

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC., GUBBI**

**Present: Smt. Vinutha D.S., B.Sc.(seri)., LL.B.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 3rd day of October -2023

O.S.No.373/2022

Plaintiff : Chikkanna S/o late Hanumanthaiah,
Aged about 52 years,
R/o Bellahalli Village,
Ankalakoppa Post,
C.S.Pura Hobli, Gubbi Taluk.

(By Sri.T.B.S, Advocate)

V/s

- Defendants:** **1.** Ramesh @ Raju S/o Hanumanthaiah,
Aged about 50 years,
- 2.** Jayamma W/o Ramesh @ Raju,
Aged about 45 years,
- 3.** Narasimhamurthy S/o Ramesha @ Raju,
Aged about 28 years,
- 4.** Girigowdaiah S/o late Chikkanarasimhaiah,
Aged about 70 years,

All are R/o Bellahalli Village,
Ankalakoppa Post,
C.S.Pura Hobli, Gubbi Taluk.

**(D.1 to 3 by Sri.V.K., Advocate.,)
(D.4 exparte)**

**PARTIES TO IA No.1****APPLICANT** : Chikkanna – Plaintiff**V/S****OPPONENT** : Ramesh @ Raju and others – defendants**ORDERS ON I.A No.1 U/O.XXXIX RULE 1 AND 2 OF THE CPC**

I.A .No.1 is filed by the plaintiff under order 39 Rule 1 and 2 of CPC praying for temporary injunction against the defendants restraining the defendants, their agents or anybody on his behalf from dispossessing plaintiff from suit schedule property till disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff has stated that he has filed the suit against defendants for declaration of title and permanent injunction with respect to the suit schedule property. The defendants taking advantage of illegal phodification conducted in Sy.No.14 and fake transactions, is trying to dispossess the plaintiff from suit schedule property. Plaintiff has purchased the suit schedule property under registered sale deed dated:16.03.1991 and he is the absolute owner in possession. Revenue documents also stands in his name. He has prima-facie case in his favour and also the balance of convenience leans on his side. Hence, he prays to allow the application.



3. Per contra, the defendants file written statement and filed memo to treat their written statement as objection to the application. In their written statement defendants No.1 to 3 admitted that, the father of defendant No.1 B.N.Hanumanthaiah and his minor children executed registered sale deed on 16.03.1991 in favour of plaintiff for 30 guntas. Defendants are the absolute owners of the suit schedule property. Defendants never created any registered sale deed dated:30.06.2014. They have admitted that they have filed OS.No.260/2020 against plaintiff before the Court of Addl.Civil Judge and JMFC, Gubbi. It is their contention that they are in lawful possession and enjoyment of property bearing Sy.No.14/1B1 and 14/1B2. The transaction between T.Rajanna S/o Thimmanna and defendants No.1 to 3 is lawful. Plaintiff is stranger to defendants property. Defendants are not taking any advantage of phodification. The sale by defendants to said Rajanna is lawful. Plaintiff is not in possession of the suit schedule property. It is further contended that the land bearing Sy.No.14/1B2 measuring 25 guntas situated at C.S.Pura Hobli, Bellahalli Village is purchased by defendant No.2 under registered sale deed dated:13.09.2021 and she is the absolute owner of said property and revenue documents are standing in her name. Since the date of purchase, defendant No.2 is in possession and enjoyment of said property. The plaintiff and one Yashodamma, Naveen Kumar colluding with each other, are



trying to interfere in defendant No.2's peaceful possession and enjoyment of said Sy.No.14/1B2 property. Therefore, defendant No.2 has filed a suit in OS.No.228/2023 against plaintiff and his children for permanent injunction before Addl.Civil Judge and JMFC, Gubbi. In the said case temporary injunction order is granted. Further, that land bearing Sy.No.14/1A measuring 3.25 guntas at Bellahalli Village, Originally belonged to Narasimhegowda and he was in possession and enjoyment over said property. After his death, his two sons B.N.Thimmegowda and B.N.Hanumanthaiah (father of defendant No.1) got divided their properties and accordingly B.N.Thimmegowda got an extent of 1.32.08 acres each for their share. The defendant No.1's father has sold only 30 guntas to plaintiff on 16.03.1991 and he had retained remaining 1 acre 2.08 guntas in said survey number.

