



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KUNIGAL.

-.PRESENT:-

Sri. Manjunath Shivapooji B.A. LL.B.,

Addl. Civil Judge & JMFC., Kunigal

Dated this the 6th day of July, 2024.

O.S. NO.90/2024

plaintiffs : Sri.C.N.Dhananjaya and others

V/s

Defendants : Smt.Boramma and another

I.A. No. 1

Applicant : Sri.C.N.Dhananjaya and others

V/s.

Opponent : Smt.Boramma and another

ORDERS ON APPLICATION FILED BY THE plaintiffs
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiffs have filed this suit for the relief of declaration, to declare that they are perfected their title over the suit schedule property by way of adverse possession and



consequential relief of permanent injunction to restraining the defendants and their mens with interfering with plaintiffs peaceful and lawful possession and enjoyment of the suit schedule property.

2. The plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 of CPC and to restrain the defendants and their mens from demolishing the house situated within the suit schedule property till disposal of the suit. Further, the plaintiffs pleaded that, the 1st defendant had purchase the Sy.No.23/2 totally measuring 7 guntas including 3 ½ of suit property from its lawful owner under the register sale deed dated: 25.04.1992. The plaintiffs further contended that, the mother of plaintiffs was also paid amount of Rs.2,500/- towards the sale consideration. But, the sale deed was mutated in the name of 1st defendant. Because, there was a cloud on plaintiffs that, the purchaser must be the agriculturist and they must own agricultural land or lands



should be in their name and name shall reflect in the RTC. During that time, the plaintiffs ancestral property of Sy.No.22/1 was standing in the name of their father Nanjegowda. Due to said difficulty, the sale was not register in the name of mother of plaintiffs or the family members of the plaintiffs.

3. The plaintiffs further pleaded that, after the purchase, the mother of plaintiffs was in possession and plaintiffs have constructed house in the Sy.No.23/2 measuring East-West: 42 feet and North-South: 31 feet within the extent out of 3 ½ guntas. After construction of house panchayath has given Khaneshmari No.45 to the said house and plaintiffs and their mother was/is being paid Tax to the revenue authorities.

4. plaintiffs further contended that, such being the fact, they have perfected their title by way of adverse possession against true owner i.e., 1st defendant.



5. The plaintiffs further submits that, the defendants on 15.01.2024 came near the suit house and made hectic attempt to build the residential house situated within the suit schedule property by denying right, title, interest and possession of the plaintiffs over the suit schedule property. Hence, they have filed this suit to protect their right, title and interest over the suit property including house situated in the suit schedule property. In this suit, they have filed IA No.1 U/O 39 R 1 and 2 of CPC against the defendants to restrain them to demolish the house till disposal of suit and prayed to allow the IA No.1 in the interest of justice.

6. On the other hand, the defendants have filed their written statement and objections to IA No.1 by denying the claim, case and contention of IA No.1. The defendants contended that, the 1st defendant is the absolute owner and in possession over the written statement property. 1st defendant has purchased under the sale deed dated: 25.04.1992.



Onwards, the sale she was/is in possession over the suit property and she has constructed house in suit property for her best use.

7. Further contended that, 1st defendant being the absolute owner has executed gift deed in favour of her daughter-in-law. After the gift, the daughter-in-law of 1st defendant has invested huge amount to install the Petrol Bunk in the written statement property. The plaintiffs have filed this suit only to harass the defendants and daughter-in-law of 1st defendant. The plaintiffs have no lawful title, right and interest over the suit property. Hence, the suit of the plaintiffs is not maintainable in the eye of law. The plaintiffs have filed IA No.1 only with an intention to cause harassment and for unlawful gain. Hence, they have prayed to dismiss the IA No.1 with exemplary cost in the interest of justice.

8. Heard arguments.



9. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiffs have made out prima- facie case in their favour?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?

4. What order?

10. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

11. My finding on 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 the final order for the
following;

::REASONS::

12. **Point No.1 to 3**: Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.

13. On perusal of the pleadings of the plaintiffs and defendants and documents produced by the both parties it is clear that, the 1st defendant is the absolute owner of the suit schedule property. But, the plaintiffs claimed that, they are the absolute owner and in possession by way of adverse possession. Considering the pleadings of both parties that, there is no dispute that, the 1st defendant had purchased the suit property under the register sale deed dated: 25.04.1992. The plaintiffs claiming ownership of suit schedule property by



way of adverse possession.

