

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

PRESENT

SRI. HANUMANTHA G.H.
B.A.L., LL.M.

Prl. Civil Judge & JMFC, Kanakapura.

O.S.NO. 316/2018

DATED THIS 21st DAY OF DECEMBER 2018

Plaintiff:

Sri. Nagabyraiah
S/o late Yadi Siddaiah
Aged about 58 years
R/at Vaderahalli Colony
Cheeluru Dakle
Maralavadi Hobli
Kanakapura Taluk
Ramanagara District.

Now R/at
12, Nanjundeshwara Nilaya
Chikkaswamy Extension
Jaraganahalli
J.P.Nagar 6th phase
Bangalore 56078.

(By Sri.K.C.G Advocate)

-V/S-

Defendant:

Sri. Choluraiah
S/o late Yadi Siddaiah
Aged about 52 years
R/at Vaderahalli Colony
Cheeluru Dakle
Maralavadi Hobli
Kanakapura Taluk
Ramanagara District.

(By Sri.D.R.J Advocate)

PARTIES IN I.A.No.I

Applicant/Plaintiff : Sri. Nagabyraiah

-V/S-

Opponent/Defendant : Sri. Choluraiah

: ORDER :

The plaintiff has filed I.A.No.I under Order XXXIX Rules 1 & 2 R/w Sec.151 C.P.C to grant temporary injunction restraining the defendant and his henchmen from putting up any construction for the purpose of residence over the suit "B" schedule property.

2. It is stated in an affidavit of IA that the plaintiff is the absolute owner in possession and enjoyment of the suit "B" schedule property. The suit schedule property is the ancestral joint family property. The suit "A" schedule property earlier belonged to Sidda @ Chota who is the grandfather of the plaintiff. After his death, the plaintiff's father namely Yadi Siddaiah gave consent before the concerned revenue officials to change the katha of the suit "A" schedule property in favour of the plaintiff and the defendant. The plaintiff and the defendant are joint kathedar of the suit "A" schedule property.

The defendant has no manner of right, title or interest over the suit "B" schedule property. With an intention to grab the said property from the plaintiff, the defendant has obtained loan for construction rearing mulberry house from the Cheeluru Grama panchayath on the influence of his wife as she is member of

Cheerluru Grama Panchayath and also other local leaders by illegally mortgaging the suit "A" schedule property.

The defendant and his henchmen are making hectic preparation to put up construction for the purpose of residence over the suit "B" schedule property. Hence, the plaintiff has prayed to prevent the defendant as prayed in IA.

3. The written statement filed by the defendant is treated as objection to IA by filing memo. It is contended that the property in Sy.No.216/1 was purchased in the name of the plaintiff on 21-06-1994 as he held responsibility of the family. The plaintiff sold an extent of 23 guntas in Sy.No.216/1 towards northern side in favour of one Honnagiriyappa S/o Venkategowda on 1-12-2003. An extent of 10 guntas out of 23 guntas in Sy.No.216/1 came to the share of defendant. The defendant is cultivating an extent of 30 guntas in Sy.No.216/1 and has also constructed mulberry house therein by taking permission from Cheeluru Grama Panchayath. The plaintiff has not made the wife of the defendant and the PDO of the said Panchayath as parties to the suit. He has filed the suit to grab the property in the possession of the defendant. Accordingly, he has prayed to reject IA.

4. I have heard on plaintiff's side and perused the materials on record.

5. The points for consideration are:

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?

6. The answers to the above points are:-

Points No.1 to 3	: In the Affirmative
Point No. 4	: As per final order.

:: R E A S O N S ::

7. Points No.1 to 3:- They are taken together for common discussion to avoid repetition of facts and documents.

8. The copy of M.R.No.38/1988-89 produced by the plaintiff shows that the the properties in Sy.Nos.216/2 and 221 are jointly mutated to the plaintiff and the defendant. Thereafter, the names of them have been jointly continued to the suit properties up to suit year as found from the RTCs furnished by the plaintiff. Thus, it is clear that the suit properties are jointly standing in the name of the plaintiff and the defendant as pleaded by the plaintiff. It is also found from the copy of the complaint dated 12-4-2018 relied on by the plaintiff that he approached the PDO, Cheelur Grama Panchayath alleging that his brother defendant dug the foundation in the land of Sy.No.216/2 for construction of the mulberry house without license.

9. The defendant has not furnished any document in support of his contention at this stage. Thus, there is no contra material on record to disbelieve the documents of the plaintiff. Since the suit properties are jointly standing in the names of the plaintiff and the defendant, the defendant has no exclusive right to do anything specifically, the construction of any structure. Therefore, if the defendant is not restrained as prayed in I.A, certainly hardship will be caused to the plaintiff and it leads to multiplicity of the proceedings. Hence, I am of the opinion that the plaintiff has made out prima facie case. The balance of convenience is also in his favour. Thus, he has proved the points raised above. Accordingly, the **points No.1 to 3** are answered in the **Affirmative**.

10. Point No.4:- In view of the above discussion and findings on the Points No.1 to 3, 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 Sec.151 C.P.C for
the relief of temporary
injunction is allowed.**

**The defendant is
temporarily restrained from
putting up any construction**

**over the suit 'B' schedule
property.**

**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 21st day December 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 Sec.151 C.P.C for
the relief of temporary
injunction is allowed.**

The defendant is temporarily restrained from putting up any construction over the suit 'B' schedule property.

There is no order as to costs.

Prl. Civil Judge & JMFC
Kanakapura.