

**IN THE COURT OF THE PRL.CIVIL JUDGE AT KANAKAPURA**

**PRESENT**

**SRI. HANUMANTHA G.H.**  
**B.A.L., LL.M.**  
**Prl. Civil Judge, Kanakapura.**

**O.S.NO. 267/2017**

**DATED THIS 7<sup>th</sup> DAY OF AUGUST 2018**

**Plaintiff:**

N. Venkatesh  
S/o late Sri. D.Narasimhaiah  
Aged about 52 years  
R/at the Farm House  
at Sy.Nos;108/3 and 110 of  
Jakkasandra village,  
(Next to Jain Vidyanikethan  
School) Maralavadi Hobli  
Kanakapura taluk,  
Ramanagara District

(By Sri. C.V.N, Advocate)

-V/S-

**Defendants:**

1. Smt. Saraswathi Bai  
W/o late Dasharatha Rao  
Aged about 82 years  
R/at Jakkasandra village  
Maralavadi Hobli  
Kanakapura taluk  
Ramanagara District & others.

(D7 & 8 by Sri. C.M.J . Advocate  
D1 to 6 exparte)

**PARTIES IN I.A.No.I**

Applicant : N. Venkatesh

-V/S-

Opponent : Smt. Saraswathi Bai & others

**PARTIES IN I.A.No.III**

Applicant : Ravi

-V/S-

Opponent : N. Venkatesh

**: ORDER :**

The plaintiff has filed I.A.No.I under Order XXXIX Rules 1 & 2 R/w Sec. 94 and 151 of C.P.C. for the relief of Temporary Injunction seeking to restrain the defendants and their henchmen from interfering with his peaceful possession and enjoyment of the suit schedule properties (herein after referred to as the properties).

The defendant No.7 has filed I.A.No.III under Order XXXIX Rules 1 & 2 R/w Sec. 151 of C.P.C. for the relief of Temporary Injunction against the plaintiff to restrain him from interfering with his peaceful possession and enjoyment over the suit schedule property (herein after referred to as the property).

**2.** In an affidavit filed along with I.A., the plaintiff has sworn in that he is the absolute owner in physical possession and enjoyment of the properties. He and his brother B.N.Paramesh purchased them from defendants No.1 to 4 under a registered sale deed dated 16-08-2004. The plaintiff has a bore well, a farm house, a pump house, silver wood, teak wood, coconut trees and other fruit bearing trees in the properties. He has also put up a fence to protect the properties and has electricity connection to the farm house and to the bore well.

On 22-06-2017, the defendants interfered with plaintiff's peaceful possession and enjoyment of the properties by attempting to remove the barred wire fence and tried to trespass into the properties forcibly. Accordingly, he has prayed to allow I.A.

**3.** The defendants No.7 and 8 have filed memo to treat written statement as objection to I.A. It is contended that at the time of sale of the properties, neither the defendants No.1 to 4 nor the plaintiff get the properties measured from the Government surveyor and fixed the haddubasth. The families of 1<sup>st</sup> defendant and families of deceased Venkoba Rao and Maloji Rao entered into a agreement of sale with the 7<sup>th</sup> defendant in respect of land measuring 0.29 guntas in Sy.No.108/2. They got the entire land in Sy.No.108 and 110 surveyed through proper surveyor and came to know that the possession of the plaintiff is illegal and the land sold to him is situated near the Jain School Bus stop. Hence the defendants No.1 to

6 and 8 sincerely requested the plaintiff to give the possession of the properties into their custody and go to the land belonging to him as per the survey sketch issued by the surveyor. Instead of complying the legal demands of the defendants No.1 to 6 and 8, the plaintiff gave false complaint to the jurisdictional police against the defendants and instituted the present suit.

The plaintiff is in unlawful possession of the properties and as such he is not entitled to the relief sought. Accordingly, they have prayed to reject the IA with cost.

**4.** In an affidavit filed along with I.A.No.III, it is stated that the families of 1<sup>st</sup> defendant and families of deceased Venkoba Rao and Maloji Rao have entered into a sale agreement with the defendant No. 7 in respect of the property. The defendant No.7 is the bonafide purchaser and purchased the property from its previous vendors through registered sale deed dated 9-5-2017. He and his family members are in physical possession and enjoyment of the property. Accordingly, he has prayed to allow IA.

**5.** The plaintiff has filed objection to I.A. It is contended that the defendant No.7 has no locus standi to claim the relief by relying on an agreement of sale. He has relied on the provision of Sec.54 of the T.P. Act and contended that an agreement of sale by itself does not create any right, interest in or charge on the property agreed to be sold. It is further contended that the defendant No.7

does not have any cause of action of his own in the above suit. Accordingly, he has prayed to reject IA.

**6.** Learned counsel for both parties have filed written arguments reiterating their respective stands taken in their pleadings.

