

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

Dated this the 06th day of October 2017

**Present : Sri. Kishor Kumar .M. B.A. LLB.,
Addl. Civil Judge & JMFC,
Kunigal.**

O.S. NO. 214/2015

Plaintiff/Applicant : Smt. Jayamma

V/s

Defendants/Opponents : Smt. Kempamma and Another

ORDERS ON IA NO. 1

The plaintiff filed this application U/o XXXIX Rule 1 and 2 of CPC, prays for grant of temporary injunction restraining the defendants, their agents, servants, attorney or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

2. In support of the application plaintiff has sworn to the affidavit stating that she is the absolute owner in possession and enjoyment of the suit property. She acquired the suit property along with other properties through compromise decree passed in O.S. No. 90/2014 on the file of Addl. Civil

Judge & JMFC, Kunigal. Accordingly, khatha of the suit property mutated in the name of plaintiff bearing MR No. H15/2014-15. The plaintiff is paying tax to the Government. The plaintiff further stated in her affidavit that her father constructed a tile roofed house in the suit property about 16 years back and now the plaintiff along with her family members living in the said house. Father of the plaintiff is no more. The plaintiff further stated in her affidavit that the defendants are utter strangers to the suit property having no manner of right, title, interest or muchless possession over the suit property. Such being the case the defendants who are inimical persons towards the plaintiff tried to dispossess the plaintiff from the house situated in the suit property and thereby interfered with the peaceful possession and enjoyment of the plaintiff over the suit property and further threatened the plaintiff with dire consequences. If the defendants succeeded in their illegal attempt, the plaintiff will be put to irreparable loss and injury.

3. The plaintiff in her affidavit further stated that, she had a prima facie case and balance of convenience lies in her favour. The order of temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the suit property is granted in her favour no harm or injustice would be caused to other side. On the contrary the plaintiff will be put to great hardship and injustice which cannot be compensated in any means. Accordingly, the plaintiff sought for allowing the IA No. 1 as prayed for:

4. Upon service of suit summons, the defendants appeared through their counsel and filed their written statement and objections to I.A. No.1.

5. The defendants in their Written Statement and objections denied the entire plaint and I.A. No.1 averments in toto. Apart from that defendants specifically contended in their objections that during the lifetime of Shivaramaiah, he constructed a residential tiled roofed house about 30 years back in property bearing Sy No. 10/6 i.e., subject matter of

the registered sale deed Dt. 27.04.1981. There exist no agricultural property as claimed by the plaintiff. The defendants are in peaceful possession over to the extent of East-West: 15 yards and North-South: 25 Yards in Sy No. 10/6. Such being the case the defendants trying to interfere over the suit property does not arise. The plaintiff has not come to this court with clean hands. The plaintiff has not made out any prima-facie case in her favour. Hence, prayed for dismissal of the application.

6. I have heard the arguments of both sides and perused the entire record. In the facts and circumstances of the case, the points that arise for my consideration are:

1. Whether there exists prima facie case in favour of the plaintiff?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What order?

7. My answer to the above points are as under:-

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

Points No.1 to 3:

8. These points are inter-related, hence, I have discussed them together for the sake of brevity and to avoid the repetition of the facts. As I have already narrated in brief as to what the case of the plaintiff is and what the defence of the defendants is. Hence, it is not required to reproduce the same again in detail.

9. As could be seen from the contentions urged in the I.A. No. 1, it is the case of the plaintiff that she had acquired the suit property along with other properties through compromise decree passed in O.S. No. 90/2014 on the file of Addl. Civil Judge & JMFC, Kunigal. Accordingly, khatha of the suit property mutated in the name of plaintiff. She is in lawful possession and enjoyment of the suit property. The defendants having no manner of right, title, interest or muchless

possession over the suit property, they are trying to dispossess the plaintiff from house situated in the suit property and thereby they interfered with the plaintiff's peaceful possession and enjoyment of the suit property.

10. On the other hand the defendants seriously objected the I.A. No.1 filed by the plaintiff stating that husband of the plaintiff by name Ramachandraiah being the absolute owner to the extent of 5 guntas of land in Sy No. 10/6, sold a portion of the property in Sy No. 10/6 to an extent of East-West: 15 yards and North-South: 25 yards bounded by East: Property retained by Ramachandraiah, West: House of Ankaiah, North : Road and South : Property retained by Ramachandraiah in favour of Shivaramaiah S/o Doddabalaiah, who is husband of Defendant No.1 and father of Defendant No.2. Ever since the date of purchase the said Shivaramaiah continued has absolute owner. During his lifetime he constructed a residential tile roofed house about 30 years back measuring East-West: 35 feet, North-South: 45 feet and there is remaining vacant site. After the demise of Shivaramaiah the

defendants inherited the property by law of succession. The defendants further contended that the compromise decree in O.S. No. 90/2014 is nothing but a collusive and fraudulent decree obtained behind the back of defendants. The said decree not binds the defendants. The defendants further contended that title of the plaintiff is itself under the dispute, hence suit for injunction without being physical possession and title is liable to be dismissed in limine.

