

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 & J.M.F.C.
Channapatna.

Dated: This the 9th day of January 2019

O.S.No.226/2017

PLAINTIFF:

1. Sri. Ramalingaiah
S/o Late Chikkannaiah
Aged about 53 years,
R/a: No. 1499,
V.T. Road, Fort,
Channapatna Town,
Ramanagara District.
2. Sri. Ramakrishna
S/o Late Nanjundaiah
Aged about 46 years,
R/a: No. 1217, Fort,
Manteswamy Temple Street,
Channapatna Town,
Ramanagara District.
3. Sri. Thimmaiah
S/o Late Thimmaiah
Aged about 60 years,
R/a: No. 174,
Yalekeri,
Devarahosahalli Road,
Channapatna Town,
Ramanagara District.

Handwritten signature and date:
9/1/19

4. Sri. S.M. Veeregowda
S/o Muniyappa
Aged about 47 years,
R/a: Somanathapura Village,
Channapatna Taluk,
Ramanagara District.

(By Sri. M.K.N/S.S., Advocate)

V/s

DEFENDANTS:

1. Sri. R. Govinda Naik
S/o Late Kuntaramaiah
Aged about 58 years,
R/a: Cholamaranahalli,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.
2. Sri. Tulasi Naik
S/o Late Hosarama Naik
Aged about 40 years,
R/a : Cholamaranahalli,
Lambani Thandya,
Silk Farm Post,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.
3. The State of Karnataka
Represented by
Chief Secretary,
Vidhana Soudha,
Bengaluru.

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4. The Tahasildar
Channapatna Taluk,
Ramanagara District.
5. The Range Forest Officer,
Channapatna Range,
Channapatna.
6. The Assistant Executive Engineer,
Channapatna Sub-Division,
Channapatna.
7. Rampura Grama Panchayath,
Rampura, Kasaba Hobli,
Channapatna Taluk,
Ramanagara District,
Represented by its
Secretary/PDO.
8. The Special Land Acquisition Officer,
National High Way Authority,
Basavanapura,
Ramanagara Taluk,
Ramanagara District.

(By Sri. K.S.V., Advocate for D1 & D2,
Sri. B.V.B, Advocate for D8)

PARTIES TO I.A.No.III

Applicant : Sri. Ramalingaiah
and Others Plaintiff

-V/s-

Respondent: Sri. R. Govinda Naik
and OthersDefendant

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**ORDERS ON I.A. No.III under Order
XXXIX Rule 1 & 2 of CPC**

The application due for consideration is filed by the plaintiff restrained the defendants No.1 and 2 from putting up construction over the suit schedule property. The defendants No. 1 and 2 have resisted the application.

2. The case of the plaintiff is nutshell is as under:

The land in Sy. No.90 of Cholamaranahalli Village, Channapatna Taluk is a gomala land with an extent of 182 acres. The defendant No.1 was one of the unauthorised occupants of a portion of the gomala land. The Government recognizing the unauthorised occupation, granted the defendant No.1 with 4 acres 1 guntas of land. Accordingly, the grant certificate was issued in favour of defendant No.1. The grant

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certificate did not mention the boundaries and was subject to revenue sketch.

3. On 11.08.2017 the defendant No.1 entered into a registered sale agreement in favour of defendant No.2 agreeing to sell 5 acres of land. Now the defendant No.2 is trying to put up construction in the suit schedule land by blocking the Raja Kaluve. The defendants No.3 to 8 are very much aware of a illegal activities of the defendants No.1 and 2. But these officials have remained tight-lipped. Thus this suit is instituted in the interest of general public.

4. The defendants No.1 and 2 in their written statement have contented that the defendant No.1 is the absolute owner of Sy.No.90/P10. The defendant No.1 entered into a sale agreement to sell 5 guntas of land in favour of the defendant No.2 after 15 years. It is the urge of the defendants No.1 and 2 that they

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have not violated the terms and conditions of the grant. The suit instituted is with an ulterior motive to harass these defendants.

5. The affidavit accompanying the I.A.No.III is nothing but a reiteration of the plaint and defendants No.1 and 2 have adopted their written statement as statement of objections to I.A.No.III.

6. In the premise of the rival contentions, the following points arise for my consideration:-

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

7. I have heard the counsel for the both parties. I have perused the documents carefully.

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8. My answer to the above points are as under;

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per final order,

for the following;

REASONS

9. **Point No.1:** It is not disputed that the land in Sy. No.90 Cholamaranahalli is a gomala land and total extent is 182 acres. It is further not disputed that the defendant No.1 was granted with 4 Acres 1 guntas of land. The issuance a grant certificate to the defendant No.2 is also admitted. It is further admitted that a registered sale agreement dated 11.08.2017 was entered into between the defendant No.1 and 2.

10. The crux of the dispute is that the defendant No.1 and 2 have violated the conditions the grant and without obtaining license or permission from

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proper authority, the defendant No.2 is constructing in the suit schedule property.

11. The copy of the grant certificate is on record. The grant certificate is dated 06.11.1978. As per the *Karnataka Land Grant Rules* the period of non-alienation will be prescribed. I have perused the grant certificate carefully. The non-alienation period is 15 years. The date of agreement sale is 11.08.2017. On a simple calculation, as on the date of the sale agreement there exists no bar Therefore, I do not find any merits in the arguments of the counsel for the plaintiff to the point that the defendant No.1 and 2 have violated in the conditions of the grants.

12. The most significant aspect that is to be considered is the locus standi of the plaintiff. I have perused the averments of the affidavit accompanying the application. It is not the case of the plaintiff that he is in

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possession of the suit schedule property, nor it is the plaintiffs' case that they are the neighboring land owners and are affected by the construction carried out by the defendants. In other words, the plaintiff has not shown any materials by which this court can arrive at the conclusion that the plaintiff has a prima facie right over the suit schedule property and the said right is under threat.

13. Therefore based on the broad preponderance of probabilities, I opine that the plaintiffs have not shown prima facie right over the suit schedule property and in result have failed to show prima facie case. Accordingly I answer the **Point No.1** in the **NEGATIVE**.

14. **Point No.2 and 3:-** In view of the discussion made above with regard to point No.1, Point No.2 and 3 are taken together.

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15. The Hon'ble apex court in **Kashi Math Samsthan And another V/s Shrimad Sudhindra Thitha Swamy and another** reported in AIR 2010 SC 296 has held as follows:

“If a party fails to prove prima facie case to go for trial , it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted”

When the plaintiffs have failed to show prima facie case in their favour the question of considering the balance of convenience and irreparable loss and injury does not arise, hence I answer the **Points No.2 and 3** in the **NEGATIVE**.

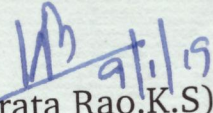
16. Point No.4: In the light of the above reasonings, I make the following;

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ORDER

The I.A. No. III under order XXXIX
Rule 1 and 2 of CPC is rejected.

(Dictated to the stenographer, transcribed by her, corrected and then
pronounced by me in the open court this the 9th day January, 2019)


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