

IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT SIRA

Dated this the 8th day of January 2021

PRESENT : Smt. Asha K.S.
B.A. L. LL.B.,
Prl. Civil Judge & JMFC., Sira
O.S.NO. 211/2020

PLAINTIFF : Jayamma,
W/o. Late H.R. Ranganathappa,
@ Ranganathaiah,
Aged about 70 years,
Agriculturist,
Residing at
Huligere village,
Kasaba Hobli,
Sira Taluk,
Thumakuru District,
(By Sri. S. Harishbabu,
Advocate)

/Vs/

DEFENDANTS :1 Kenchappa @ Kenchegowda,
S/o. Late Guddappa,
Aged about 75 years,

2. Ashwathappa,
S/o. Kenchappa
@ Kenchegowda,
Aged about 50 years,

3. Siddamma,
W/o. Ashwathappa,
Aged about 50 years,
Agriculturist,
All are residents of
Huligere village,
Kasaba Hobli,

Sira Taluk,
Thumakuru District,
**(Sri.H.C. Eranna,
Advocate)**

Parties in I.A. No.1

APPLICANT : Jayamma

/Vs/
OPPONENTS : Kenchappa @ Kenchegowda
& others

ORDERS ON I.A. NO. 1

This is an application filed by the plaintiff U/Or. XXXIX Rules 1 & 2 CPC to restrain the defendants from interfering with the plaintiff's possession over the suit schedule property, till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff has stated that she has filed suit for permanent injunction. It is further stated that her husband purchased the schedule property from Khadar sab on 04.07.1974. As such, he became the owner of the schedule property and he was in possession of the schedule property. After the death of plaintiff's husband, she and her Family members continued the possession of the schedule property. Even though the

defendants have no right over the schedule property, they are trying to interfere with the plaintiff's possession over the schedule property. Hence, to resist the defendants' activity, the plaintiff has filed this I.A.

3. The defendants have filed objections to I.A. In that, it is contended that, the plaintiff is not in possession of the schedule property. The defendants are the absolute owners of Sy. No. 354 measuring 10 acres 15 guntas. In that property, one Rangappa alienated 12 guntas in favour of Peersab under a registered sale deed dated 19.07.1950. Thereafter, in the 12 guntas, 9 guntas property acquired for the purpose of forming road. After forming road, only 3 guntas retained by Peersab. Thereafter, Peersab alienated his property, but now the plaintiff is claiming more than three guntas property. The plaintiff and her husband colluded with revenue officials and changed the documents in their name. When the defendants questioned the illegal activity of plaintiff, she filed this frivolous suit. There are no merits in the application. The

plaintiff has not made out prima facie case. Hence, prays to dismiss the I.A.

4. The following points that arise for consideration:

1. Whether the plaintiff has made out prima facie case to grant Temporary Injunction?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted in her favour?
4. What order?

5. Heard the learned counsel for the plaintiff and defendants. Perused the record.

6. The above points are answered 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. Points No.1 to 3: All these points are taken together for consideration in order to avoid repetition of facts.

The plaintiff has filed the suit for the relief of permanent injunction. It is the case of the plaintiff that, she is in possession of the schedule property. While repairing voppar, the defendants caused obstruction. In support of her case, the plaintiff has produced sale deed, khatha extract, tax paid receipt, resolution passed by the Panchayath, Adhar card and death certificate of her husband. The defendants also produced RTC Extract, Encumbrance certificate in respect of Sy. No. 354/1A. The documents produced by the plaintiff show that the schedule property belongs to plaintiff's husband and now the plaintiff is in possession of the schedule property. The defendants contended that they are the absolute owners of Sy. No. 354. The plaintiff's vendor purchased 12 guntas of property in Sy. No. 354 from the defendants. After the purchase, 9 guntas acquired for forming road. Even though the plaintiff's vendor lost his right over the 9 guntas, he

executed sale deed in favour of husband of plaintiff in respect of unexisted property. Even though it is within the knowledge of plaintiff, she is claiming right in the property of defendants. The plaintiff is trying to encroach the defendant's property. When the defendants questioned the same, the plaintiff filed this frivolous suit.

8. On perusal of written statement, objections and documents produced by the defendants, it is noticed that the defendants are claiming remaining property in the Sy. No. 354. In the written statement, they themselves admit that one Rangappa alienated 12 guntas in Sy. No. 354 in favour of Peer sab. It shows that the defendants are not denying the execution of sale deed in favour of Peersab and husband of plaintiff. The plaintiff produced Registered sale deed to show that plaintiff's husband purchased the suit schedule property from Khader sab. Till today khata is standing in the name of plaintiff and she is paying tax to the concerned authority. The photos produced by the plaintiff show that she is repairing her house and Voppar.

9. The defendants have not placed any documents to show that 9 guntas property acquired in the plaintiff's property for forming road. The plaintiff has produced Hissa tippany and other documents in respect of Sy. No. 354/1A. It shows that road formed in the kharab land of Sy. No. 354. The plaintiff is claiming right over the House property measuring 120X25 feet. The plaintiff and her husband contracted house and now the plaintiff is in possession of the said house and vacant land. In a suit for injunction, the plaintiff has to show her possession over the schedule property as on the date of suit. As stated above, the plaintiff has produced several documents to show her possession over the schedule property as on the date of suit. The documents produced by the plaintiff shows that there is a prima facie case in favour of her.

10. The cause of action shown in the plaint is that, the defendants' obstructed to repair the house and voppar. The photos produced by the plaintiff clearly show that she is repairing the voppar. In this rainy season, if the plaintiff is

not permitted to repair the voppar, definitely, it will cause great loss to the plaintiff. It may also cause danger to the house also. The plaintiff is claiming right in respect of existed house and voppar. She is not constructing new house. The photos clearly show that it is old house and it requires repair work, otherwise it is difficult to reside in the said house. As stated above, the defendants are claiming right in respect of agricultural properties. The schedule property and defendants' claim are entirely different. If the plaintiff is not permitted to repair the house, more inconvenience cause to the plaintiff than the defendants. Moreover, if the plaintiff repairs her house, no hardship will cause to the defendants. In the written statement, the defendants also stated that they have right in the schedule property. But they have not produced any documents in support of their defence in respect of schedule property. The contention of the defendants shows that they tried to obstruct the repair work. All these aspects show that the plaintiff is in possession of the schedule property and the defendants caused obstruction. At this stage, the plaintiff has made out prima facie case. The balance of

convenience is in her favour. If the I.A. is not allowed, definitely irreparable loss will cause to the plaintiff than the defendants. Hence, these points are answered in the **Affirmative.**

11. Point No.4: In view of findings on Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.1 filed by the plaintiff U/Or.
XXXIX Rule 1 & 2 CPC is hereby allowed.

The defendants or anybody claiming
under them are temporarily restrained
from interfering with the plaintiff's
possession over the schedule proeprty, till
disposal of the suit.

(Dictated to the Stenographer, computerized and printout taken
by her, then corrected, singed and pronounced by me in the open
Court on **08.01.2021**)

(ASHA K.S.)
Prl. Civil Judge & JMFC.,
Sira

