

KATK810003982019



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

Dated this the 24th day of November 2021

PRESENT : Smt. Asha K.S.
B.A. L. LL.B.,
Prl. Civil Judge & JMFC., Sira

O.S.NO. 67/2019

PLAINTIFFS :1. Shankarananda,
Aged about 60 years,

2. Darmaveera,
Aged about 46 years,
Both are children of
Late Chikkalingappa,
and residents of
Inakanahalli village,
Kasaba Hobli,
Sira Taluk,
Thumakuru District,
(By Sri. P.B.S. Bhoopathi
Gowda, Advocate)

/Vs/

DEFENDANTS :1. Gayathramma,
W/o. Thippanna,
Aged about 42 years,

R/o. Banni Nagara,
Bhovi colony,
Sira Town,
Thumakuru District,

2. The Commissioner,
City Municipal Council,
Sira.
**(Sri. Siddaraju B.,
Advocate for D-1,
Sri. C. Malimariyappa,
Advocate for D-2)**

Parties in I.A. No.1

APPLICANT : Shankarananda,

/Vs/

OPPONENT : Gayathramma,

ORDERS ON I.A. NO. 1

The plaintiffs have filed this application U/Or. XXXIX
Rules 1 & 2 CPC and prayed to restrain defendant No.1 from
putting any structure in the schedule property, till
disposal of the suit.

2. In the affidavit annexed to the application, Applicant/Plaintiff has stated that, he and his brother have filed suit for permanent injunction against the defendants. Father of plaintiffs namely Chikkalingappa purchased the schedule property through registered sale deed dated 18.03.1959. As per Sale deed, khatha also changed in the name of Chikkalingappa and from the date of sale, he and his family members are in possession of the schedule property.

3. It is further stated that as per order No. 35/1980-81 dated 13.04.1981, 21 guntas of land in Sy. No. 55 was converted to non agricultural purpose. Thereafter, the plaintiffs divided the said property through compromise decree passed in R.A. 3/2013 on 20.08.2016. Though the defendants have no right over the schedule property, they are trying to put up construction in schedule property. Hence, this application.

4. Defendant No.1 has filed Memo to adopt the written statement as objection to I.A. In that, she denied the case of the plaintiffs and possession of them. She contended that one Siddagangamma purchased site No.2 from Municipal Council on 10.06.1983. Thereafter, she alienated the said site in favour of one Padmamma on 13.10.1978. After that, the said Padmamma alienated the said site in favour of Sharadamma on 16.11.2012. Thereafter, Sharadama and her family members alienated the said site in favour of defendant No.1 on 25.11.2015. From the date of purchase, she is in possession of the schedule property. She constructed house in the said site. Hence, prays to dismiss the application.

5. The following points that arise for consideration:

1. Whether the plaintiffs have made out prima facie case to grant Temporary Injunction?
2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss and injury if temporary injunction is not granted in her favour?
4. What order?

6. Heard the learned counsel for the plaintiff and
Perused the record.

7. 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

8. **Points No.1 to 3:** All these points are taken together for consideration in order to avoid repetition of facts.

The plaintiffs have filed the suit for the relief of permanent injunction and also filed I.A. with prayer to restrain defendant No.1 from putting up construction in the schedule

properties. It is the case of the plaintiffs that he and his family brothers are in possession of the schedule properties. Plaintiffs' father Chikkalingappa purchased Sy. No. 55 measuring 1 acre 24 guntas. Thereafter, 21 guntas converted for non agricultural purpose as per Orders passed by Tahasildar in ALN.SR No. 35/1980-81 dated 13.04.1981. Thereafter, remaining 1 acre land also converted in ALN.SR. No. 106/1981-82 on 11.01.1982. Thereafter, the plaintiffs divided the said properties through compromise decree. As per compromise decree, the plaintiffs are in possession of the schedule properties. Though the defendants have no right over the schedule properties, they are trying to interfere with the possession of the plaintiffs.

9. Defendant No.2 is the commissioner, CMC, Sira not filed written statement. Defendant No.1 filed written statement and contended that, she is in possession of the written statement schedule property.

10. The plaintiffs have produced sale deed dated 11.03.1959, RTC Extract, Orders passed by the Tahasildar, Sira regarding conversion of land, compromise decree passed in R.A. No. 3/2013, tax paid receipt, rough sketch, photos, and encumbrance certificate.

11. The plaintiffs are claiming right over the schedule properties Site No. 48 and site No.47 situated in Sy. No. 55/1F. Defendant No.1 is claiming right over the site No.2, Assessment No. 3649/2742/6642. The documents produced by the plaintiffs show that their father Chikkalingappa purchased the Sy. No. 55 measuring 1 acre 24 guntas on 18.03.1959. As per sale, khatha also changed in the name of plaintiffs' father. As per orders passed by the Tahasildar, Sira Taluk, said land converted to non agriculture purpose. The plaintiffs divided the said property through compromise decree passed in R.A. 3/2013. In the said decree, item No.1 of the schedule properties allotted to plaintiff No.1 herein and item No.2 of the schedule properties allotted to plaintiff No.2 herein.

From the date of decree, they are in possession of the their respective shares.

12. It is the case of the plaintiffs that, defendant No.1 is trying to put up construction in the schedule properties. The photos produced by the plaintiffs show that construction is going on. As per rough sketch produced by the plaintiffs show that written statement schedule properties are not the adjacent properties to plaintiff schedule properties. As per sketch, the plaintiffs' properties i.e., site No.47 and 48 situated in one side and Site No.2 is situated in beginning. There is lot of gap between plaintiffs' properties and defendant's property. Defendant No.1 has not produced any documents to show in support of her case.

13. To grant an order of injunction, the plaintiffs must show the possession and interference by the defendants. The plaintiffs have produced several documents. Those documents show the possession of the plaintiffs over the schedule

properties. The defence taken by defendant No.1 itself shows that she is claiming right in the schedule properties. But she has not produced any documents in support of her case. The photos and contention of defendant No.1 itself shows that they are trying to put up construction in the schedule properties. As stated above, both are claiming right over the schedule properties. But at this stage, rights of the parties cannot decide. To protect the schedule properties, it is necessary to restrain defendant No.1 from put up construction in the schedule properties. As discussed above, the plaintiffs have produced documents to show their possession and prima facie case in their favour. The plaintiffs are in possession of the property from 1959. Defendant No.1 is claiming right under the sale deed, but she has not placed any documents before the court. The case on hand is for the relief of permanent injunction. To grant an order of injunction, plaintiffs must show thier possession as on the date of suit. As discussed above, the documents produced by

the plaintiffs itself shows that the schedule properties are standing in their name. All the documents show that, plaintiffs are in possession of the schedule properties. The plaintiffs have made out prima facie case to grant temporary injunction against defendant No.1. Balance of convenience lies in favour of plaintiffs and if an order of injunction is not granted, hardship will cause to the plaintiffs than defendant No.1. It will create multiplicity of proceedings also. Hence, points No.1 to 3 are answered in the **Affirmative**.

14. 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 plaintiffs U/Or.
XXXIX Rule 1 & 2 CPC is hereby allowed.

Defendant No.1 or anybody claiming
under him are hereby restrained from
putting up construction in the schedule
properties by way of temporary

injunction, till disposal of the suit.

(Dictated to the Stenographer, transcribed, computerized and printout taken by her, then corrected, signed and pronounced by me in the open Court on **24.11.2021**)

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

