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O.S.No.469/2022

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

-.PRESENT:-

Smt. Sujatha A.B,
Prl Civil Judge & JMFC., Kunigal.

DATED: THIS 3rd DAY OF MARCH, 2025

O.S. No.469/2022

BETWEEN:

Plaintiff-

Smt.B. Gangalakshamma

(By Sri.YRH., Advocate)

AND

Defendants-

Sri. Boraiah and others.

(D-1(a to 3) by Sri.DS., Adv.,D-2 to 6 by Sri
by Sri. DS and D-7 by Sri. CG)

I.	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC
II.	Relief sought for	To grant temporary injunction order

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		against defendants
III.	The date on which the application is filed	21.07.2022
IV.	Number of the application	I
V.	The date on which the objections are filed by	02.02.2023
VI.	The date on which the order were passed on the said application	03.03.2025

RANKS OF THE PARTIES IN IA No.I

Applicant/Plaintiff-

Smt.B. Gangalakshmamma

Vs.

Opponents/Defendants-

Sri. Boraiah and others.

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

The plaintiff has filed this application under



order XXXIX Rule 1 and 2 of CPC praying this court to pass an order of an ad-interim temporary injunction restraining the defendant No.2 from alienating or creating any encumbrance over the suit schedule property till the disposal of the suit.

2. In the affidavit annexed along with the application, the plaintiff contended that the land bearing Sy.No.48/3, totally measuring 02 acre 04 guntas, including 05 guntas Kharab originally vested with one Channaveeraiah S/o Ammali of Kalasipalya village, Kothagere Village, Kunigal Taluk, after the demise of Channaveeraiah S/o Ammali, his daughter namely Huchamma and her husband namely Kalaiah had jointly sold the entire property in favour of one



Narasingaiah under a registered sale deed dated 26.07.1950. Accordingly the said Narasimhaiah, acquired absolute right, title, interest and possession over to the extent of 01 acre 14 guntas + 30 guntas Kharab, in totally 02 acre 04 guntas in Sy. No.48/3 (but in the sale deed only 01 acre 14 guntas was shown). So it is very clear that on the date of sale deed Kalaiah and Huchamma are not at all retained any inch of the land in Sy. NO.48/3.

3. Plaintiff further averred that after the demise of Narasimhaiah S/o Venkataiah, his son namely Doddavenkataiah and his minor children's jointly sold entire property in favour of Ramaiah S/o Boraiah and also Narasamma W/o Siddaiah under a registered sale



deed dated 02.11.1969. In the said sale deed also executant of the documents not at all retained any inch of the land in Sy.No.48/3. As such said Ramaiah S/o Boraiah and also Narasamma W/o Siddaiah, jointly acquired absolute right, title, interest and possession to the extent of 02 acre 04 guntas including 30 guntas Kharab in Sy.No.48/3 and continued in actual physical possession and enjoyment of the same.

4. Plaintiff contended that there was an oral partition between the Ramaiah S/o Boraiah and Narasamma W/o Siddaiah. According to said partition, towards Northern half portion to the extent of 01 acre 02 guntas had fallen to the share of Ramaiah S/o Boraiah and towards southern half portion to the



extent of 01 acre 02 had fallen to the share of Narasamma W/o Siddaiah. Accordingly they are continued in actual physical possession and enjoyment of the same. Plaintiff further contended that said Narasamma W/o Siddaiah and her family members jointly sold southern half portion to the extent of 01 acre 02 guntas, (but wrongly shown as 27 guntas in the sale deed) in favour of plaintiff namely B.Gangalakshamma under a registered sale deed dated 28.06.1999. Accordingly plaintiff acquired absolute right, title, interest and possession over the said property and continued in actual physical possession and enjoyment of the same. But in the said sale deed extent shown as 27 guntas instead of 01 acre



02 guntas, but the physical possession was handed over to her upto the extent of $39 \frac{1}{2}$ guntas+ $02 \frac{1}{2}$ guntas Kharab in totally 01 acre 02 guntas, out of 02 acre 04 guntas, in Sy.No.48/3. Again plaintiff contended that in the year 1959, the survey authorities conducted 2nd re-clause survey at that time the authorities mentioned the Kharab to the extent of 05 guntas out of 30 guntas, as remaining 25 guntas was under the cultivation as Hiduvali Land it is attached towards the eastern side of Sy.No. 48/3. As such the plaintiff is in possession over to the extent of $39 \frac{1}{2}$ guntas + $02 \frac{1}{2}$ guntas Kharab in totally 01 acre 02 guntas, out of 02 acre 04 guntas, in Sy No.48/3.

5. Plaintiff contended that defendants are utter



strangers to the suit schedule property , the defendant No. 1 to 6 are alleged to be legal heirs of Kalaiah and Huchamma, they are taking illegal entries in the name of Channaveeraiah @ Ammali to the extent of 01 acre 12 guntas Sy.No.48/3 and they are colluded with the revenue authorities illegally changed the Katha and pahani in their name to the extent of 01 acre 12 guntas. The alleged revenue entries came to be known by the plaintiff and he filed appeal before the Assistant commissioner at Tumakuru for set aside the MR.No.T73/2021-22. The Hon'ble Assistant Commissioner at Tumakuru stay the said MR in its case number i.e., R.A.(KUN) 926/2022 and appeal is still pending for adjudication. Hence plaintiff



contended that defendants knowing fully well that they have no manner of right, title, interest or possession to the extent of any portion of the suit schedule property, with an ulterior motive, the defendants taking the undue advantage of illegal katha and pahani and made hectic attempt to cause obstruction to the plaintiff by denying their title. So plaintiff finds no alternative remedy except to approach this court with this suit and hence prayed to allow the same.

