

**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC AT
KANAKAPURA**

PRESENT

SRI. HANUMANTHA G.H.

B.A.L., LL.M

Prl. Civil Judge & JMFC, Kanakapura.

O.S.NO.510/2016

DATED THIS 17th DAY OF JANUARY 2020

PLAINTIFF : Mukkannaiah
S/o late Girigowda @ Mande Gowda
Aged about 45 years
R/at Yedmaranahalli village
Uyyamballi Hobli
Kanakapura Taluk
Ramanagara District

(By Sri.S.Prasana Kumar, Advocate)

-V/S-

DEFENDANTS : 1. Smt. Nagarathna
W/o Krishna S
Aged about 40 yers

2. Sri. Krishna
S/o Siddegowda
Aged about 48 years

Both are R/at
Yedmaranahalli village
Uyyamballi Hobli
Kanakapura Taluk
Ramanagara District.

(By Sri.L.Puttamadaiah, Advocate)

PARTIES IN I.A.No.I

Applicant/Plaintiff : Sri. Mukkannaiah

-V/S-

Opponents/Defendants : Smt. Nagarathna & another

ORDER

The plaintiff has filed I.A.No.I under Order XXXIX Rules 1 & 2 of C.P.C to grant an order of temporary injunction to restrain the defendants and their henchmen from interfering and obstructing with the plaintiff's possession over the suit schedule property.

2. In an affidavit filed along with I.A., the plaintiff has stated that the suit schedule property (**herein after referred to as the 'property'**) is an ancestral property of his father namely Girigowda @ Mandegowda. After the death of the father of the plaintiff, the khata of the 'property' has been transferred in the name of plaintiff. The plaintiff is the owner in possession and enjoyment of the 'property' without interference from anybody.

The defendants are strangers to the 'property'. They do not have any right, title and interest over the 'property'. On 16-11-2016, the defendants and their henchmen have come to the 'property' and attempted to disposes the plaintiff from it. Hence, the plaintiff has filed I.A. Accordingly, he has prayed to allow I.A.

3. Learned counsel for the defendants has filed memo to adopt the written statement as objection to I.A. It is contended that the defendant No.1 has acquired the land bearing

Sy.No.1/10 measuring 10 guntas situated at Yedamaranahalli village, Kanakapura Taluk in the registered partition dated 05-07-2013. The boundaries of the said land are east by a house of Siddamma W/o Kullaiah, west by road, north by a vacant site of Chikkathayamma and Siddegowda and south by a house and vacant site of Chikkeeregowda. The revenue records of the said land are in the name of the defendant No.1. Hence, the defendants are the absolute owners in lawful possession and enjoyment of the said land. They have also obtained loan from the UCO Bank on the security of the said land and developed the said property.

The plaintiff has no right, title or possession over the said land of the defendants. He has not identified his property. But he has included the portion of the land of the defendants. He has given false boundaries and khata number to the 'property' by creating false documents and by misrepresenting the facts before the court to obtain unlawful gain. Hence, the plaintiff is not entitled to the relief. Accordingly, the defendants have prayed to reject I.A.

4. I have heard on both sides and perused the materials on record.

5. The points for consideration in I.A 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 temporary Injunction is refused?

4) What Order?

6. The answers to the above points are:-

Points No.1 to 3 : Do not survive for consideration

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.

8. Learned counsel for the plaintiff has argued that the 'property' is the ancestral property of the plaintiff as he acquired it from his father. He is the owner in possession and enjoyment of the 'property'. The documents produced by the plaintiff prove the case of the plaintiff at this stage. The defendants having no right over the 'property' are causing interference to the plaintiff's peaceful possession and enjoyment of the 'property'. Therefore, they are to be restrained as prayed in I.A.

