

IN THE COURT OF THE ADDL.CIVIL JUDGE & J.M.F.C., AT PAVAGADA

Dated 22nd day of April 2019

O.S.No. 408/2015

Present:

Sri.Siddarama.S. M.A., LL.B.,

Addl.Civil Judge & J.M.F.C.,

Pavagada

Plaintiff/s : Sannanagamma

V/s

Defendant/s: Narayanamma & others

I.A.No. I

Applicant : Sannanagamma

V/s

Opponent : Narayanamma & others

ORDERS ON I.A. No. I

I.A. No. I is filed by the learned counsel for the Plaintiff under Order 39 Rule 1 and 2 of C.P.C. for seeking Temporary Injunction in favour of the plaintiff and thereby restraining the defendant No. 4 or his agents, servants or any body acting on his behalf from in any way put up any fence on the north west corner of the suit schedule property in any manner till disposal of the suit.

2. The plaintiff sworn to an affidavit in support of the application wherein he has stated that I am the plaintiff in the above case. I have filed this suit against the defendants for permanent injunction and such other relief's. The averments of the plaint may kindly read as part and parcel of this affidavit also.

I swear that, I am the absolute owner in possession and enjoyment of the suit schedule property since 50 years by raising ground nut crops. My husband has acquired the suit schedule property under a Regd. Sale deed dated: 04-09-1964. After the death of my husband I am in possession and enjoyment of the suit schedule property. The katha and pahani stands in my name under Pavathi Varas. I am paying land revenue to the Govt. regularly.

3. I swear that, I had dug a bore well on the north west corner of the suit schedule property. The defendants No.1 to 3 were sold some portion of the same Sy. No. to the defendnts No.4. Therefore the defendant No. 1 to 3 are the just and necessary parties to this suit. The defendant No.4 is trying to put up the fence by conversing the bore well. The defendant No.4 has no right to do so. The 4th defendant with an intent to knock off the bore well by encroaching some portion of the suit schedule property. The defendant No.4 has no manner of right, title, interest, or much less possession over the suit schedule property. I am an innocent women and has no support in any corner. Hence pray to allow the I A NO.1.

3. The defendants has filed objections to I.A.1 by denying the facts of the affidavit annexed to the I.A.1 as false, frivolous and vexatious one. The allegation that the husband of plaintiff Ramappa

had acquired the suit schedule property by virtue of registered sale deed dated: 04-09-1964 is all false and denied herein. But it was a fact that the said Ramappa had acquired 19 acres 09 guntas excluding 1 acres 19 guntas of Kharab from its rightful owner Parashuramappa and his sons by virtue of registered sale deed dated: 03-09-1964 excluding a kharab of 26 guntas and B kharab of 34 guntas but not as alleged in para 2 of the plaint. It is a fact that the husband of plaintiff Ramappa had sold eastern 6 acres 35 guntas to one Chikka Venkataravanappa S/o Sannappa of Palavalli village by virtue of registered sale deed dated: 26-09-1974 for valuable consideration followed by delivery of possession. Therefore the said Chikka Venkataravanappa had again sold 6 acres 35 guntas to one Erappa S/o Hanumanthappa of Palavalli village by virtue of registered sale deed dated: 14-03-1977 for valuable consideration of Rs. 2,000/-.

Therefore the husband of plaintiff Ramappa had sold 3 acres 03 guntas to one Masineni Govindappa S/o Hanumanthappa of Gangasagara village by virtue of registered sale deed dated: 17-10-1980 for valuable consideration of Rs. 4,000/- out of 12 acres 14 guntas excluding kharab followed by delivery of possession. The said Masineni Govindappa has been in possession and enjoyment of said 3 acres 3 guntas excluding kharab by having katha in his name and there was no durasth of said extent of 3 acres 3 guntas at that relevant point of time.

Thereafter the said Masineni Govindappa @ Govindappa died leaving behind his wife and one son who are none other than defendnts 1 and 2 who succeeded said 3 acres 3 guntas in suit survey number.