14. The Hon'ble Supreme Court in **2019 (3) Indian Civil Case 641** has held that “*the plea of acquisition of the title by adverse possession can be taken by plaintiffs under Article 65 of Limitation Act and there is no bar under the Limitation Act, 1963 to see on aforesaid basis in case of infringement of any rights of a plaintiffs*”.

15. Hence, considering the case on hand in the light of the decision of Hon'ble Supreme Court in the above said decision, the plaintiffs can file suit for declaration by way of adverse possession and case of the plaintiffs is fit for go for trail.

16. Now, the question is arised before this court is whether a house is existed in the Sy.No.23/2 with extent of Sy.No.3 ½ guntas?



To prove the existence of house in the Sy.No.23/2, the plaintiffs have produced Khaneshmari No.45, the Tax paid receipts and photos of house existed in the Sy.No.23/2. Moreover, the defendants have also admitted that, there is a house is existed in the Sy.No.23/2. Considering the pleadings of the both parties and contents of the documents it clears that a house is existed in Sy.No.23/2.

17. Now, the another question is arised for consideration before the court that, who has holds the possession over the house existed in Sy.No.23/2. Both parties have claim possession over the house in Sy.No.23/2.

18. The plaintiffs to prove their case, they have produced Khaneshmari No.45, khata extracts from the year 2001 to 2023 and also produced Electricity supply certificate, Tax paid receipts and receipts of Electricity Bills. To prove their contention, the defendants also have produced RTC of Sy.No.23/2, Patta Books, 11 E sketches, E-khata and photos pertaining to suit schedule



properties. On perusal of photos produced by the plaintiffs and defendants it appears one red tiled roofed house is existed in the suit schedule property.

19. The plaintiffs has produce one sketch issued by ಭೂಮಾಪಕರು. On perusal of sketch it appears that, the surveyour has mentioned that, the sons of Ningamma are in possession over the house existed in Sy.No.23/2. The plaintiffs have also produced two 11 E sketch. Those two sketches were prepared in the year 2021. On perusal of those two sketches, on prima-facie it appears that, 1st defendant has expressed her intention and willingness to transfer her right over the suit schedule property to the extent of 7 guntas in Sy.No.23/2 in favour of plaintiffs.

20. The defendants have submitted that, they have started to installation of Petrol Bunk by investing huge amount, if this courts has restrained them more loss will be cases to them. Considering, this arguments of defendants on the light of photos produced by them it appears that, they have



already started work of installation of Petrol Bunk in the remaining land in Sy.No.23/2 by leaving red tailed house in the Sy.No.23/2. Hence, this court comes to the conclusion that, if the defendants are restrained from demolishing the red tailed house no harm would be cause to them.

21. This court comes to the conclusion that, as to the possession shall have to determine only after full pledge trial. The case in hand as to determine the question of possession it needs evidence. The plaintiffs claim the declaration by way of adverse possession. The question of adverse possession could not be decided at the preliminary stage of the suit. The plaintiffs filed IA No.1 for restrain the defendants from demolishing the house existed in the suit schedule property till disposal of the suit.

22. Hence, this court comes to the conclusion on the basis of the pleadings of both parties and documents produced by them that, the house existed in the suit schedule property



shall have to be keep intact until disposal of the suit. The plaintiffs have made out the prima-facie case.

23. If the defendants are not restrained from demolishing the house, in case if the plaintiffs are succeeded to discharge their burden. Then, it will difficult for the plaintiffs to protect their possession over the suit house. The defendants are restrained from the demolish no harm would be caused to them.

24. By considering all these aspects it appears that, on prima-facie it clear that, there is a red tailed house is existed in Sy.No.23/2. If the defendants are restrained from demolishing the red tailed house, no harm would be caused to the defendants.

25. Hence, considering all these aspects plaintiffs has prove the prima-faice case and balance of convenience lies in their favour. The plaintiffs have succeeded to get confidence of this court that, if temporary injunction is not granted



irreparable loss will be caused to them. Accordingly Point No.1 to 3 are answered in the ***Affirmative.***

26. Point No.4:: For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

IA No.I filed by the plaintiffs under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants or their agents or anybody acting on behalf of them are hereby restrained from demolishing red tailed house existed in Sy.No.23/2 i.e., suit schedule property in any manner till disposal of the suit.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 6th day of July, 2024]

Sd/-
[Shri.Manjunath Shivapooji]
Addl Civil Judge and JMFC,
Kunigal.