

IN THE COURT OF THE II ADDL. CIVIL JUDGE AND
JMFC., MAGADI.

O.S.NO:273/2015

Presented BY

Rekha H.C.
II Addl. Civil Judge and JMFC.,
Magadi.

Dated this the 07th day of December-2017

PLAINTIFF : Madan Mohan
Aged about 46 years,
S/o Late Ramachandraiah
Thimmasandra village,
Madhigondanahalli post,
Solur Hobli,
Magadi Taluk,
Ramanagara District.

V/S

DEFENDANT/S : Ramakrishnaiah
Aged about 60 years,
S/o Late Chikkegowda
Thimmasandra village,
Madhigondanahalli post,
Solur Hobli, Magadi Taluk,
Ramanagara District.

ORDER ON I.A No.I FILED U/O XXXIX RULE 1 AND 2 R/w
151 OF CPC BY THE PLAINTIFF

The plaintiff filed this suit for prays that for the reasons
sworn to in the annexed affidavit, that this Hon'ble court be

pleased to grant an ad-interim order of temporary injunction restraining the defendant, interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. It is the case of the plaintiff that he is the absolute owner and have been in peaceful possession and enjoyment of the suit schedule property. The suit schedule property was purchased by his grand father through a Registered Sale Deed. He was in possession and enjoyment and after his death, his father inherited the property and continued in possession. His father is dead, and he have succeeded and have been continuing in peaceful possession and enjoyment of the suit schedule property in his own right. The Taluk Surveyor has conducted measurements and mahazar which also discloses his right, title and possession over the suit schedule property. He has been personally cultivating and growing crops. The defendant has no manner of right, title or interest nor possession over any portion of the suit schedule property. But, he meddled with katha and he challenged the same before the Assistant Commissioner. The learned Assistant Commissioner set aside the mutation accepted in favour of the defendant and remanded the matter to the Tahsildar. The learned tahsildar, holding that both parties have not proved the partition, they may approach competent civil court, and till then the katha to be continued in the names of Chikkegowda and his grandfather Anjanappa.

3. The defendant filed the objection and stated that the defendant's grandfather, Patel Chikkegowda had acquired right of ownership of $\frac{1}{2}$ share in Jodi-Thimmsandra village, by virtue of registered sale deed dated 5-11-1948, vide Registered document No.26216/1948-49, from his vendors Bheema Rao and his children Since the time of purchase, defendant's grandfather was in possession and enjoyment of $\frac{1}{2}$ Jodi Thimmasandra grama lands. Accordingly, the Revenue entries are still in existence in the name of late Chikkegowda, based on the aforesaid title deeds, the Revenue authorities have mutated the katha in his name as kathadar and owner thereof inrespect of property bearing Sy.No.54 of Thimmasandra village (5 acre 3 guntas including 7 guntas karab). Accordingly, the defendant's grandfather namely Chikkegowda is entitled $\frac{1}{2}$ share inrespect of the property bearing Sy.No.54 of Thimmasandra village.

4. Further contended that it is relevant to make a mention here in that, the defendant's grandfather had purchased land of $\frac{1}{2}$ share of Thimmasandra Jodigrama village which clearly discloses that, the boundaries of land which was acquired by the grandfather of the defendant as per registered sale deed dated 5-11-1948, vide Registered Document No.2616/1948-49. However, the plaintiff has misinterpreted and shown the boundaries of land of $\frac{1}{2}$ share of Thimmasandra village Jodi grama which is referred in the registered sale deed dated 5-11-1948. As the said land being

enjoyed by the grandfather of the defendant and his father as per registered sale deed dated 5-11-1948. The said registered sale deed dated 5-11-1948, vide Registered Document No.2616/1948-49 is remains un-challenged by the grandfather of the plaintiff and plaintiff also. Accordingly, the aforesaid registered sale deed dated 5-11-1948 is force, effective and binding on the plaintiff's grandfather and also the plaintiff. Therefore, it is prayed to reject the application.

5. Heard both the advocates appearing for the parties and perused the materials available on record.

6. Upon careful perusal of materials available on record, following points that arise for my consideration:

POINTS

1. Whether the Plaintiff has made out a *prima-facie* case to allow the I.A ?
2. Whether the plaintiff has got balance of convenience in her favour ?
3. Whether the plaintiff would be put to loss and injury if the IA is not allowed ?
4. What Order?

7. After careful scrutiny of material available on the file, my findings to the above Points are as follows:

POINT NO.1 : In the “Negative”

POINT NO.2 : In the “Negative”

POINT NO.3 : In the “Negative”

POINT NO.4 : As per order

for the following :

R E A S O N S

8. POINT NO.1:- This is a suit filed by the plaintiff seeking the relief of injunction against the defendants restraining them from interfering with her peaceful possession over the suit schedule property. It is the case of plaintiff that grand father of the plaintiff as purchased the schedule property through Registered Sale Deed. After the purchase grand father of the plaintiff was in possession over the suit schedule property. After the death of his grand father, father of the plaintiff is in possession and enjoyment over the schedule property. After that plaintiff is in possession over the schedule property, but plaintiff does not produce Sale Deed in respect of schedule property infavour of grand father of the plaintiff.

