

IN THE COURT OF THE ADDL CIVIL JUDGE
AND J.M.F.C AT CHANNAPATNA

PRESENT: Smt. Namrata Rao.K.S
B.A.L, L.L.B., M.B.L
Addl., Civil Judge and J.M.F.C.
Channapatna.

Dated: This the 15th day of June 2018

O.S.No.146/2017

PLAINTIFF:

1. Sri. Bhairegowda,
S/o Emme Boregowda,
Aged about 70 years,
R/a: Makali Village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

(By Smt. .M.A.P., Advocate)

DEFENDANTS:

1. Smt. Chowdamma
W/o Chikkonu @ Boregowda,
Aged about 75 years,
2. Sri. Bhaira
S/o Chikkonu @ Boregowda,
Aged about 45 years,
3. Smt. Jayamma
D/o Chikkonu @ Boregowda,
W/o Nanjanna,

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Aged about 47 years,

All are R/a:
Makali Village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. T.M.L., Advocate for D1 to D3)

PARTIES TO I.A No. I

Applicant : Sri. Bhairegowda
..... Plaintiff

-V/s-

Respondent: Smt. Chowdamma
and others Defendant

ORDERS ON I.A. No. I under Order XXXIX
Rule 1 and 2 of CPC

The application pending for
consideration is filed under Order 39 Rule 1
and 2 of CPC. The defendant have contested
the application.

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2. The akin facts of the case are as under:-

The suit schedule property was a part of Government Gomala Land and was granted to the plaintiff on the basis of the cultivation. The plaintiff is continuing to be in possession of the suit schedule property for fifty to sixty years prior of the date of the grant. After the date of the grant, the Revenue records stands in the name of the plaintiff. The defendants are the neighbour land holders of the suit schedule property. The defendants have trespassed to the extent of $\frac{1}{2}$ acre of suit schedule property. Further they have destroyed the crops standing in the suit schedule property by claiming title over the

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property. Thus the suit for declaration and injunction.

3. The contention raised by the defendant in their written statement is as under:-

a) The plaintiff is not granted with the 3 acre of land and is not in possession at any point of time;

b) Plaintiff has provided wrong boundaries;

C) The Plaintiff is in habit of filing frivoluous suits. He had filed O.S 199/2003 against the defendant and had utterly failed;

d) Plaintiff is attempting to engulf the property of the defendant;

4. The affidavit accompanying the I.A. No.1 and the statement of objections are nothing but the reiteration their respective pleadings.

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5. In the premise of the rival contention, the following points arise for my consideration:-

1. Whether the plaintiff has made out a prima-facie case in his favour?

2. Whether irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?

3. Whether the balance of convenience lies in favour of the plaintiff?

4. What order?

6. I have given a careful consideration to the arguments advanced by the both counsel. I have perused the records carefully.

7. My answer to the above points are as under:-

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Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per the final order

for the following:

REASONS

8. **Point No.1:-** The plaintiff has approached this court for the relief of declaration and injunction. The plaintiff asserts that 3 acres of land in Sy No. 198/3-P2 situate in Makali Village of Channapatna Taluk belongs to him. It is the claim of the plaintiff that the said property was granted to him on 01.04.1985. The plaintiff has produced the same original Grant Certificate. I have perused the Grant Certificate. The name of the plaintiff finds its place in the Grant Certificate against

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land measuring 3 Acre in block No.3 in Sy.No. 198/3-P2 Makali Village.

9. Further, it is the assertion of the plaintiff that after the grant, he is in possession of the suit schedule property and all the Revenue Records stand in his name. Plaintiff has produced the RTC Extract of the year 1984-85 and 2001-2002, 2016-2017. The plaintiff's name does occur in column No.9.

10. It is not in dispute that the defendants are the neighbour land holders of the suit schedule property. The defendants contend that they are owners of Sy.No. 198 block No.1 to an extent of 3 acres. The defendants have also produced the Grant Certificate and is as per their contention.

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11. It is the contention of the defendants in the written statement that the plaintiff is not the owner of 3 acres of land as asserted by him. There is a denial by the defendant towards the right of the plaintiff over the suit schedule property. When the document adduced by the parties, are read in the backdrop of broad prepondarence of probabilities. Then it appears to me that the plaintiff has shown a prima-facie right over the suit schedule property and a traiable case. Thus I arrive at the conclusion that the plaintiff has shown prima-facie case in his favour. Accordingly, I answer the point No.1 in the ***Affirmative.***

12. **Point No.2:-** It is the case of the plaintiff that the defendants tried to encroach a

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portion of suit schedule property and have destroyed the standing crops. Whereas, the defendants contended that the plaintiffs are not in possession 3 acres of land as asserted by him. It is a intentional attempt by the plaintiff to engulf the property of the neighbour.

13. When the pleadings are carefully gone into, its appears that the crux of the dispute between the parties is with the identification of their respective lands, At this stage no documents are produced before me which shows that survey, identification and demarcation of their property was made in the post grant period. When no such attempt is made by the plaintiff to identify and demark his property, then I am of the opnion that the plaintiff is unable to show a material and

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irreparable injury particularly when he is at default.

14. The plaintiff has produced the Judgement and Decree rendered by this court in O.S. 199/2003, I have given a careful reading to the Judgement. The suit was one for the relief of perpetual Injunction between the parties in the present case and the subject matter is also identical. In page 12 of the said judgement, a reference is made as to the application filed by the plaintiff under order 23 Rule 1. The basis of that application was that the defendant encroached a portion of the property of the plaintiff. Therefore, it raises a doubt in the mind of the court about juxtaposition of the possession of the land. If at all the said application is to be believed,

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then the sudden inconvenience that the plaintiff is asserting does not find its place. If at all the defendants had an encroached property way back in the year 2008, then the possible material injury to the plaintiffs is not shown and justified. If at all the plaintiff is unable to show a possible material injury which cannot be compensated by damages, then the relief of temporary injunction can not be granted. When I opine so, I am supported by the decision of the **Hon'ble Apex Court** in **Manohar Lal Chopra V/s Seth Hiralal reported in AIR 1962 SC 527**. The **Hon'ble Apex Court** observed that the injury must be material one, that is which can not be compensated by way of damages. The plaintiff has failed to show a material injury,

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Accordingly I answer the point No.2 in the **Negative.**

15. **Point No.3:-** It is the case of the plaintiff that the acts of the defendants cannot be stoppe except the orders this court and I am aware of the legal position held in ***Dalpat Kumar V/s Prahlad Singh reported in 1992(1) SCC 719*** that the court must weigh one need against another and determine where the Balance of Convenience lies. I have already discussed about the application filed by the plaintiff in O.S.199/2003. The probable inconvenience that the plaintiff may under go is not shown . When the documents, pleadings of both parties are weighed, at this stage it appears that the plaintiff has not shown the


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greater inconvenience than the defendant.
Therefore, I answer the Point No.3 in the
Negative.

16. **Point No.4:** In view of the above
reasons, I make the following :-

ORDER

I.A. No. I filed under Order
XXXIX Rule 1 & 2 CPC is
rejected.

(Dictated to stenographer, transcribed by her, the
transcript corrected by me and then pronounced in the
open court on this the **15th day June, 2018**)


(Namrata Rao.K.S)
Addl., Civil Judge & J.M.F.C.,
Channapatna.