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**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC, AT
MAGADI**

**PRESENT: SMT.DHANALAKSHMI.M. B.A.L., LL.B.,
Addl.Civil Judge & JMFC,
Magadi, Ramangara District.**

Dated: This 06th day of October, 2023

O.S.NO.124/2022

PLAINTIFF : Sri.B.M.Ravichandra
S/o Marigowda,
Aged about 41 years,
Residing at No.402,
Boregowdana Gudisalu,
New Timber Yard,
Raghava Nagar,
Bengaluru-560026.

**(Plaintiff Represented by
Sri.T.R.K. Advocate)**

-Vs-

DEFENDANT : Sri.E.Balakrishna
S/o Late Eraiah,
Aged about 61 years,
Residing at No.153,
2nd Block, Jooganahalli,
Rajajinagar, Bengaluru-560010.

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**(defendant are
Represented by
Sri.B.R. Advocate)**

I.A. No. I

APPLICANT

: Sri.B.M.Ravichandra.

V/S

DEPONANT

: Sri.E.Balakrishna.

| | | |
|---|---|---|
| 1 | Provision under which the application is filed | Under Order XXXIX Rule 1 & 2 of Civil Procedure Code. |
| 2 | Relief sought for | Temporary Injunction |
| 3 | The date on which the application is filed | 26.05.2022. |
| 4 | Number of the application | I.A. No.I |
| 5 | The date on which the objections are filed by different opponents | WS as objection to I.A No.I dated 24.07.2023. |
| 6 | The date on which the orders were passed on the said application | 06.10.2023. |

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ORDERS ON I.A.NO.I

The Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass ad-interim order of temporary injunction, restraining the defendant, his henchmen, agents, servants, representatives, power of attorney holders or anybody acting on his behalf from in any way interfering or meddling the suit schedule property or dispossessing the plaintiff from the suit schedule property pending disposal of the above suit, in the interest of justice and equity

2. The plaintiff has filed an application along with an affidavit and he has filed a suit against the Defendant for Permanent Injunction. Plaintiff submitted that, plaintiff is the absolute owner in physical possession and enjoyment of the northern portion of the property bearing Site No.4, katha No.24/1D, Gramatana Katha Serial No.1236 situated at Channenahalli Village and plaintiff has acquired the schedule

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property through registered sale deed executed by Sri.Shankarappa and Smt.Rangamma and their daughter on 16.01.2013. Based on the registered sale deed the revenue records were transferred in plaintiff name and plaintiff has paid property tax to the concerned authorities.

It further submits that, originally the land bearing Sy.No.24/1D belongs to Anjinappa and his family member and been acquired the said land along with other land through his ancestors and the said Anjinappa and his family member have partitioned the joint family properties amongst themselves under the partition deed dated 15.09.2003 and in the said partition A.Hombegowd and Chikkarajamma acquired 'B' schedule property and the land bearing Sy.No.24/1D of Channenahalli village has fallen to their share as item No.2 of the partition deed dated 15.09.2003 and thereafter a rectification deed also executed by the parties dated 18.11.2005 and mutation was effected in respect of their name allotted in the said partition.

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It is further submits that, after the execution of the registered partition deed the said Hombegowda and Chikkarajamma sold an extent of east to west 30 feet and north to south 40 feet site property bearing No.4 in favour of Sri.Shankarappa and Smt.Rangamma jointly through registered sale deed dated 03.02.2005. Thereafter the revenue records transferred in their name in respect of the said property. The said Sri.Shankarappa and Smt.Rangamma sold an extent of east to west 30 feet and north to south 20 feet in all 600 sq. feet in plaintiff's favour under the registered sale deed dated 16.01.2013. From the date of purchase of the schedule property plaintiff is in peaceful possession and enjoyment of the said proeprty without any hindrance or interference from anybody till this day. The said Hombegowda and Chikkarajamma sold an extent of 0-15 guntas out of 0-17 guntas as per mutation effected in respect of the land bearing Sy.No.24/1D in favour of defendant.

