

KARN320008292022



IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA

Present:

Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)
Prl. Civil Judge & JMFC, Kanakapura

O.S No.69/2022

Dated this the 05th day of January 2024

PLAINTIFF:

Sri. K.Raju

-Versus-

DEFENDANTS:

Sri. D.Devu and another

PARTIES ON I.A.I

APPLICANT:

Plaintiff

Sri. K.Raju

-Versus-

OPPONENTS:

Defendants

Sri. D.Devu and another

ORDER ON I.A No.1

The Plaintiff filed this application U/o 39 Rule 1 and 2 r/w Section 151 of CPC to restrain the defendants from interfering the peaceful possession and enjoyment of the suit schedule property, till the disposal of the suit.

2. In the affidavit the plaintiff contended that, the plaintiff has filed this suit for permanent injunction. The plaintiff contended that, originally the property bearing old Sy.No.677/1 was granted to Sri Venkataraju S/o Govinda Raju vide order bearing No.201/1926-27. The said Venkataraju being the absolute owner sold the entire property bearing Sy.No.677/1 measuring 4 acres in favour of Siddegowda and Kempegowda through registered sale deed dated 11.01.1945. The said Siddegowda and Kempegowda being a brothers and they were in physical possession and enjoyment of the property and the revenue records were also mutated in their names as per MR No.125/1983-84. The said property was converted for residential purposes

measuring to an extent of 2 acres on 20.03.1984 and the said Siddegowda and Kempegowda divided the property equally among themselves and revenue records was also came to be changed in their respective names. The Kempegowda died intestate. The eldest son of Kempegowda relinquished her right in favour of plaintiff and his brother through relinquishment deed dated 27.11.1998. Later, the plaintiff and his brothers and sisters got divided the land bearing Sy.No.677/1 presently property bearing Sy.No.739/P2 on 23.01.2002. The plaintiff is in exclusive possession of the suit schedule property.

Further stated that, the plaintiff intended to develop the suit schedule property and the plaintiff started laying a road in the suit schedule property. At that relevant time, during 2021, the defendants came to the suit schedule property claiming that they have purchased the site and the defendants are trying to interfering the suit schedule property. Hence, the defendant being the

stranger to the suit schedule property interfering the plaintiff's property. Hence, plaintiff filed this suit along with present application and prays to allow the application.

3. On the other hand, the defendant filed a written statement and also filed memo to consider the written statement as objection to I.A No.1.

In the written statement, the defendant denied the contents of plaint averments and also contended that, the defendant is the absolute owner of revenue site property measuring 1 guntas 4 annas in Sy.No.705/1A1 situated at Kanakapura acquired the same through registered sale deed dated 18.08.2017 purchased from its previous vendor Smt.Pallavi.T W/o G.Venkatesh for valuable sale consideration of Rs.2,00,000/-. On the strength of the sale deed, mutation was effected as per M.R No.H77/2017-18 and after purchasing the property the survey department was conducted the durasth and after durasth renumbered as Sy.No.705/8. The vendor of this

defendant acquired right over the property through registered gift deed dated 06.11.2015 from her mother-in-law Smt.Gowramma. The plaintiff being stranger to the property of the defendants and he do not have any manner of right title and interest. The plaintiff and his brother Jayaramu both have filed a suit in O.S No.198/2004 before the Civil Judge (Junior Division), Kanakapura for the relief of declaration of title by way of adverse possession and consequential relief of Permanent injunction with respect to same suit schedule land bearing Sy.No.677/1 measuring 2 acres situated at Kanakapura taluk. The defendant No.2 and 3 appeared through government pleader and filed the written statement and after full fledged trial the said suit came to be dismissed on 29.09.2006 on merits. The plaintiff has not whispered about the earlier suit bearing O.S No.198/2004 which was dismissed. After lapse of 7 years filed this frivolous suit. Hence, prays to reject the application.

4. Heard both the sides.

5. The following points arises for my consideration;

1. Whether the plaintiff has made out the prima-facie case ?
2. Whether the plaintiff show that the balance of convenience lies in his favour?
3. Whether the plaintiff show that, if the application is not allowed irreparable injury will caused to the plaintiff ?
4. What order ?

