

Smt.Ranjitha G.B B.B.A, LL.B. (Hons)

Dated this 6th day of April, 2024

PLAINTIFFS : 1. Smt.Jayalakshmi
W/o Late Venkatesh
Aged about 62 years,

2. Sri.Mohan Kumar
S/o Late Venkatesh
Aged about 39 years,

3. Sri.Narasimhamurthy
S/o Late Venkateshappa
Aged about 36 years,
All are R/at Uddandlahalli village,
Donnenahalli Dhakle,
Chikknahalli Post,
Tavarekere Hobli,
Bengaluru south Taluk.

-Vs-

DEFENDANT : Sri. Babu Reddy
Aged about 67 years,



R/at: No.19, 2nd Main, Hosahalli,
Vijayanagara, Bengaluru-560040.

IA No.III

APPLICANTS/
PLAINTIFFS :

Smt.Jayalakshmi & others

-V/s-

OPPONENT /
DEFENDANT :

Sri. Babu Reddy

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 of CPC</i>
ii	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii	<i>The date on which the application is filed</i>	<i>09.01.2024</i>
iv	<i>Number of the application</i>	<i>IA No.III</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>20.01.2024</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>06.04.2024</i>

**II Addl.Civil Judge & JMFC,
Magadi**



ORDER ON IA No.III FILED BY THE PLAINTIFFS
UNDER ORDER XXXIX RULE 1 AND 2 READ WITH
SEC.151 OF CPC

This Application filed at the stage of further chief-examination of PW-1. The Plaintiffs have filed this application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendants not to dispose the Plaintiffs from the suit schedule property.

2. The Plaintiffs have filed the present suit as against the Defendants for the relief of permanent injunction. When the matter is posted for further chief-examination of PW-1, this Application is filed, along with accompanying affidavit and sworn that, on 15.12.1993, the suit schedule property was granted by the government in LNSDR (3) 372/93-94 dated 15.12.1993 as MR No.37/96-97 in favour of the father of the Plaintiffs. During the lifetime of the father of the Plaintiffs, he was in possession and enjoyment of the suit schedule property and after his death, the Plaintiffs are in possession of the same.



3. The Defendant is having no manner of right over the suit schedule property. The Defendant has colluded with the third parties and created some documents and trying to interfere with the possession of the Plaintiffs over the suit schedule property. Hence, the Plaintiffs have filed the present suit seeking for the relief of Permanent Injunction, along with an application under Order XXXIX Rule 1 & 2 of CPC, restraining the Defendant from interfering with the suit schedule property. After hearing both the parties, this Court has rejected the said application for some technical grounds and posted the matter for Plaintiffs evidence. The Plaintiff No.2 had already adduced the evidence and got marked some documents and thereafter, this matter is posted for further evidence of Plaintiffs. At that time, the Defendant made an attempt to interfere with the suit schedule property. The Plaintiffs No.1 & 3 have constructed the goat shed in the suit schedule property and they are in possession of the suit schedule property.

4. The Defendant have colluded with the Tavarekere Police and lodged the false complaint as against the



Plaintiffs No.1 & 3. Therefore, 24.12.2023, 25.12.2023 & 23.12.2023 the Police and Defendant made an attempt to interfere with the suit schedule property and also forcefully vacating the Defendant from the suit schedule property. Hence, on 26.12.2023, the Plaintiffs have lodged the complaint to Superintendent of Police Ramanagara, on 27.12.2023 to Inspector General of Police and on 29.12.2023 to DGP. The said complaints are still pending. The khata in respect of the suit schedule property stands in the name of the father of the Plaintiffs. With no other alternatives, the Plaintiffs have filed this application seeking to restrain the Defendants from dispossessing the Plaintiffs from the suit schedule property. Hence, prayed to allow the application.

5. The Defendant filed objection and contended that, at the time of filing the suit, the Plaintiffs were never in the possession of the suit schedule property. The Plaintiffs have not disclosed the description of the suit schedule property sufficiently. The husband of Plaintiff No.1 has not cultivated the property properly and when he was in need of the money to meet his family necessities, he



approached the Defendant and offered to sell the suit schedule property along with Sri.G.H Seetharam. After verifying the documents, the husband of Plaintiff No.1 and Sri.G.H Seetharam agreed to sell the land bearing Sy.No.26/P2 totally measuring 2 acres 16 guntas, including 1 acre of the suit schedule property for a total sale consideration of Rs.8,09,992/-. In pursuance of the said agreement, the father of the Plaintiffs had executed joint agreement of Sale and received an advance amount of Rs.1,00,000/- and agreed to hand over all the documents within 3 months from the date of agreement.

