.1983 from the defendant No.1. As per the sale deed the plaintiff is in possession and enjoyment over the suit schedule property. The defendants are interfere with possession of the plaintiff and trying to alienate the suit schedule property in favour of 3rd person. **Hence, the defendants as to be temporarily restrained till the disposal of the suit.**

12. The learned counsel for the defendant No.1 and 2 argued before this court that, the suit schedule property belonged to 1st defendant, she was sold the suit schedule property in favour

of 2nd defendant. The 2nd defendant is in possession and enjoyment over the suit schedule property. The husband of the plaintiff had filed a suit against the 1st defendant, the same was dismissed. The plaintiff filed false suit against the defendants. **Hence dismiss the applications filed by the plaintiff.**

13. 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 have to make out a prima-facie case to get the relief of injunction. In other worlds, the court must be satisfied that there is a bona-fide 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, the defendants have illegally trying to alienate the suit schedule property, and interfere with possession of the plaintiff over the suit schedule property, when the defendant No.1 and 2 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 and defendants.

14. 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** unregistered sale deed dtd.07.02.1983, it reveals that the 1st defendant sold the suit schedule property in favour of the plaintiff, 12 photos, Hand written and computerized RTC's, Mutation register extracts, xerox copy of sale deed dtd.10.04.2015 it reveals that the 1st defendant sold the suit schedule property in favour of 2nd defendant through registered sale deed.

15. **The documents of the defendants consist of** xerox copies of judgment and decree in O.S No.178/2010, xerox copies of plaint and written statements filed in O.S No.178/2010.

16. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principle of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.

17. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situations, keeping in mind the pros and cons of the matter

and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiffs if the relief is refused; and injury and prejudice likely to be caused to the defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

18. 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.

19. In order to assert the prima-facie case this court has carefully perused the materials on record, the plaintiff filed this suit against the defendants for the relief of declaration of title by virtue of adverse possession and sale deed dtd.07.02.1983, the sale deed dtd.10.04.2015 is null and void and other reliefs. The sale deed produced by the plaintiff in respect of suit schedule property is unregistered and unduly stamped. Unless and until impound the said document the court has not looked into. The sale deed is compulsory registrable document as per Sec.17(1) of Registration Act. The photos produced by the plaintiff do not show her possession in respect of suit schedule property in this stage. The RTC produced by the plaintiff discloses that, the Katha in respect of suit schedule property stood in the name of Srikantiah and 1st defendant.

20. The judgment and decree produced by the defendants in O.S No.178/2010 is discloses that, the husband of the plaintiff had filed a suit against defendant No.1 herein and others before Addl.Civil Judge and JMFC., Channapatna for the relief of declaration and permanent injunction. In the said suit the plaintiff claim the right in respect of suit schedule property by way of adverse possession. The said suit was dismissed on 05.05.2020. The plaintiff filed present suit in respect of suit schedule property for the relief of declaration of title by way of adverse possession and sale deed dtd.07.02.1983. In the previous suit the plaintiff not produced the alleged sale deed dtd.07.02.1983 which is produced in the present case. The plaintiff not discloses regarding previous suit in the present suit. The plaintiff suppressed the material facts. The 1st defendant already sold the suit schedule property in favour of 2nd defendant through registered sale deed. Prima-facie show that the plaintiff not in possession and enjoyment over the suit schedule property. Hence the I.A No.I, II and IV are not maintainable. Hence, this court concluded that the plaintiff have not made out prima-facie case. **Hence with these observations this court answer the point No.1 in the Negative.**

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

22. 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.

23. 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 not lies in favour of the plaintiff and if the injunction is not granted the plaintiff will not be put to inconvenience and irreparable loss and injury. **With these observations this court answer the point no.2 and 3 in the Negative.**

24. **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.I, II and IV u/O 39 Rule-1
and 2 r/w sec.151 of CPC., filed by the
plaintiff are hereby dismissed.**

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 3rd day of March-2022).

**Sd/-
(Mahendra.M)
Prl.Civil Judge & JMFC.,
Channapatna.**