6. My answered to the aforesaid points are as under;

Point No.1 to 3 : In the Negative;
Point No.4 : As per final order
for the following

REASONS

7. **POINT NO.1 to 3:** The plaintiff filed this suit for bare injunction to restrain the defendant from interfering the possession of the suit schedule property. In the affidavit contended that, the schedule property bearing Sy.No.677/1 belongs to Venkataraju S/o Govindaraju and subsequently the Siddegowda and Kempegowda

purchased the 4 acres of land through registered sale deed dated 11.01.1945 and subsequently converted the 2 acres of land from agricultural to non-agricultural on 20.03.1984. After the demise of the Kempegowda, the son of Kempegowda relinquished all his rights over the property in favour of the plaintiff and his brothers through relinquishment deed dated 27.01.1998. Later, the plaintiff and his brothers got divided the land bearing Sy.No.677/1 and present property bearing Sy.No.739/P2 on 23.01.2002 and plaintiff is in exclusive possession of the schedule property. This being a fact, the defendant without there being any right title and interest and being the stranger trying to interfere the possession and enjoyment of the property.

8. On the other hand, the defendant specifically denied the case of the plaintiff and pleaded that the defendant is the absolute owner of the revenue site measuring 1.04 guntas in Sy.No.705/1A1 situated at Kanakapura village and contended that, the plaintiff is

absolutely stranger and he do not have any right title and interest over the suit schedule property. Falsely and wrongly claiming right over the same and he is not in possession any portion of the schedule property. On the other hand, the defendant is an physical possession of the property and when the plaintiff is not in possession the question of interference does not arise. Moreover, the plaintiff and his brother Jayaramu both have filed O.S 198/2004 against the State of Karnataka, Tahasildar, Revenue Inspector on the file of Civil Judge (Jr. Dn.) Kanakapura for the relief of declaration of title by way of adverse possession and consequential relief of permanent injunction in respect of the suit schedule land bearing Sy.No.677/1 measuring 2 acres. In the said case, the defendant No.2 and 3 are appeared through their government pleader and filed their written statement. After full fledged trial the court held that, the suit is dismissed on 29.09.2006. But the plaintiff did not pleaded about the earlier filing of O.S No.198/2004

which was dismissed. The plaintiff has suppressed the material facts and after lapse of 7 years from the date of dismissal of suit filed this present suit without there being any cause of action. The plaintiff filed this false suit to harass the defendant.

9.After going through the pleadings and documents, the plaintiff produced the xerox documents in respect of Sy.No.677/1 and 705/1a. As per the ROR Sy.No 739 the extent of 2 acres standing in the name of the Kempegouda @ Chikkanna. How and when the plaintiff acquired the suit property to the extent of 16 guntas did not placed any material documents. Moreover the plaintiff did not placed any documents to show that the suit property is standing in the name of plaintiff. The defendant furnished the copy of O.S No.198/2004 in respect of the present plaintiff and his brother was filed the suit for declaration by way of adverse possession against the government in respect of the property bearing Sy.No.677/1 to the extent of 2 acres and the said suit

came to be dismissed. At the time of arguments, the counsel for plaintiff contended that, in the said judgment on merits was not decided, as all the issues were not answered and the Issue No.1 and 2 are answered as does not survive for consideration. Hence, the present suit is maintainable. On the other hand, the defendant contended that, already the matter was decided and suit is not maintainable. At present the plaintiff after going through the entire material document, did not place any material document to show that he is in possession of the suit schedule property to the extent of 16 guntas. Hence, under such circumstances, this court is of the opinion that, the plaintiff has not made out prima-facie case and balance of convenience does not lie in favour of the plaintiff. Hence, this court answered the Point No.1 to 3 is in the "Negative".

10. **POINT NO.4:** For the reasons stated in the Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiff
U/O XXXIX Rule 1 & 2 r/w Sec.151
of CPC is hereby rejected.

(Dictated to the Steno through electronic media, transcribed by him, corrected and then pronounced by me in the open Court on this the **05th day of January 2024**)

(SURESH ANNAPPA SAVADI)
Prl. Civil Judge & JMFC.,
Kanakapura.