

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

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC.,

Dated this the 21st day of February, 2022.

O.S. NO. 112/2020

PLAINTIFFS

: Sri. Veerashetty

V/s.

DEFENDANTS

: Sri Kallegowda and others

I.A. No. I

Plaintiff/Applicant

: Sri. Veerashetty

V/s.

Defendants/Opponents

: Sri. Kallegowda and others

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
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 defendants, their agents, henchmen or anybody claiming on their behalf 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 has averred that he has filed the present suit for the relief of declaration and permanent injunction in respect of the suit schedule property. He is the absolute owner in possession of suit schedule property, purchased the same from one B.H. Kapanaiyah and his family members through a registered sale deed dated 17-06-2010. Thereafter his name was came to be mutated in the revenue records of suit schedule property. When the situation thus being so, in the month of May-2019, when he obtained the RTC extracts in respect of the suit schedule property he came to know that the name of defendant No.1 was came to be entered in the revenue records.

3. He has further contended that on further enquiry, he came to know that defendant No.1 and 2 by colluding each other had filed a suit vide O.S. No.462/2015 on the files of this court and they have got compromised the same including the suit schedule property. On the basis of said compromise decree, the defendant No.1 got mutated his name in the revenue records and making hectic efforts to alienate and create encumbrance over the suit schedule property. If the application is not allowed, he will be put to irreparable loss and injury and balance of convenience is in his favor. Hence, prayed to allow the application.

4. Upon the service of summons, the defendants have appeared before the court through their counsel and filed written statement cum objections to IA.No.I.

5. It is the contention of the defendants that the suit schedule property was originally belonging to their grand father by name Kallaiah. The said Kallaiah had two children

by name Kapanaiyah and Nanjundaiah. After the demise of said Kallaiah, they have partitioned the ancestral properties under the partition dated 01-04-1970. By virtue of said partition the suit schedule property was allotted to the share of said Nanjundaiah. Thereafter the defendants being the children of said Nanjundaiah have partitioned the suit schedule properties in O.S. No.462/2015 under the compromise petition. Accordingly the name of defendant No.1 got entered in the revenue records of the suit schedule property. The plaintiff is no where concerned with the suit schedule property. Hence, prayed to dismiss the application.

6. 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 plaintiff has made out prima- facie case in his 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?

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

8. 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::

9. **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.

10. The plaintiff has filed the present suit for the relief of declaration and permanent injunction against the defendants on the basis of registered sale deed dated 17/06/2010. It appears on prima-facie that one Kapanaiiah and his family members are executed a registered sale deed in respect of property bearing Sy.No.31/6 measuring 9½ guntas of Bommenahalli village, Huthridurga Hobli, Kunigal Taluk. By virtue of the same, the name of the plaintiff was came to be entered in the revenue records in respect of suit schedule property.

11. Further it appears on prima facie that the defendant No.1 had filed a suit vide O.S. No.462/2015 against the defendant No.2 herein. The said suit was came to be decreed by virtue of compromise petition filed by the defendants herein. As per the compromise decree, it appears that the suit schedule property has fallen to the share of defendant No.1. In the said suit the plaintiff herein was not

the party to the suit. Though his name appeared in the revenue records of the suit schedule property. But by virtue of the said compromise decree, the revenue officials have removed the entry of the name of the plaintiff and mutated the name of defendant No.1. Hence the issue as to ownership of the suit schedule property has to be determined with full fledged trial.

12. At this stage, the defendants have also not produced any material documents to show that the suit schedule property exclusively belonging to their family members and they have partitioned the same. On the other hand, the plaintiff has produced the original sale deed dated 17-06-2010 executed in his favor in respect of suit schedule property. Whereas the name of the plaintiff came to be removed from the revenue records and inserted the name of defendant No.1. Hence, if the defendants alienate the suit schedule property in favour of any other persons during the

pendency of the suit, it would certainly cause irreparable loss and injury to the plaintiff and also creates multiple proceedings. Having discussed above, this court is of the opinion that the plaintiff has made out a prima-facie case and balance of convenience is in his favour. Thus, if the application is not allowed, it is the plaintiff would suffer the irreparable loss and injury than in comparison with the defendants. As such, this court is of opinion that, the plaintiff has succeeded to prove the ingredients which are necessary for order of temporary injunction. In view of the above said reasons points No.1 to 3 are answered in the ***Affirmative.***

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

::ORDER::

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

The defendants or their agents or henchmen or anybody claiming on behalf of them are hereby temporarily restrained from alienating or creating any encumbrance over the suit schedule property during the pendency of this suit.

No costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 21st day of February 2022]

[Lakshmi Narasimha R.V.,
Addl Civil Judge and JMFC,
Kunigal.