The defendant No.1 had mutation in her name by virtue of inherited rights in M.R. No. H21/2013-14. Thereafter she had durasth of her property measuring 3 acres 3 guntas and said property was being phoded as Sy. No. 415/2. The defendants 1 to 3 have sold 3 acres 3 guntas excluding kharab to this 4th defendant by virtue of registered sale deed dated: 24-05-2014 for valuable consideration of Rs. 99,000/- followed by delivery of possession. The name of 4th defendant was being mutated as khathedar and anubavadar of 3 acres 7 guntas which includes kharab of 4 guntas. The said 4 guntas of kharab is situated in the middle portion of 3 acres 3 guntas which has been purchased by 4th defendant from defendnts 1 to 3. Thereafter this 4th defendant had dug up a bore well on 28-07-2015 in 3 acres 3 guntas and he had paid Rs. 41,300/- for drilling of said bore well. This defendant is getting 2 and half inches water from the said bore well. This 4th defendant had obtained bore well ownership certificate from the Deputy Tahasildar, Nagalamadike Hobli, Pavagada Taluk dated: 07-12-2015. This defendant had applied to the survey authorities to fix the hudbust of 3 acres 3 guntas in Sy. No. 415/2 of Palavalli village. The survey authorities had issued notices to the Aju Bajudars i.e., to the plaintiff, Nagappa, Gopalappa etc, before visiting for fixing of hudbust of Sy. No. 415/2 of Palavalli village which is the property of 4th defendant. The survey authorities have visited the Sy. No. 415/2, fixed the hudbusth of Sy. No. 415/2 and a statement of 4th defendant was being recorded before the witnesses including the plaintiff by the survey authorities on 21-08-2015 and opined there is no encroachment by the Aju Bajudars by preparing the sketch. This 4th defendant has been in possession and enjoyment of cultivable 3 acres

3 guntas in Sy. No. 415/2 by raising crops and by paying kadayam including kharab of 4 guntas which has been clearly shown in the RTC extract and other survey records of Sy. No. 415/2 of Palavalli village and the kharab of 1 acres 16 guntas has been located in Sy. No. 415/1 of Palavalli village which belongs to plaintiff and others. The said revenue records are prima facie legal by showing the possession of respective parties of their respective landed properties including kharab.

4. Heard the learned counsel appearing for the parties and perused the materials on record.

5. The following points arose for the consideration of this court.

Point No.1:- Whether the plaintiff has made out prima facie case for grant of Temporary Injunction as sought for ?

Point No.2:- Whether the balance of convenience lies in favour of the plaintiff?

Point No.3:- Whether the plaintiff will be put to irreparable loss and hardship, if I.A. 1 is not allowed ?

Point No.4:- What Order?

6. The findings of this court on the above said 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

7. Point No.1:- The learned counsel for the plaintiff argued before the court that. plaintiff has filed this suit against the defendants for permanent injunction and such other relief's.

The plaintiff is the absolute owner in possession and enjoyment of the suit schedule property since 50 years by raising ground nut crops. plaintiff husband has acquired the suit schedule property under a Regd. Sale deed dated: 04-09-1964. After the death of my husband plaintiff has been possession and enjoyment of the suit schedule property. The katha and pahani stands in the plaintiff name under Pavathi Varas. plaintiff paying land revenue to the Govt. regularly.

8. Per contra, the learned counsel for the defendant vehemently argued before the court that the husband of plaintiff Ramappa had sold 3 acres 03 guntas to one Masineni Govindappa S/o Hanumanthappa of Gangasagara village by virtue of registered sale deed dated: 17-10-1980 for valuable consideration of Rs. 4,000/- out of 12 acres 14 guntas excluding kharab followed by delivery of possession. The said Masineni Govindappa has been in possession and enjoyment of said 3 acres 3 guntas excluding kharab by having katha in his name and there was no durasth of said extent of 3 acres 3 guntas at that relevant point of time.

9. At this stage, without going in to the merits of the case and holding mini trials, this court has considered the aspects of prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well

settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go in to the prima facie title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for grant interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests, i.e., injury and prejudice, lightly to be caused to the plaintiff if the relief is refused, and injury and prejudice lightly to be caused to the defendants, if the relief is granted. The underlying object of granting Temporary Injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

11. The power to grant a Temporary Injunction is at the discretion of the court, this discretion. However should be exercised reasonably, judiciously and on sound legal principles, injunction should not be lightly granted as it adversely affects the other side.

