

KARN320001052021



**IN THE COURT OF THE I ADDL.CIVIL JUDGE & J.M.F.C.,**  
**AT KANAKAPURA.**

Present: Sri. Krishnamurthy.N., *B.A., LL.B.*,  
I Addl. Civil Judge & JMFC.,  
Kanakapura.

**Dated: This 11<sup>th</sup> day of March 2022**

**O.S. No. 31/2021**

**Plaintiff/s** : Smt. Sudha  
W/o Chandregowda  
Major,  
R/at: No.663,  
Cauvery Nagar,  
Banashankari,  
Bengaluru-70.

**(By Sri. Giridhara.K.S, Adv.)**

**-V/S-**

**Defendant/s:** : Smt. Savithamma  
W/o late Ramalingachar  
Major,  
R/at: Sherugararabeedi,

Kote, Ward No.26,  
Kanakapura Town,  
Ramanagara District.

**(By Sri. Chidananda.C, Adv.)**

**I.A.No.I**

**Applicant/s** : Smt. Sudha  
**Plaintiff/s**

//Vs.//

**Opponent/s:** Smt. Savithamma  
**Defendant/s**

**ORDER ON I.A. No.I UNDER ORDER XXXIX RULE**  
**1 & 2 R/w 151 OF CPC**

This application under Order XXXIX Rule 1 and 2 R/w 151 of CPC has been filed by the plaintiff seeking an order restraining defendant from putting up unauthorized construction in the application schedule property for the reasons stated in the affidavit which accompanied with the application

2. In the affidavit it is stated that, the plaintiff has purchased the property vacant site bearing Kaneshmari No.78 site No.31 East to West 30 feet and North to South 40 feet, in total 1200 Square Feet situated at Chatrada Agrahara Village,

Thungani Grama Panchayath, Kasaba Hobli, Kanakapura Taluk i.e, suit schedule property for valuable consideration from one Smt. Basavarajamma wife of Sri. Chandregowda through registered sale deed dated 03.11.2006. Pursuant to the said sale deed, plaintiff became absolute owner and enjoyment of said property and as such, it is her self acquired property. It is further stated that, plaintiff's vendor namely Smt. Basavarajamma wife of Sri. Chandregowda acquired the suit schedule property from one Smt. Chandramma daughter of Sri.late Narayanappa under registered sale deed dated 10.12.2012. Originally Smt. Chandramma was grantee of the vacant site of suit schedule property. It is further stated that, when plaintiff gone to Bengaluru after the cleaning site property on 03.11.2020 for the intended construction of residential house therein and after one week came back and visited the suit schedule property, she noticed that the some people were gathered in the suit schedule property and they threatened the plaintiff with dire consequences and immediately the plaintiff approached the concerned Grama Panchayath on 24.11.2020. Meanwhile, the defendant illegally entered into the suit schedule property thereby construct the Hallow Bricks Shed unauthorizably over night in the suit schedule property. The act of the defendant was brought to the notice of jurisdictional Kanakapura Rural Police Station in order to protect suit

schedule property now the defendant is trying to put up unauthorized construction and causing interference with plaintiff's possession and enjoyment of suit schedule property hence, this application.

3. On the other hand, the defendant has filed written statement denying the entire averments made by the plaintiff in the plaint as false and has contended that defendant was granted in site No.29 on 27.08.1988 by the Kallahalli Mandala Panchayath by issuing Hakkupatra in favour of defendant. When such being the fact, one Sri.Chandregowda had put up shed in the site No.29 instead of site No.30 and later, he laid the foundation stone therein for above 30 years ago, though said Sri.Chandregowda was given site No.30 but he never laid foundation therein. On the other hand, by putting up a shed defendant has been in possession over the site No.30 despite she was given site No.29 and as such, Kallahalli Grama Panchayath passed a resolution dated 05.01.1992 that the site No.30 becomes the property of defendant upon considering actual physical possession of site No.29 and 30 by defendant and one Sri. Chandregowda. Since then, she has been residing by putting up shed which consist of sheet house in the site No.30 without any obstruction. It is further contended that, in fact the plaintiff purchased the site No.30 belonging to this defendant, by

mentioning site No.31 in the sale deed at the time of purchase from one Smt. Basavarajamma. Therefore, plaintiff never physical possession and enjoyment of the suit schedule property and therefore, without there being in possession of the property the suit of the plaintiff is liable to be dismissed. Hence, prays to dismiss the application.

