

IN THE COURT OF THE SENIOR CIVIL JUDGE AT: MAGADI

Present:- Sri. J.V Kulkarni B. Sc., LLB.
Sr. Civil Judge.,
Magadi

O.S. No. 325/2014
(Old OS No.37/2011)

Dated this the 15th Day of June 2023.

Smt. Kamamma

Plaintiff

Vs

Sri Narasegowda and others

Defendants

IA No. 50

Applicants

Smt. Kamamma
(By adv A.K.H.)

(Pltf.)

Vs

Opponents

Sri Narasegowda and others
(Def. 1 to 3 by adv. R.P.)
(Def. 4 & 5 by adv. Dead)
(Def. 4(a to d) by adv. M.M.)
(Def. 5 to 9, 15 & 16 ex-parte)
(Def. 11 to 13 by adv. N.R.S.)
(Def. 14 by adv. G.P.)

(Defs.)

(Sri. J.V Kulkarni)
Sr. Civil Judge., Magadi.

ORDER ON IA No.50

1. This application is filed by the plaintiffs under Or. 39, Rule 1 and 2 of CPC seeking TI against the defendants restraining them from interfering with the peaceful possession and enjoyment of the plaintiff in respect of land Sy.No.131/4 measuring 2 acre 19 guntas situated at Soluru Village, Soluru Hobli, Magadi Taluk bounded on east land of Venkataramanaiah, west land of Shivakumar, north N.H.48, south Kuduru border and agriculture land. Sy.No.104 measuring 1 acre 38 guntas situated in Soluru Village, Soluru Hobli, bounded on east thoti inam land, west land of Shivalingaiah, north land of Puttaiah, south land of Shivalingaiah. These properties hereinafter referred as the petition schedule properties.

2. The plaintiff filed suit for declaration and permanent injunction, the suit schedule properties are originally belongs to Naganna S/o Kenchaiah who is father of the mother- in-law viz., Eramma W/o Sanjeevaiah. Since there was order of pada she made an application before the concerned authorities after considering the facts the Tahsildar by order dated : 03.02.1994 has restored the pada and accepted the khata in the name of Naganna. Accordingly khata has been accepted in his name since he was no more by t hat time the khata was

accepted and name of Eamma was substituted. Eamma became absolute owner and possessor of suit schedule properties, during the life time she sold 2 acres out of 4 acres 21 guntas in Sy. No.131/4 of Soluru Village in favor of Shivakumar S/o late Manjunath through sale deed dated : 26.05.1994 then she has been in possession of the suit schedule properties.

3. During her life time on 18.06.1994 she executed Will in favor of the plaintiff, Will was registered and the suit schedule properties are bequeathed in favor of the plaintiff on 31.07.1994. After the death of Eamma the plaintiff became absolute owner and possessor of suit schedule properties. During the life time of Eamma she sold 2 acres in favor of Shivakumar, his name was entered in the RTC based on MR No.8/1994-95. On 18.06.1994 Eamma has executed registered Will in favor of Kamamma in favor of the suit schedule properties. Eamma D/o Naganna given to one Sanjeevaiah who is son of Narasimhegowda out of said wedlock Eamma has got two sons and two daughters.

4. The applicant is the wife of Narasimhaiah who is the first son of Eamma and Sanjeevaiah. Eamma has love and affection towards the plaintiff she bequeathed the suit schedule properties in her favor. The defendants have no any kind of right, title or interest over the suit

schedule properties. The defendant No.1 claiming lineal descendant of Narasimhegowda and also collusion with the revenue officials got mutated his name as per MR No.26/1996-97. When this act was brought to the notice of the plaintiff she filed W.P. No.24560/1997 before Hon'ble High Court of Karnataka.