12. The first rule is that the applicant make out a prima facie case in support of the right claimed by him the court must be satisfied that there is bonafide dispute raised by the applicant, that there is a

strong for trial which needs investigation and decision of merits and the facts before the court there is probability of the applicant being entitled to the relief claimed by him. The existence of the prima facie right and infraction of such right is a condition precedent to grant of Temporary Injunction.

13. In Order to ascertain the prima facie case of the plaintiff this court has perused the list of documents consists of RTC bearing Sy. No. 415/1 measuring 17 acres 22 guntas out of which 9 acres 11 guntas stands in the name of plaintiff by name Sanna Nagamma W/o Ramappa, 6 acres 35 guntas jointly stands in the name of Hanumantharayappa, Anjinappa, Subbarayappa, P.E. Ramanjineya and Huchamma for the year 2014-15, RTC bearing Sy. No. 415 totally measuring 20 acres 29 guntas out of which 3 acres 3 guntas stands in the name of Govindappa S/o Hanumanthappa, 9 acres 18 guntas jointly stands in the name of Sanna Nagamma w/o Ramappa, Hanumantharayappa, Anjinappa, Subbarayappa, P.E. Ramanjineya and Gujjamma, RTC bearing Sy. No. 415/2 3 acre 3 guntas stands in the name of Mohammed Nasarulla S/o Late Jamil Sab for the year 2014-15, two photos, Xerox copy of the sale deed dated: 03-09-1964, certified copy of the sale deed dated: 17-10-1980, certified copy of the registered sale deed dated: 24-05-2014 executed by the Smt. Narayanamma W/o late Govindappa, Venkataswamy S/o late Govindappa, M.V. Prasanna kumar S/o Venkataswamy in favour of the Mohammed Nazirulla S/o late Jamil Sab bearing Sy. No. 415/2 measuring 3 acres 7 guntas including karab 4 guntas, Xerox copy of the two mutation register, copy of the mutation register bearing No.

186/2013-14 and M.R. No. 132/2013-14, Xerox copy of the form No. 5 bearing Sy. No. 415/1 and Sy. No. 415/2, certified copy of the form No. 5 with respect to Sy. No. 415, copy of the bill dated: 03-08-2015 issued by the Reddy bore wells, certificate issued by the PDO dated: 09-03-2017, certificate issued by the Deputy Tahasildar Nagalamadike with respect to Sy. No. 415/1 dogging the bore-well, certificate copy of the certificate dated: 03-09-1964 executed by the Parashurama S/o Papanna and his minor children by name Nagabhushanappa, Rangadhamappa in favour of the Ramappa s/o Govindappa.

14. In Order to ascertain the prima facie case of the defendant this court has perused the list of documents by the defendant the list of document consists of certified copy of the registered sale deed dated: 03-09-1964 executed by the Parashuramappa and his sons in favour of Ramappa with respect to land bearing Sy. No. 415 measuring 19 acres 19 guntas, certified copy of the Registered sale deed dated: 26-09-1974 executed by the Ramappa in favour of the Venkataramappa with respect to land measuring 6 acres 35 guntas, certified copy of the registered sale deed dated: 17-10-1980, Xerox copy of the M.R., Xerox copy of the survey sketch, Xerox copy of the mahazar, Xerox copy of the notice and 11 E sketch, certified copy of the settlement Akarband 415/1, 415/2, Xerox copy of the 2nd re class certificate with respect to Sy. No. 415, copy of the form No. 5 with respect to Sy. No. 415/1 and 2 issued by the survivor Pavagada, certified copy of the registered sale deed dated: 24-05-2014 executed by the Smt. Narayanamma W/o late Govindappa, Venkataswamy S/o late Govindappa, M.V. Prasanna kumar S/o Venkataswamy bearing Sy.

