

KARN320018502018



**IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA**

Present:

**Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)
Civil Judge & JMFC, Kanakapura
O.S.No.376/2018**

Dated this the 31st day of January 2023

PLAINTIFF:

1. Smt. Jyothi C.P.

-Versus-

DEFENDANTS:

1. Smt. Saraswathi and others

PARTIES ON I.A.I

APPLICANT:

Plaintiff

1. Smt. Jyothi C.P.

(By Sri. K.V.M., Adv.,)

-Versus-

OPPONENTS:

Defendants

1. Smt. Saraswathi and others

(By Sri. S.D., Adv.,)

ORDER ON I.A.No.I

The plaintiff filed I.A No.1 U/O 39 Rule 1 and 2 r/w Sec.151 of CPC to restraining the defendants from interfering the peaceful possession and enjoyment of the suit schedule property.

2. In the affidavit the plaintiff contended that the plaintiff is the absolute owner and in possession over the suit schedule property as it is the self acquired property. The plaintiff has purchased the suit schedule property on 12.12.2012 through registered sale deed from his vendor by name Shivashankar and E-khata of suit schedule property has been made in her name and its PID No.23-506-162. Since the date of purchase, the plaintiff is in possession and enjoyment of the suit schedule property. The plaintiff further contended that the defendants are without there being any right, title or interest over the suit schedule property being stranger trying to interfere with the peaceful possession and enjoyment of the suit schedule property. The defendant No.1 had purchased the property bearing Municipal khata No.6182/5662, measuring 30X40 feet from one K.L. Sunilkumar through registered sale deed dated 09.06.2000 and defendant No.1 has sold the property to the defendant No.2 on 15.12.2017 through registered sale deed and boundaries mentioned in the sale deed of defendant No.2 is different and the boundaries mentioned in the sale deed of defendant No.1 is different. The defendant No.2 claiming

her right over the property of the plaintiff by mentioning the boundaries of the plaintiffs. Hence filed this application to restrain the defendants from interfering the peaceful possession and enjoyment of the suit schedule property. Hence with these set of contentions prays to allow the application.

3. On the other hand, the defendant No.2 and 3 appeared through their counsels and filed written statement and filed memo to consider the written statement as objections to I.A.No.I. In the written statement the defendants specifically denied the entire plaint averments and contended that the suit is not maintainable without seeking for declaration. Further contended that the defendant is in possession and enjoyment of the suit schedule property as there is no case of action to file this suit. Originally the suit schedule property belongs to one Lingaiah S/o late Subbegwoda, and he was utilizing the land with total measurement of 1 acre 34 guntas and khata stood in the name of said Lingaiah. He was the absolute owner and khatedar of Sy.No.686/3, 686/1, 688/1. Subsequently, converted the said land agriculture to non agriculture vide order No.ALN-SR-97/1983/84, dated 11.07.1984. In the year 1985, the municipal authorities obtained development charges and taxes from said Lingaiah and bifurcated as house sites. Later in the year 1993 as per panchayath parikath the suit schedule property and other properties fallen to the share of K.L. Sunil Kumar which shows in 'B'

schedule properties. Old Sy.No.688/2 after conversion, municipal site No.50265 to 50271 which sites measuring 30X45 feet. Later defendant No.1 sold the property to the defendant No.2 by mentioning the wrong boundaries. Immediately on 30.01.2018, rectification deed was executed in favour of defendant No.1, on the strength of the same, the present boundary shown by the plaintiff in respect of suit schedule property and rectified the same. Subsequently, during 2017, wife of the defendant No.1, Sunita verified the same and purchased for valuable consideration of Rs.6,25,000/- and since then defendant is in possession and enjoyment of the suit schedule property on the strength of the sale deed and without there being any right, the plaintiff filed this false suit, only to harass the defendants. Hence prays to dismiss the suit along with application.

4. Heard the both sides.

5. The following points arises for my consideration;

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

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

1. Point No.1 to 3 : In the affirmative

2. Point No.2 : As per final order
for the following

REASONS

7. POINT NO.1 to 3: The plaintiff contended that she is the absolute owner and in possession of the suit schedule property through registered sale deed dated in respect of property No.8310/7016 (Old No.6065/4981/5), measuring 30X40 feet and the boundaries mentioned in the plaint is East: the property of Jagadeesha, North: Property of Narasimha, North: Road, South: Road and the same has been entered in the municipal numbers and E-Khata has been prepared and its PID No. No.23-506-162 where in the property has been purchased on 12.12.2012 from one M. Shivashankar. The plaintiff claiming that she is in possession of the suit property from date of purchase. On the other hand the defendant specifically contended that the plaintiff shown the boundaries of the property of the defendant. The defendant also contended originally it was a survey number subsequently converted as agriculture to non agriculture land and municipal numbers have been given and defendant claiming that he has purchased the property K.No.6182/5662 from one Sunil Kumar L. Later the defendant No.1 sold the said property

to the defendant No.2, the property number is 6182/A-5662/A, and claiming title over the property each other. For that the plaintiff has furnished the some documents, after going through the said documents ie., notarized copy of sale deed, E.C. municipal documents, its shows that property No.8310/7016 stands in the name of plaintiff and the boundaries shown in the plaintiff is the boundaries mentioned in the municipal records and its PID number and municipal authority has given endorsement that the boundaries of the defendants' property will not tally with the PID number of the municipal authority, but the defendant did not placed any document to show that the suit property standing in her name. after going through the entire material available on record, at this stage, there is a prima-facie material in favour of the plaintiff. Hence, under such circumstances, this court is of the opinion that at this stage the plaintiff has made out prima-facie case and also shows that the balance of convenience lies in favour of plaintiff. Hence this court answered the Point No.1 to 3 in the affirmative.

8. **POINT NO.4:** For the reasons stated in the Point No.1, I proceed to pass the following;

ORDER

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

The defendants are restrained from interfering the peaceful possession and enjoyment of suit schedule property of the plaintiff till the disposal of suit or three years which ever is earlier.

No order as to costs.

(Dictated to the Steno through electronic media, transcribed by her, corrected and then pronounced by me in the open Court on this the 31st day of January 2023)

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