Further, out of remaining 01.02.08 acre, the defendants have sold 25 guntas to one T.Rajanna S/o Thimmanna. Then defendants have retained 00.17.08 guntas with them in said Sy.No.14/1A and are in possession and enjoyment of it. The defendant No.2 has purchased 25 guntas in Sy.No.14/1B2 of Bellahalli Village on 13.09.2021 under registered sale deed. The plaintiff is not in possession of suit schedule property. Hence, they pray to reject the application.

4. Heard both sides. Perused materials on record.



5. After going through the pleadings and other materials available on record, the following points arise for my consideration.

1. Whether the plaintiff has made out prima facie case ?
2. Whether the plaintiff has balance of convenience in their favour?
3. Whether irreparable loss or injury would be caused to plaintiff if temporary injunction is not granted?
4. What Order?

6. for the above points my answer 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 final order for the Following reasons:

REASONS

7. Points No.1 to 3:-___Prima-facie case means an arguable case made out from the allegation and averments made in the pleadings in support of the documents produced by the party concerned. Among the trios as a guiding factor 'balance of convenience and irreparable loss to the defendants also plays a vital role. Grant of injunction is in the discretion of the court and if such discretion has to



be exercised in favour of the applicant/defendants, it is to be proved to the satisfaction of the court that there is prima-facie case on their side, balance of convenience leans on their side and unless the opponents/plaintiff are restrained by an order of injunction, an irreparable loss or damage would be caused to plaintiff during pendency of the suit. Let us examine the case on hand keeping these trio factors into consideration.

8. This is a suit for declaration of title and to declare that transaction dated:30.06.2014 between defendants and Rajanna in Sy.No.14/1B2 is fraud and not binding plaintiff over suit schedule property.

9. The suit schedule property is described as under:

All that piece and parcel of the land bearing old Sy.No.14/1 eastern side 0.30 guntas covered under the registered sale deed dated:16.03.1991, now the said land fetched in new Sy.No.14/1b1 to an extent of 0.5 guntas and Sy.No.14/1b2 to an extent of 0.25 guntas, totally measuring 0.30 guntas situated at Bellahalli Village, C.S.pura Hobli, Gubbi Taluk, Tumkur District bounded by;

East : Tank Basin

West : Remaining land in the same survey number

North: Land of Narasimhaiah

South: Land of plaintiff in the same survey number

Plaintiff says he has purchased suit schedule property from father of defendant No.1 under registered sale deed dated:16.03.1991. At his back, defendant No.1 colluding



with revenue authorities got illegal phodification in Sy.No.14. So the land purchased by plaintiff in Sy.No.14/1 measuring 30 guntas spread out in 2 survey numbers as Sy.No.14/1B2 measuring 25 guntas and Sy.No.14/1B1 to an extent of 5 guntas totally measuring 30 guntas. But survey officials have wrongly incorporated the survey number to plaintiff said suit schedule property as 14/1A1. Defendants trying to interfere in his peaceful possession and enjoyment over suit schedule property. Defendants No.1 to 3 have no lands in Sy.No.14/1 but they in collusion with one Rajanna, created fake registered sale deed dated:30.06.2014 by changing name of defendant No.1 as Raju instead as Ramesh. Later Rajanna came to know that defendants No.1 to 3 have no land in Sy.No.14/1 and in suit schedule property he inturn sold land in Sy.No.14/1B2 to defendant No.2. Defendants taking advantage of illegal phodification trying to dispossess plaintiff. Hence, prays to grant temporary injunction.