**7.** The points for consideration are in IA No.I:

1. Whether the plaintiff has got a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and injury if the T.I. is refused?
4. What Order?

**8.** The points for consideration are in IA No.III:

1. Whether the defendant No.7 has got a prima-facie case?
2. Whether the balance of convenience lies in favour of the defendant No.7?
3. Whether the defendant No.7 suffers irreparable loss and injury if the T.I. is refused?
4. What Order?

**9.** The answers to the above points are:-

Points No.1 to 3 in IA No.I :- Affirmative,

Points No.1 to 3 in IA No.III :- Negative,

Points No.4 in both IAs. :- As per final order.

**:: REASONS ::**

**10. Points No.1 to 3 in both IAs.:-** They are taken together for common discussion to avoid repetition.

**11.** Pertaining to IA No.I, the plaintiff has relied on the copy of the sale deed to establish the fact of purchase of the properties on 16-08-2004 from the defendants No.1 to 4. It shows that the plaintiff and his brother namely Paramesh purchased the properties from the defendants No.1 to 4. The copy of the release deed dated 18-05-2007 supports the averments of the plaintiff that his brother namely Paramesh relinquished his right over the properties in favour of the plaintiffs. The endorsement dated 16-5-2005 discloses that the plaintiff was given license by the Tahasildar to construct the farm house in the properties. The copy of the crop certificate also establishes the case of the plaintiff that he has grown the trees mentioned above. The documents pertaining to electricity show that he has electricity connection to his farm house and bore well. The photos relied on by him show the existing picture of the properties.

**12.** The defendant No.7 and 8 have admitted the possession of the plaintiff over the properties. But according to them, it is illegal possession. They have contended that the plaintiff is in the possession of the properties which were not sold to them and he has to be in the possession in somewhere else. Having considered the contention of the defendants No.7 and 8, it is pertinent to note that the court cannot determine at this stage the nature of the possession of the properties. The court is to determine the prima facie case, balance of convenience and irreparable injury to consider interim application.

**13.** The materials relied on by the plaintiff are found to be prima facie materials to accept his case. The materials placed by the defendants No.7 and 8 are not sufficient to counter the materials of the plaintiff. Therefore, the plaintiff has prima-facie case and balance of convenience. He will be put to injury if at all IA is not considered and allowed.

**14.** Pertaining to IA No.III, the defendant No.7 has based his case upon an agreement of sale dated 9-5-2017. According to him, he is the bonafide purchaser of the property and he is in the possession and enjoyment of the property. The said agreement of sale does not confer any right to the defendant No.7 over the property unless it has become the sale deed. The possession of the property has also not been handed over to the defendant No.7 under

the said agreement of sale. Such being the case the defendant cannot claim the relief as sought in IA.

**15.** Further there should be cause of action to the defendant No.7 to file IA in the suit filed by the plaintiff. But the defendant No.7 has not stated anything about cause of action. There is no doubt that the defendant can also move an application to take interim order in the case involved in Rule 1(a) of Order XXXIX CPC. But the defendant No.7 has not stated any such ground in his IA.

**16.** Therefore, I am of the opinion that the defendant No.7 has not made out prima-facie case and balance of convenience. No hardship will be caused to him if IA is not considered and allowed.

**17.** Hence, without prejudice to the merits of the case, I am of the opinion that the plaintiff is entitled to the relief sought and the defendant No.7 is not entitled to the relief sought. Accordingly, the **points No.1 to 3 in IA No.I** are answered in the **Affirmative** and **the points No.1 to 3 in IA No.III** are answered in the **Negative**.

**18. Points No.4 in both IAs:-** In view of the above discussion and findings on the Points No.1 to 3 in both IAs, I proceed to pass the following:-

**:: O R D E R ::**

**I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 R/w Secs.94 and 151 C.P.C. for the relief of temporary injunction is allowed.**

**The defendants and their henchmen are temporarily restrained from causing interference to the plaintiff's possession and enjoyment of the suit schedule properties.**

**I.A.No.III filed by the defendant No.7 under Order XXXIX Rules 1 and 2 R/w Sec. 151 C.P.C. for the relief of temporary injunction is rejected.**

**There is no order as to costs.**

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the Open Court in this 7<sup>th</sup> day August 2018)

(HANUMANTHA G.H.),  
Prl. Civil Judge & JMFC  
Kanakapura.

(Separate order is passed and pronounced in the open court)

**:: O R D E R ::**

**I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 R/w Secs.94 and 151 C.P.C. for the relief of temporary injunction is allowed.**

**The defendants and their henchmen are temporarily restrained from causing interference to the plaintiff's**

**possession and enjoyment of the suit schedule properties.**

**I.A.No.III filed by the defendant No.7 under Order XXXIX Rules 1 and 2 R/w Sec. 151 C.P.C. for the relief of temporary injunction is rejected.**

**There is no order as to costs.**

Prl. Civil Judge & JMFC  
Kanakapura.