It is further submits that, the defendant is utterly stranger to the schedule property and who has no manner of right, title

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and interest or possession over the schedule property and who is none other than the bajadar of the suit schedule property is making hectic arrangement to interfere with plaintiff possession and to encroach the schedule property illegally and one such attempt was made by the defendant and his henchmen during second week of May 2022 and the same was resisted by plaintiff and his family members at the timely intervention of the neighborers of the schedule property. Hence, prayed to allow I.A. No. I.

3. In response, the defendant, through their counsel, appeared and filed memo to treat written statement as objection to I.A. No.I. The defendant states that, the defendant is the absolute owner in possession and enjoyment of the land bearing Sy.No.24/ID measuring to an extent of 15 gunta situated at Channenahalli. The defendant purchased the said property through registered sale deed dated 21.09.2005 from one Sri.A.Hombegowda and his wife Smt.Chikkarajamma for valuable sale consideration. Subsequent to purchase of the said land entered his name in all revenue records in respect of

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the said land and the defendant is in possession of the said land without an lit or hindrance from any quarter. The vendors of the defendant acquired the said property and other properties by way of registered partition deed dated 15.09.2003 entered among their family members. Subsequent to purchase of the said land entered in vendors of the defendant in all revenue records in respect of the said land. The defendant after verifying all the documents has purchased the said land from his vendors for valuable sale consideration and after surveying of the said land in the presence of vendors of the defendant, other co-shares of the said land in Sy.No.24/1D. The defendant invested huge amount for purchase of the said land by raising loans from several persons. The plaintiff is not at all in possession of the suit schedule property is not at all in existence. The vendors of the plaintiff at no point of time has formed the sites in Sy.No.24/1D of Channenahalli village and now the plaintiff is trying to locate the suit schedule property on the property of the defendant to knock-off his valuable property. The defendant is bonafide purchaser of the said land. The plaintiff is well aware that the defendant is in possession of his

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purchased said land and hence the question of interfering with his possession or trespass or encroach, dispossess in respect of the suit schedule property by the defendant does not arise.

It is further submits that, the defendant out of the said property has sold portion of the property measuring 3300 sq feet through registered sale deed dated 21.02.2022 in favour of Sri.Uddandappa son of late Rudrahanumaiah out of 15 guntas of land in Sy.No.24/1D and also sold portion of the said property measuring 2630 sq feet through registered sale deed dated 21.02.2022 in favour of Smt. Prathima wife of late Manjunatha out of 15 guntas of land in Sy.No. 24/1D for valuable sale considerations and retained portion of the said land in Sy.No.24/1D of Channenahalli village and thus he is in actual possession and enjoyment of the portion of the said land as absolute owner thereof from the date of acquisition.

It is further submits that, the plaintiff is an utterly stranger to the defendant and his property. The plaintiff has no manner of right, title or interest over the said property of the defendant. The plaintiff is powerful and influential person in

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the locality. The suit schedule property is not at all in existence and also he was not all in possession of the suit schedule property, he has filed above false suit against the defendant by attempting to encroach portion of the property belongs to the defendant. Now the plaintiff is trying interfere with the possession of the said property belongs to the defendant on the basis of the created and concocted documents. Hence, prays to reject I.A. No.I.

4. Heard on both sides. Perused the material on record.
5. The points that arise for consideration are as follows:
 - 1. Whether the Plaintiff has made out a prima facie case?**
 - 2. Whether the balance of convenience lies in their favour?**
 - 3. Whether the Plaintiff will be put to hardship and injury if the Order of temporary injunction is not granted?**
 - 4. What order?**

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6. The findings of this court on the above said points are as under:-

- 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
or the following:-

REASONS

7. **POINT NO.1** :- The Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass ad-interim order of temporary injunction, restraining the defendant, his henchmen, agents, servants, representatives, power of attorney holders or anybody acting on his behalf from in any way interfering or meddling the suit schedule property or dispossessing the plaintiff from the suit schedule property pending disposal of the above suit, in the interest of justice and equity.

