



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

:-Present:-

Sri. Shrinivasa.K.R B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 11th day of July, 2024

O. S. No.253/2022

PLAINTIFF : Smt. Rudramma,
W/o M. Shivanna.

:Vs:

DEFENDANTS : Smt. Rajamma,
W/o Late Honnagangaiah & Ors.

I.A. No.I

**APPLICANT/
PLAINTIFF** : Smt. Rudramma,
W/o M. Shivanna,
Aged about 75 years,
R/at Nagashettahalli Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. M.V.S., Advocate)

:Vs:



**OPPONENTS/
DEFENDANTS :**

1. Smt. Rajamma,
W/o Late Honnagangaiah,
Aged about 50 years,
2. Sri. Yogesh,
S/o Late Honnagangaiah,
Aged about 30 years,
3. Sri. Manu,
S/o Late Honnagangaiah,
Aged about 26 years,

All are R/at Nagashettahalli Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(Rep. By Sri. A.S.P., Adv.,)

**(Sri. Shrinivasa.K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.**

ORDER ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF C.P.C.

The plaintiff has filed application U/O. 39 rule 1 & 2 R/w.Sec.151 of C.P.C., with a prayer to restrain the defendants, their agents, servants, power of attorney holder or anybody from interfering with peaceful possession and enjoyment of plaintiff over the suit schedule property. The suit



is filed in respect of land bearing Old Sy.No.27/4, New No.27/4, 1B, New No.27/4C, measuring 0.2 guntas, situated at Thaggikuppe Grama Panchayathi, Nagashettahalli Village, KH.No.19, Property No.103, situated at Nagashettahalli Village bounded as:

East by : Property belongs to Gangappa &
Siddabasavaiah,

West by : Road,

North by : Property of Siddalingaiah &

South by : Road and property of Gangappa &
Siddabasavaiah at present Milk
Dairy Building.

2. The application is supported with an affidavit sworn to by the applicant/plaintiff stating that, the Katha of suit schedule property previously belongs to Gangappa S/o Muddaiah and Siddabasavaiah S/o Muddaiah and they sold the same in favour of father in law of the plaintiff by name Sri. B. Maralusiddaiah S/o Chikkabasavaiah through Registered Sale Deed dated 28.09.1959. In pursuance of the registered



sale deed, the vendors of the father in law of plaintiff delivered and put the father in law of the plaintiff in possession and enjoyment of the suit schedule property. Since, the father in law of the plaintiff is in possession and enjoyment of the suit schedule property as an absolute owner. The father in law of the plaintiff Sri. Marulusiddaiah has constructed stone slab roofed house and Mangalore tiled roofed residential house and retained vacant space and in the said vacant space planted two coconut trees. The father in law of the plaintiff bequeathed the suit schedule property and other property in favour of the plaintiff through Registered Will dated 04.05.1978. The father in law of the plaintiff died on 17.07.1978 leaving behind the said Will in favour of the plaintiff. As such the plaintiff succeeded the suit schedule property and other property under testamentary succession and she became an absolute owner of the suit schedule property and other property.

3. Further contended that, the plaintiff and her family members who are residing in a building which exists in the



suit schedule property was in dilapidated condition, hence the plaintiff demolished the building and started to living in the separate building and due to financial problem the plaintiff not put up new construction in the suit schedule property. The plaintiff made arrangement of money for build construction and prepared for digging foundation in the suit schedule property. At that time, the defendants illegally obstruct the digging foundation work and as such the defendants are illegally interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. The suit property is within the limit of Panchayath and the Katha of the suit schedule property made in the panchayathi in the name of plaintiff. Hence, prays to allow the application.

4. The defendants filed written statement and contended that, the land bearing Sy.No.27/4 measuring total 1 acre 1 gunta including 4 guntas karab originally belongs to Siddabasavaiah and his brother Gangappa @ Gangaiah and in the said property the said Siddabasavaiah and Gangappa @



Gangaiah have sold an extent east to west 20 gaja and north to south 10 gaja in favour of father-in-law of plaintiff by name Maralusiddaiah through registered sale deed dated 29.09.1959. After sale of said property the Siddabasavaiah and Gangappa @ Gangaiah became the absolute owner and possessor of remaining property. The said Siddabasavaiah and Gangappa @ Gangaiah have sold another 3 guntas of land to another person. After that in land bearing Sy.No.27/4 an extent of 2 guntas was acquired for the purpose of construction of road which is purchased by the father-in-law plaintiff and property of said Siddabasavaiah and Gangappa @ Gangaiah. In the said land bearing Sy.No.27/4 there is total 6 guntas of karab land.