9. Learned counsel for the defendants has argued that the defendant No.1 acquired the land bearing Sy.No.1/10 measuring 10 guntas through a partition and therefore, it is the absolute property of the defendants. The plaintiff has falsely given the boundaries to the 'property' by including the portion of the land of the defendants. The plaintiff has also suppressed the true

facts before the court and therefore, he is not entitled to the relief sought.

10. The plaintiff has relied on the copy of E-khata extract of the 'property', tax paid receipt, certified copies of the sale deeds dated 22-03-1976 and 10-01-1977, the copy of genealogical tree, the copy of hand written RTC of the property bearing Sy.No.1/10, the copy of letter of PDO, Achalu Grama Panchayath, the copy of sketch of the 'property', the copy of the order in R.A.807/2017-18 dated 14-12-2018 passed by the Assistant Commissioner, Ramanagara, the copy of notice issued by land surveyor, the copy of police notice of Sathanur PS and an affidavit of one Moogegowda S/o Siddegowda.

11. Learned counsel for the defendants has filed the notary copies of MR No.6/1993-94, receipt patta, hand written RTCs of the property bearing Sy.No.1/10, order in R.A.807/2017-18 dated 14-12-2018 passed by the Assistant Commissioner, Ramanagara, the copy of letter of ADLR, Kanakapura Taluk given to the PSI, Sathanur PS, the copy of notice issued by the land surveyor, the copy of Akarbandh, copies of survey sketches, copy of computerized RTC of the property bearing Sy.No.1/10 and the copy of MR.No.H6/2013-14.

12. The perusal of the copy of genealogical tree relied on by the plaintiff shows that one Siddegowda and Nanjamma had 2 sons namely Jogi Siddegowda @ Moogegowda and Girigowda @ Mandegowda. The said Jogi Siddegowda and his wife Putteeramma had 2 sons namely Siddegowda and Girigowda. The said Siddegowda and his wife Mayamma have 3 children

namely Krishna (defendant No.2), Gavigowda and Moogegowda. The said Girigowda @ Mandegowda and his wife Muddeeramma had 2 sons namely Jogi gowda and Mukkannaiah (plaintiff).

13. The perusal of the copies of hand written RTC of the property bearing Sy.No.1/10 relied on by both parties shows that the said property had been standing in the name of one Nanjamma, the wife of original propositor Siddegowda from 1969-70 to 1980-81. At this stage, those RTCs show that the said property belonged to the said Nanjamma. There are no contrary materials to disbelieve those RTCs at this stage.

14. The perusal of certified copy of the sale deed dated 22-03-1976 shows that the father and brother of the plaintiff sold an extent of 41X66 feet (2.84 guntas) in Sy.No.1/10 to one Chikkaveeregowda S/o Muddiregowda. The perusal of another certified copy of sale deed dated 10-01-1977 shows that the father of the defendant No.2 and the brother of the father of the defendant No.2 sold an extent of 37X66 feet (2.20 guntas) in Sy.No.1/10 to the said Chikkaveeregowda.

15. The perusal of the notary copy of mutation register extract in MR No.6/1993-94 shows that the mother of the defendant No.2 is found to have been allotted the said property of 10 guntas in Sy.No.1/10 under panchayath parikath. The copy of the Patta receipt is also in the name of the mother of the defendant No.2 to the said property and other properties. Consequently, the name of her came to be entered to the RTCs of the said property as could be seen from them.

16. The copy of the MR No.H6/2013-14 shows that the name of the defendant No.1 came to be mutated to the said property from the name of mother of the defendant No.2. As a result of it, the name of the defendant No.1 stands to the said property for 2017-18 as found from the RTC.

17. The plaintiff herein has challenged the said MR No.6/1993-94 and MR No.H6/2013-14 before the Assistant Commissioner, Ramanagara in R.A No.807/2017-18. The perusal of the order of the said Assistant Commissioner dated 14-12-2018 in the said case shows that he mentioned earlier sale transaction in the property bearing Sy.No.1/10 and earlier entry of khatas of the said property and present entry of khata of the said property. Ultimately, he has opined that the parties are to establish their case before the Civil court pertaining to the remaining extent in Sy.No.1/10.