SCHEDULE

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All the piece and parcel of the southern portion of the property bearing site No.4, khata No.24/1D, Gramatana katha serial No.1236, situated at Channenahalli Village, Tavarekere Gramapanchayathi, Tavarekere Hobli, Bengaluru South Taluk, measuring east to west 30 feet and north to south 20 feet in all 600 sq feet and bounded on:

- East by : Road.
- West by : Private Property.
- North by : Property belongs to Venkatesh.
- South by : Remaining Property in the same property number sold to Sudha.

8. This court has carefully perused the list of documents produced by the parties. The list of documents of plaintiff consists of original sale deed dated 16.10.2013, original tax paid receipt, original khatha extract, certified copy of sale deed dated 03.02.2005 and encumbrance certificate.

9. The list of documents of the defendant consists of the copies of registered sale deed dated 21.09.2005, copies of mutation and record of rights extract, copy of registered

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partition deed dated 15.09.2003, copy of the registered sale deed dated 21.02.2022, copy of registered sale deed dated 21.02.2022 and copy of the order sheet in M.A. No.17/2023.

10. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

11. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate

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balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendant if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

12. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

13. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which

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needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

14. Perused the application, affidavit, objection and documents of the both parties, On perusal it appears that, the Plaintiff has produced Original Sale Deed dated 27.03.2013, which is with respect to suit schedule property which was executed by one Smt.Nagaratnamma in favour of the Plaintiff. He has also produced Original Sale Deed dated 03.02.2005, which is with respect to suit schedule property which was executed by one Sri.A.Hombbegowda and his wife Smt. Chikkarajamma in favour of on Smt. Nagaratnamma. On the other hand Defendant produced xerox copy of Sale Deed dated 21.09.2005 which was executed by one Sri.A.Hombbegowda and her wife Smt. Chikkarajamma in favour of Defendant. Both Plaintiff and Defendant have produced the Sale Deed executed by their vendors. The Plaintiff and Defendant property

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are adjacent to each other. In such an instance, the proper person entitled to the property can be determined only after full pledged trail. The Plaintiff and Defendant are the purchaser of Sy.No.24/1D which originally to an extent 2 acres which includes both Plaintiff and Defendant's property, to ascertain whether encroachment by the defendant or there is no land in existence of plaintiff as alleged by the defendant as the property are adjacent to each other the court cannot come to the conclusion without a trail. Moreover the plaintiff in his plaint pleaded that there is a rectification of partition deed dated 18.11.2005, in order to prove the prima facie case the plaintiff has failed to produced the rectification partition deed dated 18.11.2005. As such the documents produced by the plaintiff is insufficient and after considering the overall documents produced by Plaintiff, it appear to this court that the Plaintiff have not made out prima facie case for grant of temporary injunction. **Accordingly I answer Point No.1 in the Negative.**

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15. **Point No.2 and 3** : The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

16. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

17. After considering the materials on record it appears to this Court that the balance of convenience leans in favour of the defendant and if the equitable relief of Temporary Injunction is not granted in favour of the defendant, then the defendant will

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be put irreparable loss and hardship and the same cannot be compensated in terms of money. **Accordingly I answer Point No.2 and Point No.3 in the Negative.**

18. **POINT NO.4:-** For the reasons discussed herein above on Points No. 1 to 3, I proceed to pass the following:

ORDER

➤ IA No. I under Order 39 Rule 1 and 2 R/w 151 of CPC filed by the Plaintiff is hereby dismissed with costs of Rs.500/-.

(Dictated to the stenographer, typed directly on computer, script corrected, signed and then pronounced by me in the open court, this the 06th day of October, 2023)

(Smt.Dhanalakshmi.M)
Addl.Civil Judge & JMFC,
Magadi.