5. Further contended that, the father in law of defendant No.1 and grandfather of defendant No.2 & 3 by name Siddabasavaiah and his brother Gangappa @ Gangaiah have taken partition through Panchayat Parikat in respect of land bearing Sy.No.27/4 measuring 30 gunts and other



properties. As per partition the land bearing Sy.No.27/4 new Sy.No.27/4A measuring 15 guntas fallen to the share of Gangappa @ Gangaiah and Southern side measuring 15 guntas fallen to the share of Siddavasavaiah. As per partition the said Siddabasavaiah and Gangappa @ Gangaiah have changed their names in the concerned revenue documents and they became the absolute owners and possessors. The son of Siddabasavaiah by name Revanasiddaiah and Honnagangaiah have entered into partition in respect of land bearing Sy.No.27/4 measuring 15 guntas and accordingly they have taken each 0.07 ½ guntas on 25.01.1999 and accordingly the mutation effected as per M.R.No.4/2000-2001. The plaintiff by including the property of defendants and by mentioning the false measurement, false schedule and false katha number has filed present suit. Hence, prays to reject the application.

6. Heard argument by plaintiff and defendants counsel.

7. Upon hearing arguments and materials placed on record, following points that arise for my consideration:



1. Whether plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted?
4. What order?

8. My answer to the above points are as under.

Point No. 1 to 3 : In the Affirmative.

Point No. 4 : As per order
for the following :

REASONS

9. **POINT NO.1:** Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic



being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:-

(i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the



point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

10. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The applicant/plaintiff has filed suit for the relief of perpetual injunction to restrain the opponents/defendants from



interfering into peaceful possession of applicant/plaintiff over the suit schedule property.

11. The contention of the plaintiff is that, the plaintiff is the absolute owner and in possession of suit schedule property and the plaintiff has acquired the suit schedule property through registered Will executed by her father in law by name Maralusiddaiah and as per Will the plaintiff succeeded the suit schedule property after the death of father in law of plaintiff. The defendants without having any right and interest over the suit schedule property making hectic attempt to disturb the peaceful possession of plaintiff. The plaintiff has produced all the relevant documents and the plaintiff established prima-facie and balance of convenience. Hence, prays to allow the application.

12. On the other hand the contention of the defendants is that, the identification of property is in dispute and the plaintiff not specifically pleaded with respect to suit schedule property. There is no Will deed dated 4476/1974-75. The



plaintiff not produced construction permission letter. The father in law of defendant No.1 & grand father of defendants had property in land bearing Sy.No.27/4, measuring 1 acre 1 guntas. The father in law of defendant No.1 and grandfather of defendant No.2 & 3 by name Siddabasavaiah and Gangappa have sold the property an extent of East to West 20 gaja and North to South 10 gaja in favour of father in law of plaintiff. The said Siddabasavaiah and Gangappa have sold an extent of 3 guntas of land bearing Sy.No.27/4 to one person and the remained land was in possession of father in law of defendant No.1 and grandfather of defendant No.2 & 3 and said Gangaiah. The son of said Siddabasavaiah have got partition equally in respect of land bearing Sy.No.27/4A1 and accordingly the concerned revenue documents standing in the name of defendants. There is no suit schedule property as contended by the plaintiff. Hence, prays to reject the application.



13. The applicant/plaintiff in support of her contention has produced the copy of Sale Deed dated 28.09.1959 which is in the name of father in law of plaintiff, the father in law of plaintiff purchased the property from said Siddabasavaiah and Gangaiah @ Gangappa. The defendants also not disputing the purchase of property from said Siddabasavaiah and Gangaiah @ Gangappa. The plaintiff produced Sanction of Alienation of Land to an extent of 60 X 30, on perusal of Sanction Letter it clearly shows that, the Assistant Commissioner has passed order in respect of alienation of land hence the contention of the defendants not acceptable as the suit schedule property is still agricultural property. I have carefully gone through the Hissa survey and RTC extract of land bearing Sy.No.27/4C, on perusal of said RTC and Hissa Survey it clearly shows that, the suit schedule property is standing in the name of Maralusiddaiah, who is the father in law of plaintiff. The defendants in respect of their contention have produced the certified copy of Mutation, on perusal of Mutation it clearly