6. During the lifetime of father of the Plaintiffs, the Plaintiffs have jointly executed the General Power of Attorney before the notary to do and perform all the acts pertaining to the suit schedule property. In pursuance of the said GPA, the Plaintiffs and their father have executed affidavit stating to hand over the possession of the suit schedule property by way of receiving a sum of Rs.2,87,500/- and the balance amount of Rs.50,000/- to be payable at the time of registration. After the execution of the agreement, Power of Attorney and also affidavit the



Defendant was put in possession of the suit schedule property and subsequently, he has dug borewell in the suit schedule property on 10.03.2006. After that, electricity connection has been obtained by the Defendant from BESCOM on 13.08.2012. The Defendant is cultivating the land, he has put up construction of sheet house in the suit schedule property measuring 30 X 30 sq.ft. In the meantime, an application has been filed to conduct survey and the land has been surveyed and new block number has been given.

7. After getting possession of the suit schedule property and also the property of G.H.Seetharam, the entire land has been fenced by Defendant and the Defendant has planted 40 coconut trees, silver oak and teak about 180 plants, 3 Mango trees and 2 Jackfruit trees. The rest of the land is being cultivated and growing ragi. As such the Defendant is in possession and enjoyment of land measuring 2 acres 16 guntas in Sy.No.26. On 01.09.2014, the Defendant has entered into registered agreement of sale with one Sri.Narayanappa, S/o Hanumappa for sum of Rs.10,00,000/- and received advance sale consideration of



Rs.2,00,000/-. During Covid-19 pandemic, in the month of May, 2021, the Plaintiff No3 made hectic effort to interfere with the suit schedule property and also threatened the labors of Defendant who was working in the suit schedule property. In that regard, the son of the Defendant by name Krishna has lodged the complaint before Tavarekere Police and the Plaintiff has called him and gave warning.

8. After rejecting the IA No.I, this matter was posted for Plaintiff evidence and at that time in order to establish the alleged possession, the Plaintiffs have made an attempt to interfere with the possession of the suit schedule property and also broke the door and lock of the shed. In that regard, on 13.12.2023, the Defendant had lodged the Complaint. Thereafter, with an dishonest intention, the Plaintiffs have filed this application on the basis of concocted story and also took the photographs in the absence of the Defendant. The Plaintiffs have filed this application by suppressing the true facts. Hence, prayed to reject the Application.



9. The Counsel for Plaintiffs & Defendant have filed the written arguments. In order to prove the contention of the Defendant, he has relied upon the following decisions:

***1. R. Dilip Kumar vs S Ramu, reported in
ILR 1992 KAR 2905***

***2. Smt. Nirmala vs Naveen Chhaggar and
Anr, reported in AIR 2007 KAR 40***

***3. Bangli Nagappa and others vs G
Venkatakrishana Rao, reported in
AIR Online 2022 KAR 248***

10. This Court arises the following points for consideration:

1. Whether the Plaintiffs have made out prima-facie case?
2. Whether the balance convenience lies in favour of the Plaintiffs ?
3. Whether irreparable loss and injury would be caused to the Plaintiffs, if an order of temporary injunction is not granted?
4. What order?



11. The 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 the final order,
for the following:-

REASONS

12. **POINT NO.1**: The Plaintiffs have filed the present suit seeking for the relief of Permanent Injunction as against the Defendant along with an application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendants not to dispose the Plaintiffs from the suit schedule property.

13. The case of the Plaintiffs is that, on 15.12.1993, the suit schedule property was granted in favor of the father of the Plaintiffs. During the lifetime of the father of the Plaintiffs, he was in possession and enjoyment of the suit schedule property and after his death, the Plaintiffs are in possession of the same. The Defendant is having no manner of right over the suit schedule property. The Defendant has



colluded with the third parties and created some documents and trying to interfere with the possession of the Plaintiffs over the suit schedule property. Hence, the Plaintiffs have filed the present suit seeking for the relief of Permanent Injunction, along with an application under Order XXXIX Rule 1 & 2 of CPC, restraining the Defendant from interfering with the suit schedule property. After hearing both the parties, this Court has rejected the said application for some technical grounds and posted the matter for Plaintiffs evidence.