9. Plaintiff has filed RA against the same defendant for khata was stands in the name of defendant. Conserved authority verify the documents and pass the order “ಮಾಗಡಿ ತಾಲ್ಲೂಕು, ತಹಶೀಲ್ದಾರ್‌ರವರ ಕಾರ್ಯಾಲಯ ಕಡತವನ್ನು ಗಣನೆಗೆ ತೆಗೆದುಕೊಂಡು, ವಾದಿಗಳ ಮೇಲ್ಮನವಿಯನ್ನು ಪುರಸ್ಕರಿಸಿದೆ. ಮಾಗಡಿ ತಾಲ್ಲೂಕು ತಹಶೀಲ್ದಾರ್‌ರವರ ಆದೇಶದ ನಂ.

ಎಂಆರ್ 2/03-04 ರಂತೆ ಸೋಲೂರು ಹೋಬಳಿ ಉಡುಕುಂಟೆ ಗ್ರಾಮದ ಸ.ನಂ.54 ರ 2-18 ಗುಂಟೆ ಖಾತಾ ನಡವಳಿಕೆಯನ್ನು ರದ್ದುಗೊಳಿಸಿರುತ್ತೇನೆ. ಪ್ರಕರಣವನ್ನು ಪುನರ್ ಪರಿಶೀಲನೆಗೆ ತಹಶೀಲ್ದಾರ್ ಮಾಗಡಿಯವರಿಗೆ ಆದೇಶಿಸುತ್ತಾ, ವಾದಿ ಪ್ರತಿವಾದಿಗಳು ಹಾಗೂ ಆಸಕ್ತರಿಗೆ ತಿಳಿವಳಿಕೆ ನೀಡಿ, ಸಮಾನವಕಾಶ ಕೊಟ್ಟು, ದಾಖಲಾತಿಗಳ ಪರಿಶೀಲಿಸಿ ಕಾನೂನು ಪಾಲನೆ ನಂತರ 1964 ರ ಕರ್ನಾಟಕ ಭೂಕಂದಾಯ ಕಾಯ್ದೆ ಕಲಂ 129 ರಡಿಯಲ್ಲಿ ಖಾತಾ ನಡವಳಿಕೆ ಜರುಗಿಸಲು ಆದೇಶಿಸಿ ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಿರುತ್ತೇನೆ ಹಾಗೂ ಈ ನ್ಯಾಯಾಲಯದ ದಿ:9-6-2004 ರ ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ತೆರವುಗೊಳಿಸಿರುತ್ತೇನೆ.”

10. Moreover, suit schedule property stands in joint khata in the name of chikkegowda and Anjinappa.

11. Further I rely upon the citation mentioned here:

ILR 1989 KAR 1701: (1989) 2 Kant LJ 548

Sri. Gowrishankara Swamigalu

V/s

Sri Siddhaganga Mutt

ILR 206 KAR 3961

M/s Reebok India Company and Another

V/s

M/s Gomzi Active and another

(2001) 5 Supreme Court Cases 95

Uniply Industries Ltd
V/s
Unicorn Plywood (P) Ltd. And other

LAWS (KAR) 2008-8-23

AIR(KAR)2009-0-668/AIRKARR-2009-1-124/KCCR-2008-4-
2570

Union or India

V/s

Shivanna

All the above stated decisions stated that, before granting any temporary injunction, the court has to look into prima facie case, balance of convenience and irreparable loss to be assessed. It is true the 3 principles to be assessed. Here in this case, since the plaintiffs would fail from 1st stage itself. Therefore, the above decisions do not applicable to plaintiffs case, because they failed in 1st stage itself by not adducing material documents to show that, how they come to the possession of suit property.

AIR in AIR 2010 SC 296

Kashi Math Sansthan and another V/s Srimad
Sudhina Thirta Swamy and another

“It is well settled that in order to obtain an order injunction, the parties who seeks for grant of such

injunction as prove that he has made out prima-facie case to go for trail, the balance of convenience is also in his favour and he will suffer irreparable loss and injury, if injunction is not granted, but equally well settled that, when a party fails to prove prima facie case to go for trail, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if the party fails to prove prima facie case to go for trial”.

12. In this regard the court has to consider that whether the plaintiff has made out a prima facie case, balance of convenience in his favour. Looking to the facts of the material the plaintiff is not established his prima facie case and therefore, the question of granting injunction in favour of the plaintiff does not arise. Hence, I answer the point No.1 to 3 are in the Negative.

13. POINT NO.4: - In view of the above discussion and answer give to point No.1. I proceed to pass the following:

O R D E R

IA No.1 filed by the plaintiff U/o XXXIX
rule 1 and 2 R/w Sec151 of CPC is hereby
rejected.

This order shall be in-force until further orders.

(Dictated to the Stenographer and transcribed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the 7th day of December-2017).

(Smt.Rekha H.C.)

II Addl. Civil Judge & JMFC.,
Magadi.