5. The Honorable High Court of Karnataka by order dated: 13.07.1999 disposed the matter and remanded the matter to the Tahsildar for fresh consideration. Accordingly, the Tahsildar has registered RRT (dis) 1/2000-01. The defendant No.1 and others thereafter against the defendant No.1 and others. Thereafter the Tahsildar considering the documents produced by the plaintiff held that Sy. No.131/4 originally belongs to Naganna, then it goes to Eramma. Eramma has executed Will in favor of the plaintiff in respect of the suit schedule properties. Therefore, khata was accepted in the name of plaintiff.

6. The defendant No.1 and others have filed Revenue appeal bearing RA No. LKP 6/2003-04 before Assistant Commissioner. During the pendency of the said appeal the defendants knows the consequences and he filed memo to withdraw the appeal. however, by virtue of order dated : 27.05.2005 the Assistant Commissioner has

passed considered order dismissed the appeal. He confirmed order passed by the Tahsildar, Magadi. The defendant No.1 has not challenged the order, order of Assistant Commissioner attained finality and therefore plaintiff claim that she is in possession and enjoyment of the suit schedule properties.

7. She contended that she has filed IA seeking TI against B.Nataraj Kumar the defendant No.4 from alienating Item No.1 property. On 21.02.2011 the court has granted TI against the defendant No.4. The plaintiff contended that she is in possession and enjoyment of the suit schedule properties, now the defendant No.1 to 3 in collusion with the other defendants trying to interfere with her possession over the Item No.2 property. On 27.05.2023 the defendant No.1 to 3 and defendant No.4 (a to d) tried to interfere with her possession in respect of Item No.1 property, it was averted by the plaintiff with great difficulty.

8. The plaintiff stated that the defendants are having man power at their command they may dispossess her at any point of time and they may try to interfere in her possession. Therefore, she stated that she has got prima facie case, balance of convenience lies in her

favor, if TI is not granted she will be put to irreparable loss and injury. Therefore, she prays to allow the application.

9. The learned counsel for the defendant No.1 to 3 filed objections stating that the plaintiff is neither owner nor in possession of the suit schedule properties therefore, the application is not maintainable. The plaintiff had filed false affidavit in support of the application. The suit was filed in the year 2011, the plaintiff has not sought relief injunction restraining the defendants till filing of the instant application. This fact itself shows that she is not in possession of the suit schedule properties or any part thereof. The defendant No.1 to 3 contended that the evidence of both parties are already concluded and the case was posted for arguments on merits. The plaintiff after conclusion of her evidence by one or other way filing application only to drag the proceedings.

10. The plaintiff recently filed application under Order 6 Rule 17 of CPC for amendment after enormous delay, it was dismissed. It was challenged by the plaintiff by filing W.P. No. 7864/2023 and it was pending. The plaintiff in order to postpone the proceedings has filed the recent application which is not maintainable in the eye of law. Therefore, the defendant No.1 to 3 sought to dismiss the application.

11. I heard the arguments of learned counsel for the plaintiff. The learned counsel for the defendants did not turned up therefore, their arguments taken as heard. During the hearing learned counsel for the plaintiff filed memo with document and photographs.

12. The following points arise for my consideration:

- 1) Whether the plaintiff proves that she has got prima facie case?
- 2) Whether the plaintiff further proves that the balance of convenience lies in her ?
- 3) Whether the plaintiff further proves irreparable loss and injury will be caused to her if the TI is not granted ?
- 4) What order ?

13. My answer to the above points are as follows;

Point No.1 to 3:- In Negative.

Point No. 4:- as per final order for the following

REASONS.

14. **Point No.1 to 3:-** At the outset the plaintiff has challenged the order passed by this court on IA No.45 before Hon'ble High Court of Karnataka by filing WP No.7864/2023. On the same day

another application filed by the applicant under Order 1 Rule 10 (2) of CPC to implead him as the defendant was also dismissed by this court. The third party applicant has filed W.P. No.7136/2023 before Hon'ble High court of Karnataka. In the said proceedings the Hon'ble High court granted stay till next date of hearing.

