

KASM310017482023



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC.,
AT BHADRAVATHI.

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
C/c I Addl. Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 27th DAY OF SEPTEMBER-2024.

O.S.No.184/2023

Plaintiff : Smt.Girijamma

V/s

Defendant : Sri. Halappa

I.A.No.I

Applicant : Smt.Girijamma W/o late
Ramachandra, Aged about 70
years, R/o Mavinakere Colony,
Mavinakere Post, Bhadravathi Taluk

(Rept. by Sri. Sridhara B.V., Adv.)

V/s

Opponent : Sri. Halappa S/o Bilayanaika, 75 years, Agriculturist, R/o Mavinakere Colony, Mavinakere Post, Bhadravathi Taluk.

(Rept. by Smt.Rekha B. Adv. & Sri. A.N. Pani Bhooshan, Adv)

Provision Under which the application Is filed	Order 39 Rule 1 and 2 R/w Sec.151 of CPC
Relief sought for	Temporary injunction
Date of application	02-03-2023
Number of application	I.A.No.I
Date of objection	01-12-2023
Order date	27-09-2024

ORDER ON I.A.NO.I

The plaintiff filed this IA under Order 39 Rule 1 and 2 R/w Section 151 of CPC., praying to restrain the defendant, his relatives, servants, henchmen etc., from interfering with her peaceful possession and enjoyment in the suit property, till pending disposal of the suit.

2. In the affidavit accompanying to the IA, the plaintiff has stated that, suit schedule vacant site property measuring 60' x

100' situated at Mavinakere Village was originally granted in favour of her husband Ramachandra under a sale certificate dated 24-01-1982 and the said Ramachandra was in possession and enjoyment of the suit property during his life time. That, Ramachandra has constructed the residential Mangalore tiled house measuring 15' x 20' in the suit property and was died on 23-12-2014. That, after the death of her husband, the plaintiff become the owner and in peaceful possession and enjoyment of the suit property. That, the plaintiff paying revenue to the panchayath regularly.

2.1 The plaintiff alleged that, the defendant is the brother of her late husband and he is the owner of site No.3 situated towards the eastern side of the suit property. She alleged that, on 22-02-2023, the defendant entered into the suit property along with his family members and tried to encroach it towards its western side and thereby interfered with her possession in the suit property. That, the plaintiff resisted the attempt of the defendant with great difficulty with the help of her family

members and neighbors. She alleged that, she has also lodged a complaint against the defendant before the concerned police and the said police directed her to approach civil Court.

2.2 Thus, the claims to have filed this suit and the present IA and praying to restrain the defendant from interfering with her possession in the suit property. The plaintiff also contending that, the defendant is an influenced person and his interference to her possession in the suit property cannot be prevented without the assistance of this Court. Accordingly, she prays to allow the IA.

3. In response to the suit summons, the defendant appeared through his counsel and filed his written statement along with a memo by praying to treat the written statement contention as his objection to the present I.A.

3.1. In his written statement, the defendant admitted the relationship between the parties. However, he denied the rest of the plaint allegations.

3.2 It is specifically contended by the defendant that, earlier, one Biliya Naik- the father of the defendant and Ramachandra- were residing at Volakatte Village and since the said Village was submerged in Savehakkalu-Varahi Hydro Electric Project, the family of Biliya naika was rehabilitated at Mavinakere Village along with other villagers as per the order of the Government. It is further case of the defendant that, the Special Land Acquisition and Rehabilitation Officer, Sagara vide order dated 23-10-1968 has allotted site No.4 of Mavinakere Village in his and accordingly, the revenue records of the said property mutated into his name and Tax demand register extract was issued in his favour by the PDO, Gram Panchayath, Barandur during the year 1981. He further stated that, site No.3 of Mavinakere Village was granted in favour of his father Biliya Naika vide order dated 03-08-1968 and the revenue records of the said site was mutated into the name of Biliya Naika. It is further case of the defendant that, ever since the date of allotment, he is in peaceful possession and enjoyment of site

No.4 of Mavinakere Village and thus, he contending that, the sale certificate dated 24-01-1982 issued in the name of his brother and the husband of the plaintiff Ramachandra has no sanctity in the eye of law and accordingly, the panchayath authorities have denied to mutate the name of the plaintiff or the defendant in the E-Swathu record.

3.3 The defendant contending that, the plaintiff has filed this false suit only with an intention to obtain E-Swathu document in her name despite not being in possession of the suit property as alleged. The defendant contending that, the suit filed by the plaintiff is false, baseless and frivolous and accordingly, he prays to dismiss the suit with cost as well as the IA.

4. In view of the rival contentions of both the parties, the following points are arise for my consideration;

- 1. Whether plaintiff establishes that, there exists a prima facie case in her favour ?**
- 2. Whether plaintiff establishes that, the balance of convenience also exists in her favour?**

3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction order is not granted ?

4. What order?

5. I have heard both the sides on the I.A.

6. Carefully perused the entire materials available before this court.

7. My answers to the above points are as follows:

Point No.1 : **In the Affirmative.**

Point No.2 : **In the Affirmative.**

Point No.3 : **In the Affirmative**

Point No.4 : **As per final order,**
for the following;

REASONS

8. **Point No.1 to 3**: These points are inter connected to each other and are based on common set of facts. Hence, they are taken together for my common consideration in order to avoid the repetition of facts and for the purpose of brevity.

9. Three ingredients that are to be considered while granting or rejecting the application for temporary injunction order are that:

(1) Prima facie case

(2) Balance of convenience

(3) The party who will be put to irreparable loss and injury in the event of non granting of temporary injunction.

