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Presented on : 09-08-2024

Registered on : 09-08-2024

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KANAKAPURA

Present: Smt. Radha S, B.A., LL.M.,
C/c Prl. Civil Judge & JMFC.,
Kanakapura.

Dated this the 30th day of October 2024

O.S./269/2024

Plaintiff/s :- Smt. Nagamma
W/o late Shivalingegowda
Aged about 70 years,
R/at: Sathanur Town,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. R.G.K., Advocate)

.Vs.

Defendant/s :- 1. Sri. Kempegowda
S/o late Doddakarigowda
Aged about 58 years,

2. Sri. Ravi
S/o late Karigowda
Aged about 43 years,

3. Sri. Shekhar
S/o late Karigowda
Aged about 38 years,

4. Sri. Suresh
S/o late Karigowda
Aged about 36 years,

All are R/at:
Shambegowdanadoddi Village,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

**(By Sri. P.M., Advocate for D1
Ex-Parte for D2 to D4)**

PARTIES TO IA No.II

Applicant / plaintiff: Smt. Nagamma

Vs.

Opponent / defendant : Sri. Kempegowda and others

(Smt. Radha.S)
C/c Prl. Civil Judge & JMFC.,
Kanakapura.

**ORDERS ON I.A. NO.II FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC**

This is an application filed by the plaintiff praying the court to grant temporary injunction against the defendant Nos.2 to 4, to restrain them from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property in any manner during the pendency of the suit.

2. Out of all the defendants, the defendant No.1 has appeared in the present case through his counsel and filed objections to present application.

3. Heard the arguments canvased by the learned Sri. R.G.K Advocate for Plaintiff and learned Sri. P.M Advocate for the defendant No.1 at length in great detail on IA No.II. Scrutinized the records of the case.

4. On scrutiny of records of the case and having heard arguments, the following points would arise for consideration of this court:

1. Whether the plaintiff has established her prima-facie case?
2. Whether irreparable loss and injury will be caused to plaintiff if injunction is not granted?
3. Whether balance of convenience tilts in favour plaintiff?
4. What order?

5. My findings to the above points as under:

Point No.1 to 3- In the Affirmative

Point No.4- As per final order for the following

REASONS

6. REASONING ON POINT NO.1:- Admittedly the plaintiff has filed this suit against defendants for the relief of declaration and permanent injunction in respect of suit schedule property. The present application is supported by the affidavit of the plaintiff wherein she reiterated the averments of her plaint. The plaintiff in her affidavit deposed that, she is the absolute owner of the suit schedule property. The suit schedule property was originally belonged to one late Shambhaiah @ Chikkamugegowda who was none other than the father-in-law of the plaintiff. The suit survey number i.e Sy.No.73/2 was totally measuring 00 acres 26.08 guntas which was the ancestral property of plaintiff's husband. The father-in-law of the plaintiff during his life time was sold 00 acres 02.08 guntas of land in suit survey number in favour of one Kadegowda under a registered sale deed dated 26-08-1974. There after, there was a partition among the children of said Shambhaiah @ Chikkamugegowda in the joint family properties. In the said partition, the suit schedule property was allotted to the plaintiff's husband as his share. Accordingly the khata of the suit schedule property was also transferred in the name of plaintiff's husband and he was in peaceful possession and enjoyment of the suit schedule property. The husband of the plaintiff during his life time had sold 3 guntas of land in suit survey number to one Shivaraju, 00 acres 02.08

guntas to one Chikkamarigowda and 00 acres 02.8 guntas of land in favour of one Smt. Puttlingamma under the registered sale deeds dated 27-01-2002. The remaining land measuring 00 acres 15.08 guntas in suit survey number was in the possession of the plaintiff's husband. After the death of said Shivalingegowda, being the legal heir the plaintiff continued in possession of the same.