14. The Defendant have colluded with the Tavarekere Police and lodged the false complaint as against the Plaintiffs No.1 & 3. Therefore, 24.12.2023, 25.12.2023 & 23.12.2023 the Police and Defendant made an attempt to interfere with the suit schedule property and also forcefully vacating the Defendant from the suit schedule property. In order to prove the case of the Plaintiffs, they have produced the documents such as complaint dated 27.12.2022, 27.12.2022 & 26.12.2023 & photographs.



15. On the other hand, the Defendant had contended that, at the time of filing the suit, the Plaintiffs were never in the possession of the suit schedule property. The Plaintiffs have not disclosed the description of the suit schedule property sufficiently. In need of the money to meet family necessities, the husband of the Plaintiff No.1 had approached the Defendant and offered to sell the suit schedule property and accordingly, an agreement for sale was executed. In pursuance of the said agreement, the father of the Plaintiffs had executed joint agreement of Sale and received an advance amount of Rs.1,00,000/- and agreed to hand over all the documents within 3 months from the date of agreement.

16. After getting possession of the suit schedule property, the entire land has been fenced by the Defendant. In the month of May, 2021, the Plaintiff No3 made hectic effort to interfere with the suit schedule property and also threatened the labors of Defendant who was working in the suit schedule property. After rejecting the IA No.I, this matter was posted for Plaintiff evidence and at that time in order to establish the alleged possession, the Plaintiffs have



made an attempt to interfere with the possession of the suit schedule property and also broke the door and lock of the shed. In that regard, on 13.12.2023, the Defendant had lodged the complaint. In order to prove the contention of the Defendant, he has produced the documents such as complaint & acknowledgment dated 13.12.2023.

17. On perusal of complaint dated 29.12.2023, 27.12.2023 & 26.12.2013, it is noticed that, the Plaintiff No.2 had lodged the complaint by stating that the Defendant is trying to dispossess the Plaintiffs from the suit schedule property. On the other hand, on 13.12.2023, the Defendant had also lodged the complaint as against the Plaintiffs. The Plaintiffs have contended that, they are in possession of the suit schedule property and to prove their contention, they have produced the photographs. It is important to note that, the said photographs does not prove the possession of the Plaintiffs because it is not supported by any cogent documents. The Defendant has also contended that, he is in possession of the suit schedule property, but, to prove the same, the Defendant had not



produced any documents. As such, mere say without any proof of documents does not hold any stand in eye of law.

18. It is pertinent to note that, at the time of filing the suit, the Plaintiffs have filed an application under Order XXXIX Rule 1 & 2 read with Sec.151 of CPC, seeking to restrain the Defendants from interfering with the possession of the Plaintiffs over the suit schedule property. On 13.03.2023, after hearing both the parties, this Court has rejected the said application. But, again the Plaintiffs have filed this application with the same relief. Hence, the present application itself is not maintainable. With due respect, the decisions relied by the Defendant is not applicable to the present case on hand, as the facts and circumstances are different. By considering the above reasons, this Court is of the opinion that, the application filed by the Plaintiffs itself is not maintainable. Hence, this Court proceeds to answer Point No.1 in the **“Negative”**.

19. **POINT No.2 & 3**: These two points are interrelated, hence, taken up together for discussion with regard to balance of convenience and irreparable loss is



concerned, this Court is relying upon the decision passed by the ***Hon'ble High Court of Karnataka in Gowrishankar Swamigalu V/s Siddaganga Mutt & others, reported in ILR 1989 KAR 1701***, the relevant portion of the decision is extracted below for reference.

"...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."

Thus, when the application itself is not maintainable, then it is clear that balance of convenience is not in favour of the Plaintiffs and no loss will be caused to them. Hence, this Court proceeds to answer Point No.2 & 3 in the ***"Negative"***.



20. **POINT No.4:** In view of the aforesaid reasons, this Court proceeds to pass the following:

ORDER

IA No.III filed by the Plaintiffs
under Order XXXIX Rule 1 and 2 read
with Sec.151 of CPC, is hereby
rejected.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in Open Court on this 6th day of April, 2024.)

(Smt.Ranjitha G.B)
II Addl.Civil Judge & JMFC,
Magadi.

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