18. The perusal of the copies of notice given by the land surveyor and police notice and the requisition given to the police show that the land bearing Sy.No.1/10 measuring 10 guntas is found to have been surveyed. The survey sketch also show the location of the said property. That leads to conflict between the parties herein.

19. An affidavit of one Moogegowda S/o Siddegowda who is stated to be the brother of the defendant No.2 filed on behalf of the plaintiff shows that the said land bearing Sy.No.1/10 measuring 10 guntas came to be orally divided earlier between his grand father namely Moogegowda and his relatives namely Girigowda @ Mandegowda; the father of the plaintiff sold half

portion of his property to one Chikkaveeregowda and was in possession of remaining portion of the property and after his death, the plaintiff is in possession of the said portion; his father and one Girigowda sold half portion of their property to the said Chikkaveeregowda and he and his brother are in the possession of remaining portion of the property and in the division, the said remaining portion has now come the share of the defendant No.2; the defendant No.2, having taken advantage of the fact that the khata to an extent of 10 guntas came to be entered by oversight, is causing interference to the plaintiff and the said Chikkaveeregowda.

20. After perusal of the above materials on record, at this stage, it is clear that Sy.No.1/10 contains 10 guntas only to the erstwhile family of the plaintiff and the defendants. Out of the said 10 guntas, an extent of 2.48 guntas through a sale deed dated 22-03-1976 and an extent of 2.20 guntas through a sale deed dated 10-01-1977 came to be sold. Thus, an extent of 4.12 guntas came to be sold out of 10 guntas. Therefore, the remaining land is 5.4 guntas out of 10 guntas. Despite such fact, entire extent of 10 guntas came to be allotted to the mother of the defendant No.2 as found from the MR No.6/93-94. The defendants have not produced any document to show the base as to how the entire extent of 10 guntas in Sy.No.1/10 came to be mutated to the name of the mother of defendant No.2 even after the sale of 4.12 guntas out of 10 guntas. It is found from the said mutation register extract that the said extent of 10 guntas came to be mutated to the mother of the defendant No.2 as per Panchayath Parikath. The defendants have also not produced such Panchayath Parikath to show the said fact.

Therefore, at this stage, it is difficult to accept the case of the defendants without having full pledged trial.

21. Likewise, the 'property' stands in the name of the plaintiff as found from E-khata extract and tax paid receipt. It is the case of the plaintiff that the 'property' is the ancestral property of his father and after his death, the 'property' has come to the plaintiff. The brother of the defendant No.2 in his affidavit produced on behalf of the plaintiff has narrated the fact about earlier oral partition of the property bearing Sy.No.1/10 measuring 10 guntas. But the plaintiff has not stated anything about earlier partition of the said property. Further, the plaintiff has not produced, except E-khata extract and tax paid receipt of the 'property', any document to show as to how his father acquired the 'property'. The trial is certainly required to establish the case of the plaintiff. Without having trial, it is not possible at this stage to come to conclusion to accept the case of the plaintiff also.

22. Therefore, the above discussion has made me to hold that the trial is required to ascertain the cases of both parties. At this stage, it is not possible to come to conclusion on the basis of materials on record as to whether the plaintiff has proved his case. Hence, both parties are to establish their cases only after holding full trial. However, It is necessary to direct both parties to maintain status-quo till disposal of the suit to avoid multiplicity of proceedings and in the interest of justice and equity. Therefore, it is necessary to dispose off I.A. with the said direction to both parties. Thus, the **points No.1 to 3** are answered accordingly.

23. POINT NO.4 : In the light of findings on above points, I proceed to pass following-

:: O R D E R ::

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 C.P.C. for the relief of temporary injunction is disposed off with a direction that both parties are to maintain status quo till disposal of the suit.

There is no order as to costs.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court on this 17th day January 2020.)

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