11. Plaintiff case is that her father had purchased suit property from her husband Ramachandraiah through registered sale deed Dt. 09.11.1979. Subsequently the plaintiff had acquired suit property along with other property through compromise decree passed in O.S. No. 90/2014. On perusal of the decree it is apparent that in O.S. No. 90/2014 the plaintiff herein is the plaintiff and her sister is Defendant No.1, her brother is Defendant No.2 and her mother is Defendant No.3. In that suit Defendant No.1 to 3 relinquished their right over the suit properties and plaintiff alone get the suit properties.

In view of the decree khatha of suit property mutated in the name of plaintiff vide MR No. H15/2014-15.

12. The defendants case is that husband of plaintiff by name Ramachandraiah being the absolute owner of 5 guntas in Sy No. 10/6, sold a portion of the property in Sy No. 10/6 to an extent of East-West: 15 yards, North-South: 25 yards in favour of Shivaramaiah S/o Doddabalaiah, who is husband of Defendant No.1 and father of Defendant No.2. The said Shivaramaiah during his life time constructed a tile roofed house measuring East-West: 35 feet, North-South: 45 feet and there is a remaining vacant site. After his demise the defendants inherited the same. Schedule of the sale deed Dt. 27.04.1981 reads as:-

ಕೆಂಚನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಖಾನೇಷುಮಾರಿ 86ನೇ ನಂಬರ್ ಪೈಕಿ ನಿನಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿರುವ ಪೂರ್ವ-ಪಶ್ಚಿಮ : 15 ಗಜ, ಉತ್ತರ-ದಕ್ಷಿಣ: 25 ಗಜವುಳ್ಳ ನಿವೇಶನ. ಚಕ್ಕುಬಂದಿ ಪೂರ್ವಕ್ಕೆ ಮತ್ತು ದಕ್ಷಿಣಕ್ಕೆ : ನನ್ನ ಸ್ವಂತಕ್ಕೆ ಉಳಿದಿರುವ ನಿವೇಶನ, ಪಶ್ಚಿಮಕ್ಕೆ : ಅಂಕಯ್ಯನವರ ಮನೆ, ಉತ್ತರಕ್ಕೆ: ಪಿಡಬ್ಬೂಡಿ ರಸ್ತೆ.

In the said sale deed survey number was not mentioned as pleaded in the written statement of the defendants. Even for

the sake of convenience if we assume that under sale deed Dt. 27.04.1981 Ramachandraiah sold a portion of property in Sy No. 10/6 of Kenchanahalli Village then also vendee get no title. As aforementioned husband of plaintiff Ramachandraiah had sold 5 guntas of land in Sy No. 10/6 to Dasegowda who is father of plaintiff through Sale Deed Dt. 09.11.1979. When husband of plaintiff sold 5 guntas of land in the year 1979, he cannot sold again the same in the year 1981. 'A general proposition of law is that no person can confer on another a better title than he himself has'. The defendants have produced khatha extract in support of their case. On perusal of the same it reveals that khatha is effected to the extent of 36X41 feet in bearing property No. 107. Khatha is effected to the lesser extent than the sale deed. As aforementioned in the schedule of the sale deed Dt. 27.04.1981 the property number is mentioned as Khaneshumari number 86, but in the khatha extract property number is mentioned as 107.

13. The sale Dt. 09.11.1979, decree passed in O.S. No. 90/2014, MR extract and RTC extract prima facie establishes

the case of the plaintiff. Extent and boundaries mentioned in sale deed Dt. 09.11.1979 and decree passed in O.S. No. 90/2014 are in consonance with plaint schedule. The name of the plaintiff find place in column No. 9 and 12 of RTC extract. These documents prima facie proves the possession and enjoyment of the plaintiff over suit property. As such, at this stage, I am of the opinion that the plaintiff has prima facie established that she is in lawful possession of the suit property. Even the balance of convince lies in favour of plaintiff since she has prima facie established her possession and enjoyment over the suit property. It is the plaintiff who will be put to irreparable loss and injury if an order of temporary injunction is not granted to her since the chances of interference of the defendants over suit property during the pendency of this suit cannot be ruled out. As such to avoid multiplicity of proceedings it is just and proper to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the suit property for a specific period i.e., till disposal of suit. Otherwise it will result in encouraging the litigation.

14. Under these circumstances and facts of the case, I answer Point No. 1 to 3 in the **Affirmative**.

Point No. 4:-

15. For the foregoing reasons and discussions stated therein the application filed by the applicant/plaintiff is deserves to be allowed, in the result I pass the following:-

ORDER

IA No. 1 filed by the plaintiff/Applicant U/o XXXIX Rule 1 & 2 of CPC is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from interfering with the plaintiff's peaceful possession and enjoyment over the suit property till disposal of the suit.

No order as to costs.

(Dictated to the Typist directly on the computer, typed by her, printout taken by her and corrected by me and then pronounced by me in the open court on this the 06th day of October 2017.)

**(Sri.Kishor Kumar .M.,)
Addl. Civil Judge & JMFC.,
Kunigal.**