No. 415/2 measuring 3 acres 7 guntas including karab 4 guntas, Xerox copy of the registered sale deed dated: 03-09-1964 executed by the Parashuramappa in favour of Ramappa, copy of the M.R No. 180/2013-14, RTC bearing Sy. No. 415/2 measuring 3 acres 3 guntas stands in the name of Mohammed Nazirulla S/o late Jamir Sab for the year 2015-16, copy of the 11 E sketch issued by the Deputy Tahasildar Nagalamadike, certified copy of the Hadbasth sketch bearing Sy. No. 415/2, certified copy of the Mahazar before the survivor, copy of the notice issued by the survivor, Xerox copy of the revision settlement Akarband, Xerox copy of the form No. 5 with respect to Sy. No. 415/1, 415/2, RTC bearing Sy. No. 415/1 measuring 16 acres 6 guntas out of which 9 acres 11 guntas Sanna Nagamma W/o Ramappa, 6 acres 35 guntas jointly stands in the name of Hanumantharayappa, Anjinappa and Subbarayappa, P.E. Ramanjineya, Huchamma for the year 2015-16, receipt issued by the Swamy bore-well Pavagada, endorsement issued by the secretary Gramapanchyathi Palavalli dated: 30-10-2015, certificate issued by the Deputy Tahasildar Nadakacheri with respect to Sy. No. 415/2.

The plaintiff has filed the suit against the defendants for the relief of permanent injunction against the defendants with respect suit schedule property, when this court perused RTC produced by the plaintiff bearing Sy. No. 415/1 measuring 9 acres 11 guntas i.e., suit schedule property of the plaintiff by name Sanna Nagamma W/o Late Ramappa for the year 2014-15, when perused Xerox copy of the registered sale deed produced by the defendant No.4 dated: 24-05-2014 executed by the Smt. Narayanamma, Venkataswamy and M.V.

Prasanna kumar in favour of the defendant No.4 by name Mahammed Nazirulla S/o late Jamil sab bearing Sy. No. 415/2 measuring 3 acres 3 guntas and further mention 4 guntas karab but when perused revision settlement Akarband copy in the Sy. No. 415/2 having 3 acres 3 guntas, when perused the RTC bearing Sy. No. 415/2 3 acres 3 guntas stands in the name of defendant No.4 in the column No. 3 of the RTC 4 guntas mentioned in the Karab B for the year 2014-15, the plaintiff and defendant both of them produced the bore-well certificate and receipt of bills as per document produced by the both the parties they have bore-well but the plaintiff produced the 2 photos with respect to bore-well at this stage if the I.A. No.1 is not allowed in favour of the plaintiff the defendant No.4 may be chances to put up fence on the north west corner of the suit schedule property. By considering all these facts and circumstances of the case, this court is of the opinion that the plaintiff has made out prima facie case to grant the equitable relief of Temporary Injunction and on the contrary the defendants have failed to substantiate their contentions has taken in their statement of objection. With these observations, this court has answered **point No.1 in the affirmative.**

15. Point No.2 & 3:- Both the points are interconnected, hence in order to avoid the repetition of discussion, both the points are taken together for common discussion.

16. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative, mischief,

hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17. The existence of the prima facie case alone does not entitle the applicant for a Temporary Injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequence such of apprehended injury.

18. The plaintiff has made out prima facie case after perused of the material on record, it appears to this court that if the equitable relief of temporary injunction is not granted in favour of the plaintiff, more mischief and hardship will be caused to the plaintiff. By considering the said aspects this court is of the opinion that if the equitable relief of injunction is not granted in favour of the plaintiff, then, the plaintiff will be put to irreparable loss and hardship and the same cannot be compensated in terms of money. When the defendants have failed to produce the material on to substantiated their defense, then this court is of the opinion that if the equitable relief of temporary injunction is granted in favour of the plaintiff, then the defendants will not be put to any such hardship. With these observations this court is of the opinion that the balance of convenience, lies in favour of the plaintiff and if temporary injunction is not granted in favour of the plaintiff, then the plaintiff will be put to irreparable loss and hardship. Hence, this court has answered point No.2 and 3 in the Affirmative.

19. Point No. 4: – For the aforesaid discussion on point No.1 to 3, this court proceed to pass the following:

ORDER

I.A. No. 1 filed by the learned counsel for the plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby allowed.

Restraining the defendant No. 4 or his agents, servants or any body acting on his behalf from in any way put up any fence on the north west corner of the suit schedule property in any manner till disposal of the suit.

No orders as to costs.

(Directly dictated to the stenographer on computer, typed by him, and revised and corrected and then pronounced by me in the open court on this 22nd day April 2019)

(Siddarama .S)
Addl. Civil Judge & J.M.F.C.,
Pavagada.