15. The order copies of the stay was produced by the proposed defendant as well as learned counsel for the plaintiff on 07.06.2023 respectively. This court has also received the stay order from Hon'ble High Court of Karnataka on 03.06.2023. On the same day this application is filed by the learned advocate for plaintiff seeking TI against defendants restraining them from interfering in the peaceful possession and enjoyment of the plaintiff over the suit schedule property. In both the writ petitions i.e. W.P. No.7136/2023 filed by G.Premkumar S/o Late S.M.Govindaraju, the Hon'ble high court granted stay order on 12.04.2023.

16. The plaintiff has challenged the order passed by this court on IA No.45 by filing W.P. No.7864/2023. It was also came before Hon'ble High Court of Karnataka on 24.05.2023, the Hon'ble high court has stayed **all further proceedings** in this suit was stayed till next date of hearing. The next date of hearing was not communicated either by

the third party applicant or by the plaintiff. Therefore, the stay order passed by Hon'ble High Court of Karnataka is still operating. No doubt, the counsel for the plaintiff argued that there is urgency, there is a hectic preparation by the defendants to erect the compound wall and day by day the compound wall is progressing. In this regarding photographs and CDs are produced by learned counsel for the plaintiff. The learned counsel for the defendants did not file objections. But Hon'ble High Court has granted stay in two writ petitions filed by third party applicant G.Premkumar as well as the plaintiff. Therefore, this court becomes *functus officio* once the stay order is passed.

17. The Hon'ble Supreme Court in ***AIR 1967 SC 1386 in case of Mulraj Vs. Murti Raghunath G Maharaj*** held that an order of injunction generally issued to a party it is forbidden from doing certain acts stay order is issued to the court. The Hon'ble Supreme Court further held that it is well settled that in such cases the party must have knowledge of injunction order before it could not be penalizing for disobeying it.

18. Further it is equally well settled that injunction order is not being addressed to the court, if the court proceeds in contravention of the injunction order the proceeding are not a nullity. In case of a stay

order as it is addressed to the court and prohibits it from proceeding further as soon as the court has knowledge of the order it is bound to by it and if it does not it acts illegally and all proceedings taken after the knowledge of the order would be a nullity. That is the only difference between an order of injunction to a party or an order of stay to a court.

19. The Hon'ble Supreme court in the said decision clearly held that as soon as the stay order is communicated to the court, the court is forbidden to proceed further and does not pass any order. Under these circumstances, learned counsel for the plaintiff read over the evidences of DW2, read over the documents highlighted by him in the cross examination of defendant witnesses and read over the revenue proceedings etc.,

20. The proper remedy for the plaintiffs is to approach Hon'ble High Court in a writ petition filed by her in W.P. 7864/2023 and sought injunction before Hon'ble High Court of Karnataka. But this court once the order is communicated by the parties as well as by Hon'ble High Court it becomes *functus officio*. Therefore, the maintainability application is also involves the prima facie case. The plaintiff fails to prove that there is a prima facie case in her favor. Once

the plaintiff fails to prove the prima facie case as per the judgment of Hon'ble High Court of Karnataka in ***Gowrishankar Swamiji Vs. Siddaganga Mutt*** probing the other two aspects does not arise. Hence, I answer Points No.1 to 3 in negative.

21. Point No.4:- In view of my findings to the above points, I pass the following;

ORDER.

I.A. No.50 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is dismissed as not maintainable before the court.

Call on 17.08.2023 for await order of Hon'ble High Court of Karnataka.

(Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the 15th Day of June 2023).

(Sri. J.V Kulkarni)
Sr. Civil Judge., Magadi.

Separate order signed and pronounced in open court.

ORDER

I.A. No.50 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is dismissed as not maintainable before the court.

Call on 17.08.2023 for order of Hon'ble High Court of Karnataka.

Sr. Civil Judge., Magadi.