shows that, the concerned Revenue Official has over written in respect of land bearing Sy.No.27/4B as 18 and the defendants not produced any relevant documents to show that, on 04.06.1964 the said Siddabasavaiah and Gangappa have entered into Panchayat Parikat and accordingly an extent of 18 guntas equally fallen to the share of said Gangappa and Siddabasavaiah. The defendants have produced the Revenue Documents in respect of Sy.No.27/4A but, the defendants not produced any relevant documents in respect of Sy.No.27/4C. I have carefully gone through the written statement of defendants, in the written statement the defendants at para No.7 stated that, "ಸರ್ವೇ ನಂ.27/4 ರಲ್ಲಿ 4 ಗುಂಟೆ ಕರಾಬು 0.37 ಗುಂಟೆ ಐನು ನೇರಿ ಒಟ್ಟು 1 ಎಕರೆ 1 ಗುಂಟೆ ಜಮೀನು ಮೂಲತಃ 1 ನೇ ಪ್ರತಿವಾದಿಯ ಮಾವ ಹಾಗೂ 2 ಮತ್ತು 3 ನೇ ಪ್ರತಿವಾದಿಗಳ ತಾತ ಸಿದ್ಧಬಸವಯ್ಯ ಮತ್ತು ಅವರ ಸಹೋದರ ಗಂಗಪ್ಪ @ ಗಂಗಯ್ಯ ರವರುಗಳಿಗೆ ಸೇರಿದ ಸ್ವತ್ತು ಆಗಿದ್ದು" and in the same para further the defendants contended that, "ನಾಗಶೆಟ್ಟಿ ಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೇ ನಂ.27/4 ರಲ್ಲಿ ಒಟ್ಟು 0-06 ಗುಂಟೆ ಕರಾಬು ಜಮೀನು ಇರುತ್ತದೆ." On perusal of written statement of defendants it creates doubt that whether



there is 4 guntas of karab land or 6 guatas of karab land in Sy.No.27/4 and moreover the defendants not produced documents to show that to whom the said Siddabasavaiah and Gangappa have sold the another 3 guntas of land bearing Sy.No.27/4 and after sold of property how much they have retained. It is well settled principal that the RTC extracts and mutation are not title documents. In the present the plaintiff has produced the photo copy of registered sale deed dated 28.09.1959. It is well settled principal that, the registered documents got its own presumption unless presumption rebutted. In the present case, the defendants have not produced any relevant documents at this juncture to shows that, the plaintiff has given false survey number and false measurement of suit schedule property.

14. On perusal of documentary proof placed by applicant/plaintiff in proof of her contention, no doubt the suit schedule property stands in the name of father in law of plaintiff, as on the date of suit. Applicant/Plaintiff has



established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Opponent/Defendants have not challenged the prima-facie material placed by applicant/plaintiff, by placing documents in support of their contention. Under the circumstances, I am of the opinion that plaintiff has made out prima-facie case in her favour. Accordingly, I answer point No.1 in the **Affirmative.**

15. **POINT No.2 and 3:** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in his/her favor and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the applicant/plaintiff to show that the balance of convenience lies in her favor.



16. In considering the question of balance of convenience, the court has to consider to whom more hardship or inconvenience would be caused. If temporary injunction is granted the defendants would not be put to loss and hardship. Has discussed supra applicant/plaintiff has very well established prima-facie possession over suit schedule property. If an order of temporary injunction is not granted, the opponent/defendants will be successful in interfering with the applicant/plaintiff peaceful possession and enjoyment over the suit schedule property. If the defendants successful to interfere with plaintiff's peaceful possession and enjoyment over the suit schedule property, then the plaintiff put into more hardship than defendants. In such an event the applicant/plaintiff would be left no where. Therefore balance of convenience and comparative hardship is more on the applicant/plaintiff than the opponents/defendants. Accordingly, I answer points 2 and 3 in the **Affirmative**.



17. **POINT No. 4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, applicant/plaintiff has made out prima-facie case and also made out a fit case for trial. Besides this the applicant/plaintiff has also established that balance of convenience lies in her favour and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the applicant/plaintiff is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.I filed by the applicant/plaintiff under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC is hereby allowed.

Consequently, the
opponents/defendants, their agents or any
person claiming under them are hereby
restrained by way of temporary injunction
from interfering with plaintiff peaceful
possession and enjoyment over the suit



schedule property, until the final disposal of
the suit.

No order as to cost.

(Directly dictated to stenographer, typed by her, then corrected
and pronounced by me in the open Court on this the **11th Day
of July, 2024.**)

**Prl. Civil Judge & JMFC,
Magadi.**