10. Documents produced by the plaintiff as under;

a) copy of registered sale deed dated:16.03.1991 reveals that plaintiff has purchased property from father of defendant No.1, the defendant No.1 and a minor son represented by natural guardian that is father of defendant No.1 for Rs.3,000/-. Recital of delivery of possession is also



forthcoming schedule is described as "ಪಂಚಾಯ್ತಿ ವ್ಯಾಪ್ತಿಗೆ ಒಳಪಟ್ಟಿದೆ. ಪೂರ್ವ -ಪಶ್ಚಿಮ ಸೀಳಿನಲ್ಲಿ ಪೂರ್ವದ ಕಡೆ 30 ಗುಂಟೆ, ಸರ್ವೆ ನಂ.14/1 ಎ ಆಗಿರುತ್ತದೆ ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ ಪೂರ್ವಕ್ಕೆ ಕೆರೆ ಅಂಗಳ, ಪಶ್ಚಿಮಕ್ಕೆ ಇದೇ ನಂಬರ್ ಪೈಕಿ ಉಳಿಕೆ ಜಮೀನು, ಉತ್ತರಕ್ಕೆ ನರಸಿಂಹಯ್ಯನ ಜಮೀನು ಮತ್ತು ದಕ್ಷಿಣಕ್ಕೆ ನಿಮ್ಮ ಬಾಬು ಜಮೀನು".

b) Copy of registered sale deed dated:30.06.2014, shows one Rajanna purchased property from defendants No.1 to 3 for Rs.90,000/-. The property is described as Sy.No.14/1B2 measuring 25 guntas bounded by East: Panchayati road, West: land of Annayyappa S/o late Narasimhaiah, North: land of Boramma W/o late Narasimhaiah and South: land of Chikkanna S/o Hanumanthaiah.

c) Copy of plaint in OS.No.260/2020 filed by T.Rajann against plaintiff herein shows the suit schedule property in said suit is 14/1B2 measuring 25 guntas bounded by East: Panchayath road, West: land of Annayappa, North: land of Boramma and South: land of Chikkanna.

d) RTC of Sy.No.14/1A1 of the year 2021-22 which shows total extent 2.26.08 guntas including 00.01.08 guntas of 'A' Karab. Column 9 shows plaintiff name to extent of 30 guntas in column 12(2) plaintiff name appears. RTC of Sy.No.14/1B2 of the year 2020-21 shows 25 guntas in name of T.Rajanna. At column 12(2) names of Rajanna



and defendant No.1 appears. RTC of Sy.No.14/1B1 total extent 1.07 guntas for the year 2021-22 and 2020-21. At column 9 plaintiff name does not appear. Copy of plaint in OS.No.228/2023 filed by defendant No.2 against plaintiff herein and his wife and son for permanent injunction with respect to Sy.No.14/1B2 measuring 25 guntas. Copy of registered sale deed dated:13.09.2021 executed by Rajanna S/o Thiammanna to defendant No.2.

11. Defendants admitted the sale of 30 guntas to plaintiff vide registered sale deed dated:16.03.1991. It is their specific defence that, land bearing Sy.No.14/1A was totally measuring 3 acres 27 guntas. Karab jata 3 acre 25 guntas, originally belonged to one Narasimhegowda. He had 2 sons that is B.N.Thimmegowda and B.N.Hanumanthaiah (that is father of defendant No.1) and they both partitioned Sy.No.14/1A. Wherein each of them got 1 acre 32.08 guntas for their share, accordingly revenue documents was mutated in their names vide MR.1/1983-84. After death of father of defendant No.1 the defendant No.1 succeeded said property fallen to share of his father.

He contended that his father B.N.Hanumanthaiah and himself sold 30 guntas in Sy.No.14/1A to plaintiff on 16.03.1991. Then he had retained 1 acre 2.08 guntas with



them. Further on 30.06.2014 they sold 25 guntas in said survey number to T.Rajanna. They had retained 17.08 guntas with them and they are in possession and enjoyment of it. Later, T.Rajanna sold the 25 guntas of land purchased by him under registered sale deed dated:30.06.2014 to defendant No.2 on 13.09.2021. Then defendant No.2 is the owner in possession of Sy.No.14/1B2 measuring 25 guntas.