4. Heard and perused the materials placed on record.
5. The following points that arise for my consideration on:
  - 1) *Whether the plaintiff has makes out a prima-facie case in her favour?*
  - 2) *Whether the plaintiff proves that the balance of convenience lies in her favour?*
  - 3) *Whether plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted as sought for?*
  - 4) *What Order?*
6. 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**

7. **Point No.1 to 3** : In order to avoid repetition of facts and for convenience of the court these points taken up for discussion since they are interlinked with each other at one stretch.

8. As per the plaintiff, the suit schedule property has been acquired by the plaintiff under registered sale deed dated 03.11.2006 and ever since from the date of purchase, she became the absolute owner in possession thereof. The suit schedule property is the vacant site bearing Kaneshmari No.78 site No.31 situated at Chatrada Agrahara Village, Thungani Grama Panchayath, Kasaba Hobli, Kanakapura Taluk. One Smt. Chandramma daughter of Sri. Narayanappa appears to be the grantee in site No.31 measuring 30 x 40 feet by virtue of Hakkupatra which issued by than Assistant Commissioner Sub-Division, Ramanagara dated 04.05.1980 which produced by the plaintiff and her name could be found in the demand register extract maintained in the concerned office of Thungani Grama

Panchayath with respect to site No.31 at the relevant point of time.

9. The said Smt. Chandramma daughter of Sri. Narayanappa said to have been sold the said property i.e. vacant site No.31 situated at Chatrada Agrahara Village (earlier Kaneshmari No.141) in favour of plaintiff's vendor namely Smt. Basavarajamma wife of Sri. Chandregowda through registered sale deed dated 02.02.2002, who in turn sold site No.31 Kaneshmari No.78 in favour of plaintiff for valuable consideration as per registered sale deed dated 03.11.2006 and thereafter, name of the plaintiff is entered with respect of site No.31 as per the demand registered extract Form No.12 issued by the Thungani Grama Panchayath.

10. The defendant has relied upon xerox copy of Hakkupatra and resolution which allegedly passed by the Kallahalli Grama Pandchayath dated 05.01.1992. Those documents referred only with respect to site No.29 and 30 of Agrahara Colony, Chatrada Village and it does not related with the site No.31 of the present suit schedule property. Except these, nothing cogent, reliable document have been placed to show that either plaintiff or one Sri. Chandregowda had illegally

put up shed in site No.29 or 30 or defendant has been in possession of site No.29 or 30 in the Village as contended.

11. The defendant did not choose to produced any recent relevant documents which maintained in the concerned Grama Panchayath to establish that her name is entered as owner and kathedar in respect of site No.29 or 30, except Hakkupatra and resolution dated 05.01.1992 which do not concerned with the suit schedule property. These documents are nothing to do with the property in question. It is settled that while considering the application in granting temporary injunction in a suit the court is not required to consider the merits of the case and cannot be conducted mini trial but to see whether plaintiff has make out prima-facie case and balance of convenience and injure or loss.

12. Upon considering the material placed on record produced in this case, at this juncture plaintiff has successfully establish that the balance of convenience does lie in her favour. The contention taken in the written statement by the defendant that in fact the plaintiff has purchased the site No.30 belonging to the defendant by mentioning site No.31 in the sale deed at the time of purchase from one Smt. Basavarajamma and said the Smt. Basavarajamma has no exclusive right over the site No.30 or site No.31 have to be adjudicated at the time of trial.

Therefore, the court is answered the **Point No.1 to 3 in the Affirmative.**

13. **Point No.4:** Hence, I proceed to pass following.

**ORDER**

I.A. No.I under Order XXXIX Rule 1  
and 2 R/w 151 of CPC filed by the  
plaintiff is hereby allowed.

Thereby defendant is restraining  
from being put up construction in any  
manner in the suit schedule property  
till disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 11<sup>th</sup> day of March 2022)

**I Addl. Civil Judge & JMFC.,  
Kanakapura.**