10. The Prima facie case means, a case of plaintiff is such that it needs adjudication on merits and that there is a triable issue. Plaintiff's case should not be such that it is liable to be rejected summarily. However, prima facie case does not mean cent percent case. Suffice to satisfy the case about the existence of the triable issue.

11. The balance of convenience means a comparative hardship or inconvenience i.e. likely to be caused from withholding the order of temporary injunction or by granting it. In other words, if it is the plaintiff who will be put to greater inconvenience if temporary injunction is not granted, then the

balance of convenience lies in her favour. If the greater inconvenience is caused to the defendant on granting such injunction, then the balance of convenience lies in favour of the defendant.

12. Here, as it could be seen from the pleadings of both the parties, it is evident that, the plaintiff filed this suit for the relief of injunction *simplicitor* with respect to a property consisting of Mangalore tiled house and a vacant site adjacent to it situated at Mavinakere Colony bearing Khatha No.3, Property No.4 measuring 60' x 100'. According to the plaintiff, suit property was granted in favour of her husband Ramachandra vide sale certificate dated 24-01-1982. It is alleged by the plaintiff that, the defendant is the brother of her husband and he was also granted site No.3 by the concerned authorities and the said property of the defendant is situated towards the eastern side of the suit property. The plaintiff alleged that, the defendant without having any right whatsoever is interfering with her possession and trying to encroach the

suit property towards its eastern side. Thus, she claims to have filed this suit.

13. Per contra, it is the case of the defendant that, he was granted site No.4 i.e. the suit property, vide order dated 23-10-1968 and the site No.3 was granted in favour of his father Biliya Naika on 03-08-1968. It is contended by the defendant that, he is in possession of site No.4 as per the grant issued in the year 1968 itself and hence, he claimed that, the sale certificate issued in favour of the husband of the plaintiff on 24-01-1982 has no sanctity in the eye of law. The defendant contending that, the plaintiff filed this false suit only with an intention to get E-Swathu document in her name even though she is not in possession of the suit property.

14. The aforesaid pleadings of both parties would indicate that, they are claiming each others right over the same property bearing site No.4 of Mavinakere Village. The plaintiff claims that, the said property was granted to her husband vide sale certificate dated 24-01-1982 and, on the other hand, the

defendant claims that, the same property was allotted to him vide order dated 23-10-1968 passed by the Special Land Acquisition and Rehabilitation Officer, Sagar. Hence, it is prima facie evident that, there is a clear case existing in favour of the plaintiff to go for trial. The dispute between the plaintiff and the defendant with respect to the suit property requires a full pledged investigation during the trial of the suit.

15. In support of her claim, the plaintiff has produced the original sale certificate dated 24-01-1982 issued by the then Chairman of Barandur Gram Panchayath and the said document would clearly supports her case at this stage of the suit that, the suit property bearing site No.4 measuring 60' x 100' was granted in favour of her husband Ramachandra. The boundaries shown in the said sale certificate are in consonance with the boundaries mentioned by the plaintiff to the suit property in the schedule of her plaint. The said document clearly indicate that, the site No.3 and 5 are existing towards east and western side of the suit property and the road is

existing towards remaining boundary. Further, the plaintiff has produced the tax paid receipts pertaining to the year 1996, 1990, 2004, 2007, 2021 to 2023. The said tax paid receipts would show that, the tax is paid in respect of the property bearing site No.4 of Mavinakere Village standing in the name of husband of the plaintiff Ramachandra. The plaintiff also produced the copies of the requisition given by her to the panchayath requesting to mutate her name in the revenue records of the suit property as she succeeded the same after the death of her husband.

16. The aforesaid documents produced by the plaintiff at this stage of the suit would clearly supports her claim that, she is in possession of the suit property as on the date of filing this suit. The tax paid receipts clearly supports the claim of the plaintiff and prima facie establishes her possession in the suit property as on this day.

17. On the other hand, though the defendant has produced the copy of order passed by the Special Land

Acquisition and Rehabilitation Officer, Sagar dated 23-10-1968 to show that, site No.4 was granted in his favour, he has not at all produced any document to show his possession in the suit property as on the date of this suit or prior to it. The documents produced by the defendant though indicate that, the site No.4 was ordered to allot in his favour, there is absolutely nothing on record at this stage of the suit to believe his possession in the said property. If at all, the defendant is in possession of the suit property as contended by him, nothing prevented him to produce the relevant revenue documents such as tax paid receipts etc. to show such possession. But he produced none of them.

18. Under the above said facts and circumstances of the case, it appears that, the plaintiff is in possession of the suit property as on the date of suit. The rival claim of the defendant is not supported by any documents at this stage of the suit. Since, the plaintiff prima facie found in possession of the suit property and it is prima facie found that the defendant posing

danger to her possession, there is more than a prima facie case and balance of convenience existing in favour of the plaintiff. If the possession of the plaintiff is not protected at least till pending disposal of the suit, it will not only cause irreparable injury to her, but also would lead to multiplicity of proceedings.

19. Thus, this Court is of the considered view that, this is a fit case to grant an order of temporary injunction in favour of the plaintiff as sought in the present IA. Being of the above view, Point No.1 to 3 are answered in the **Affirmative**.

20. Point No.4: Resultantly, I proceed to pass the following;

ORDER

I.A. No.I filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

Consequently, the defendant, his men, agents, servants, henchmen etc. are temporarily restrained from interfering with the possession and enjoyment of the plaintiff in

the suit property, in any manner, till the pending disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, translated, computerized by her, corrected and then pronounced by me in open court this 27th day of September-2024)

(Ravi Kumara V.)
C/c I Addl. Civil Judge & JMFC.,
Bhadravathi.