12. The documents produced by the defendants as under;

- a) Copy of sale deed dated:16.03.1991.
- b) Copy of Pakka book, Hissa survey of Sy.No.14/1B1 of Bellahalli which shows total extent 1.32 guntas and it is renumbered as 14/1B1 measuring 1acre 7 guntas, Sy.No.141/1B2 measuring 25 guntas.
- c) Copy of Akar band uttar Sy.No.14/1B2 measuring 25 guntas.
- d) Copy of RTC of Sy.No.14/1A of the yar 1978-79 to 1979-80 of Bellahalli which shows total extent as 3.27 acres including 2 guntas of karab and total extent standing in name of late Narasimhegowda, column 10 entry is as RR.384. At column 12(2) late Narasimhegowda's name appear.
- e) Copy of RTC of Sy.No.14/1A for the year 1980-81 to 1985-86 and 1986-87 to 1992-93 shows 3.25 guntas standing



in the name of Patel Narasimhegowda and it is divided equally between B.N.Thimmegowda and B.N.Hanumanthaiah that is each had got 1.32 $\frac{1}{2}$ guntas vide MR ಏಭಾಗ MR.1/83-84. At column No.12(2) their names appear.

f) Copy of RTC of Sy.No.14/1A for the year 1998-99 to 2001-02 shows total extent 3.25 guntas. At column 9 shows as 1.32 $\frac{1}{2}$ Thimmegowda.B.N and 1.32 $\frac{1}{2}$ guntas B.N.Hanumanthaiah and 0-30 guntas Chikkanna S/o Hanumanthaiah, at column No.12(2) all 3 names appears.

13. Plaintiff claim to have purchased the 30 guntas of land in Sy.No.14/1A on eastern side and said fact being admitted by defendants. The revenue document RTC relied by plaintiff of Sy.No.14/1A1 of the year 2021-22 reveals 30 guntas in said survey number is standing in the name of plaintiff. However, plaintiff alleges that subsequently it has been subdivided and said 30 guntas is sected in Sy.No.14/1B1 to an extent 5 guntas and in Sy.No.14/1B2 to an extent of 25 guntas. However, the same is not forthcoming from the materials on record. Plaintiff has not produced any documents at this stage to show that 5 guntas and 25 guntas out of his 30 guntas are being assigned with Sy.No.14/1B1 and 14/1B2 respectively. Plaintiff counsel argued that said Rajanna the plaintiff in OS.No.260/2020 and defendant No.2 in OS.No.228/2023 has shown the suit schedule property of this case as southern



boundary and have obtained temporary injunction. I have carefully perused the plaint copies of said suits. In the said suits the plaint schedule described property is of Sy.No.14/1B2 measuring 25 guntas and it's southern boundary is described as "land of Chikkanna". However the RTC of Sy.No.14/1B2 of 2020-21 shows total extent of 25 guntas standing in the name of Rajanna. Further, the Hissa survey produced by defendants shows that Sy.No.14/1B totally measuring 1 acre 72 guntas is phoded as 14/1B1 measuring 1 acre 7 guntas and Sy.No.14/1B1 measuring 25 guntas.

But plaintiff claims his '25 guntas' is spread in or fetched in new Sy.No.14/1B2. As stated above, the documents produced by plaintiff does not show prima-facie case in his favour. Hence, in such circumstance though plaintiff shows that he has purchased 30 guntas of land in Sy.No.14/1A on eastern side, he has not produced any survey sketch or the revenue documents to support his claim. Therefore, plaintiff has not made out any prima-facie case in his favour to grant temporary injunction. Balance of convenience also not lies on his side. No loss or injury will be caused to plaintiff if temporary injunction is not granted. On other hand, the documents produced by defendants at this stage prima-facie supports their version. Accordingly, this Court answers the **Points No.1 to 3 in the Negative.**



14. Point No.4: In view of the above discussion I proceed to pass the following:-

ORDER

**The I.A.1 filed by the plaintiff U/O
39 Rule 1 and 2 of CPC is hereby
rejected with cost of Rs.500/-.**

(Dictated to the stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this the 3rd day of October 2023).

(VINUTHA. D.S.)
Prl. Civil Judge and JMFC.,
GUBBI



(Order pronounced in the open
Court vide separate order)

ORDER

**The I.A.1 filed by the
plaintiff U/O 39 Rule 1 and 2 of
CPC is hereby rejected with
cost of 500/-.**

**For compliance U/Sec.89
of CPC.**

Call on 28.11.2023.

**Prl. Civil Judge and JMFC.,
GUBBI.**