7. Further the plaintiff deposed that, one Shivaraju who purchased the property from the plaintiff's husband had sold the said property to the defendant No.1 under a registered sale deed dated 24-03-2011. The said Shivaraju had sold the different property to the defendant No.1 rather than the property which was purchased by him from the plaintiff's husband. The said Shivaraju with an intention to knock off the plaintiff's property had executed the sale deed in favour of defendant No.1 by mentioning the wrong description. By taking the undue advantage of said sale deed, the defendant No.1 is illegally trying to encroach the plaintiff's property towards the northern side and thereby trying to interfere into her possession by way of making construction on the suit schedule property. The plaintiff tried to resist the illegal acts of the defendant No.1 but all her efforts are went in vain. Hence without having any other go to stop the illegal acts of the defendant No.1, the plaintiff has come up with this suit along with present application

with above relief. On these grounds the plaintiff prayed to allow the present application.

8. Per contra the defendant No.1 has filed objections to present application wherein he denied the entire case of the plaintiff. It is the specific contention of the defendant No.1 that the husband of the plaintiff himself has sold the land to the extent of 3 guntas to the wife of defendant No.1 viz Smt.Nagamma. At the time of selling the property the survey number is wrongly mentioned as Sy.No.85/2 instead of Sy.No.73/2 but the boundaries mentioned to the said sold property is correct. The defendant No.1 along with his family members are in possession and enjoyment of the said property. There after the defendant No.1 had constructed a country styled house on the said 3 guntas of land. The defendant No.1 has also taken electricity supply to the said house and paying bill as well in this regard. Now the defendant No.1 is intending to construct a new house by demolishing the old existing house. By taking the undue advantage of said situation, the plaintiff has come up with this suit only with an intention to grab the property which was sold to the defendant No.1.

9. Further it is contended by the defendant No.1 that, he purchased 3 guntas of land in land bearing Sy.No.73/2 from one Shivaraju under the registered sale deed dated 24-03-2011. The said Shivaraju had purchased the said

property from the husband of the plaintiff under the registered sale deed dated 25-01-2002. Who in turn sold the same property to the defendant No.1. The plaintiff is also well aware of these facts since beginning even though has filed this false and frivolous suit in order to harass the defendant No.1. The plaintiff is not in possession and enjoyment of the suit schedule property to the entire extent as some portion of land was already sold by them in favour of defendant No.1 and his vendor. As such the plaintiff is not entitled to any relief as sought under the suit. On these grounds defendant No.1 prayed to dismiss the present application.

10. In support of plaintiff's contention, she has produced the RTC for the year 2024-2025 pertaining to land bearing Sy.No.85/2, Photostat copy of Hissa Survey Pakka Bookku pertaining to land bearing Sy.No.85/2, Photostat copy of release deed, Photostat copy of sale deeds, RTC for the year 2024-2025 pertaining to land bearing Sy.No.73/2 i.e suit schedule property, RTC for the year 2024-2025 pertaining to land bearing Sy.No.73/5, RTC for the year 2024-2025 pertaining to land bearing Sy.No.73/6, RTC for the year 2024-2025 pertaining to land bearing Sy.No.73/8, RTC for the year 2024-2025 pertaining to land bearing Sy.No.73/7, Mutation register extracts, Photostat copy of encumbrance certificate, Certified copies of notice, mahazar, survey sketches, receipts, endorsement issued by the police

authority, postal receipts and photographs. The documents produced by the plaintiff are prima facie discloses the possession of the plaintiff on the suit schedule property. More over the defendant No.1 has not disputed the ownership of the plaintiff over the suit schedule property. It is admitted by the defendant No.1 that, his vendor has wrongly mentioned the survey number as Sy.No.85/2 instead of Sy.No.73/2. Hence the defendant No.1 has no right to interfere into the peaceful possession and enjoyment of the plaintiff in respect of suit schedule property as the sale deed executed in favour of defendant No.1 by his vendor is not binding on the plaintiff. Though the defendant No.1 has denied the possession of the plaintiff to the entire extent of the property as mentioned in the suit schedule property but as per the pleadings of the defendant No.1 the survey number mentioned in the sale deed executed in his favour is not correct. As such the said fact has to be decided after full pledge trial only. If the defendant Nos.2 to 4 are not restrained, the very purpose of filing the present suit will be defeated as the plaintiff is claiming her title on the said property. Hence there is no impediment for this court to accept the case of the plaintiff at this stage to grant temporary injunction against the defendant No.1 as prayed for. More over the genuineness of the documents cannot be discussed at this stage.