6. In pursuance to the suit summons defendant No.1 to 7 have appeared through their respective counsels and defendant No.7 has submitted no objection to the above application. On the other



hand, the defendant No.1 to 6 have filed written statement and same is adopted by them as objection. In the written statement the defendants have denied entire contention taken by the plaintiff. The defendants have admitted about the execution of sale deed in favour of plaintiff with respect to 27 guntas and denied the rest of the contention. The defendants contended that they have not colluded with any other defendants and they are the family members of Kalaiah and Hucchamma and plaintiff by colluding with the revenue officials have shown excess extent and given wrong boundaries and file the false suit. With these grounds they prayed to reject the application.



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

1. Whether the plaintiff has made out prima- facie case in their favour?

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

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



4. What order?

8. Heard arguments from both side the counsel for defendant has relied upon the decision reported in 1) Deed/Instrument – Construction – In ascertaining actual area sold recitals to boundaries should prevail.

ILR 1988 – Kar – 554,

2) Evidence Act – Sec – 95 – Area and Boundary – Conflict between – Descriptions of boundary will prevail.

AIR 1979- Cal – 50.

3) Conflict between boundaries and Khatha No. and plot No. Katha No. and boundary held prevail.

AIR 1963 SC – 1879.



4) RFA No. 1204/2002. and

the counsel for plaintiff has relied upon decision reported in 1) H.C.R. 2014 – P. 92 to 96

2) H.C.R. 2014 – P. 290 to 297

3) H.C.R. 2012 Kar. P. 992-994

9. My finding on above points are as follows:-

Point No.1 : In the *Negative*

Point No.2 : In the *Negative*

Point No.3 : In the *Negative*

Point No.4: As per the final order for

the following

::REASONS::

10. **Point No.1**- Admittedly the plaintiff has



filed the present suit for the relief of declaration and injunction. In order to support her case the plaintiff has produced sale deed dated 28.06.1999 and same goes to show that plaintiff has purchased 27 guntas in Sy.No.48/3 and said deed was executed by Narasamma W/o Siddaiah. But according to plaintiff in her sale deed, said extent has wrongly mentioned as 27 guntas instead of 1 acre 2 guntas and she in possession of 1 acre and 2 guntas overall in the said survey number.

11. Again it is noted that to demonstrate the same, plaintiff has produced certified copy of sale deed dated 26.07.1950 and 2.11.1969 which are belongs to Narasamma and in the said sale deed also the extent was shown as 27 guntas and not as claimed by the



plaintiff. Further in the sale deed of the plaintiff, if said schedule extent is wrongly shown, then why the plaintiff has not challenged or called her vendor to execute rectification deed in respect of the same is not made out. Moreover said contention taken by the plaintiff in the year 2022 but her sale deed was executed in the year 1999 itself, that is also not in her favour. Again plaintiff has also produced RTC in respect of Sy.No.48/3 and in the same her name appearing to the extent of 27 guntas.

12. Since as per sale deed the plaintiff name came to be mutated in concerned revenue documents as same was also not challenged by the plaintiff so far. The plaintiff has also produced notice issued in

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RA.KUN926/22 by the Assistant Commissioner of Tumakuru dated 16.07.2022 and same was issued to the defendants and said appeal was preferred by the plaintiff and all these documents goes to show that the plaintiff challenged the sale deed executed way back in 1999 in the year 2022. According to plaintiff said appeal preferred by her before Assistant commissioner is pending and she also produced petition in the said appeal and in the same plaintiff has challenged mutation entry as per MRT 73/2022-23 dated 28.06.2022 which was accepted in favour of present defendant No.1 to 6.

13. On the other hand, the defendants have produced RTC in respect of Sy.No.48/3 and in the



same defendant No.1 name is appearing to the extent of 1 acre 12 guntas and other defendant names also appearing as jointly. It is noted that the defendant has produced photostat copy of information regarding issuance of loan to the plaintiff by Prathamika krushi patthina sahakara sangha and same goes to show that the present plaintiff by mortgaging 27 guntas in Sy.No.48/3 has availed crop loan and in that situation if plaintiff is in possession to the extent of 1 acre 2 guntas, then why she has restricted herself in mortgaging only 27 guntas is not made out. Whether as per the version of the plaintiff, did she is in possession of 1 acre 2 guntas contrary to the sale deed has to be established by her during the full fledged



trail. Therefore at this stage the plaintiff has not made out grounds to allow this application and she has failed to show prima facie case in her favour. Hence I answer point No.1 in the **Negative**.

14. **Point No.2 and 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.

It is noted that when the plaintiff claiming right and possession based on registered sale deed of the year 1999 and after lapse of more than 20 years. Now she is claiming that she in possession to the extent of more than 1 acre and that was not mentioned in the sale deed. Furthermore, the RTC also reflects the



plaintiff name only to the extent of 27 guntas and in that situation claim of plaintiff with regard to her right and possession to the extent of 1 acre 2 guntas is matter of trial. So during that time if temporary injunction is not granted in favor of plaintiff she might not subjected to inconvenience and hardship as much as compared to defendant if same is ordered in favor of plaintiff. Hence I answered, Point No.2 and 3 are in the *Negative*.

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

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::ORDER::

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

No orders as to costs.

[Dictated to the stenographer directly on computer and then corrected by me
and thereafter pronounced in the open court on this the **3rd day of March,**
2025]

(Sujatha A.B.)

Prl. Civil Judge and JMFC.,
Kunigal.

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