11. Per contra to disprove the case of the plaintiff, the defendant No.1 has produced Photostat copy of sale deed dated 19-05-2004, Photostat copy of electricity supply certificate, Photostat copy of electricity bills, Photostat copy of tax paid receipts, Photostat copy of photographs and Photostat copy of registered sale deed dated 24-03-2011. I have carefully gone through the documents produced by the defendant No.1. As per the documents it is clear that the wife of the defendant No.1 viz Smt Nagamma has purchased 3 guntas of land in Sy.No.85/2 from the husband of the plaintiff viz Shivalingegowda under a registered sale deed dated 19-05-2004 and the defendant No.1 has purchased 3 guntas of land in Sy.No.73/2 from one Shivaraju and his wife viz Roopa under the registered sale deed dated 24-03-2011. It is pertinent to note that, it is the specific case of the plaintiff that the said Shivaraju had sold the property to the defendant No.1 by mentioning the wrong survey number and boundaries and the said fact is also admitted by the defendant No.1 in his objections. The defendant No.1 has not produced any documents to show that his vendor had title and possession on the property which was sold by him in his favour under the registered sale deed. At this stage there are no documents to show that the vendor of the defendant No.1 viz Shivaraju was having 3 guntas of land in Sy.No.73/2 to sell the same to the defendant No.1. It is pertinent to note that the plaintiff

is not claiming any relief or right on Sy.No.85/2 but the defendant is claiming his right on the suit schedule property on the basis of registered sale deed executed by the said Shivaraju. The defense taken by the defendant No.1 with regard to the mentioning of wrong survey number in the sale deed by his vendors cannot be considered at this pre-trial stage as that can be seen after full-pledged trial. More over there is no relief against the defendant No.1 under this application. Hence no harm or injustice would be caused to the defendant No.1 if the present application is allowed. As per the documents produced by the plaintiff, the plaintiff has proved prima-facie case in her favour. As such under these findings this court answers point No. 1 in the Affirmative.

12. Point Nos.2 and 3:- Since these points are interconnected to each other as such they are taken together for common discussion to avoid the repetition of facts.

13. In the present case trial has to be conducted to prove the case of plaintiff but at this stage it seems to the court that, till the disposal of the suit the defendant Nos.2 to 4 must restrain from any kind of interference on the suit schedule property as prayed in I.A. If the defendant Nos.2 to 4 are not restrained, the very purpose of filing of the suit will be defeated, as such no harm or injustice will be caused

to the defendant No.1 and other defendants if this application is allowed. Validity and genuineness of the documents can be seen at the time of deciding the case on merits. Since the plaintiff has approached the court with some relief as such this court is of the considered opinion that, defendant Nos.2 to 4 are to be restrained from interfering into the peaceful possession and enjoyment of the plaintiff on the suit schedule property in any manner till disposal of the suit. Hence this court is of the considered opinion that, plaintiff has made out prima facie case and balance of convenience is also lies in favour of plaintiff. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiff rather than the defendants. Hence this court answers Point Nos. 2 and 3 in the Affirmative.

14. Point No.4:- In view of discussion made on point Nos.1 to 3 above, I proceed to pass the following;

ORDER

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

The defendant Nos.2 to 4 are hereby restrained by way of temporary injunction from interfering into the peaceful possession and enjoyment of the plaintiff

on the suit schedule property in any manner till the disposal of present suit.

Cost of this I.A will follow the final result of this case.

*(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on **30th day of October 2024**)*

(Smt. Radha.S)
C/c Prl. Civil Judge & JMFC.,
Kanakapura.