

KATK810015012012



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

AT SIRA

Dated this the 31st day of July 2021

PRESENT : Smt. Geeta
B.A., LL.B.(Hons),L.L.M.,
Addl. Civil Judge & JMFC., Sira.

O.S. No.488/2012

PLAINTIFFS : 1. Kambakka,
W/o K.Kambaiah,
Aged about 55 years,
2. Ranganatha,
S/o Late Kambaiah,
Aged about 35 years,
3. Mohankumar,
S/o Late Kambaiah,
Aged about 33 years,
4. Raghavendra,
S/o Late Kambaiah,
Aged about 31 years,
5. Manjunatha,
S/o Late Kambaiah,
Aged about 23 years,

6. Thippeswamy,
S/o Late Kambaiah,
Aged about 21 years,
7. Rathnamma,
D/o Late Kambaiah,
Aged about 30 years,
All are R/o Ranganatha Tyre and
Tube work, N.H.4, Sira Town.

(By Sri.J.A.,Advocate)

/Vs/

DEFENDANTS:

1. Premalatha,
W/o Ashokkumar,
aged about 45 years,
2. Ashokkumar,
S/o Late Rangappa,
Aged about 50 years,

Both are R/o Sapthagiri
Extension, Sira Town.

(By Sri.D.S.K.,Advocate)

Parties in I.A.V

APPLICANT

: Kambakka,

/Vs/

OPPONENT

: Premalatha and others,

ORDER ON I.A.No.V

This is an I.A.No.V filed by the plaintiff against the defendants u/o 39 rule 1 and 2 of CPC and prayed to restrain the defendant No.1 and 2 or their agents or family members or anybody acting on their behalf from interfering with plaintiff's physical possession and enjoyment of the Southern portion of the suit schedule property till disposal of the suit.

2. The plaintiff sworn to an affidavit contended that, the suit schedule property originally belongs to one S.N.Krishnamurthy which was a vacant site and part of then land bearing Sy.No. 39/6A, which was purchased by K.Kambaiah i.e., the husband of plaintiff No.1 under a oral sale deed about 45 years back. Since then the dispute arose between the said K.Kambaiah and S.N.Krishnamurthy. They filed a suit in O.S.No.315/1998, during the pendency of the said

suit S.N.Krishnamurthy got compromised the suit and admitted the ownership of K.Kambaiah over the suit schedule property.

3. On the strength of the said decree the khata was made out in the name of K.Kambaiah and he constructed a shed by investing huge amount and using it as godown. The defendants own their house property towards southern side of suit schedule property and there is a 10 feet galli in between suit schedule property and defendant's property and earlier on account of interference the husband of plaintiff had filed O.S.No.89/2006 against these defendants for the relief of permanent injunction was dismissed. Against the said judgment RSA No.2701/2010 was filed before the Hon'ble High Court of Karnataka, the said appeal was rejected at the admission stage itself. The defendants are interfering and obstructing the

physical possession and enjoyment of Southern portion of suit schedule property. With these averments prayed to grant temporary injunction against the defendants.

4. Defendants filed objection contending that, the application is not maintainable , the plaintiff has filed this application just to harass and trouble the defendant. The defendant No.1 is lawful owner of the property purchased it on 22-09-1999 from one Sanjeevaraya S/o Late P.Honnoorappa. Since then the defendants are in possession and enjoyment of the suit schedule property. The defendants further contended that, the plaintiff has filed this application only to tress pass in to the suit schedule property i.e., defendants house. With these averments the defendants prayed to reject the application.

5. Heard the arguments and perused the materials available on records.

6. The following points that would arise for my consideration;

1. Whether the plaintiffs have made out prima-facie case?
2. Whether the balance of convenience lies infavour of plaintiffs ?
3. Whether the irreparable loss or injury would cause to the plaintiffs if the application is not allowed?
4. What Order?

7. My findings to the above points as follows –

Point No.1– In Negative

Point No.2– In Negative

Point No.3– In Negative

Point No.4– As per the final order for the following-

REASONS

8. **POINT No.1 TO 3:** These points are inter connected with each other, in order to avoid the

repetition of facts, I have taken these points together for consideration.

This is a suit filed by the plaintiff against the defendants for declaration of their title over the suit schedule property and permanent injunction. The case is posted for further defendants evidence at this stage the plaintiff has filed an I.A. under 39 Rule 1 and 2 of CPC praying to restrain the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. It is averred by the plaintiff that, the husband of the plaintiff No.1 and father of plaintiff No.2 to 7 has purchased a vacant site from one S.N. Krishnamurthy under a oral sale deed above 45 years back, after that the dispute arose between the K.Kambaiah the husband of the plaintiff No.1 and S.N.Krishnamurthy and he filed a suit in O.S.No.315/1998 and it was ended in

compromise. On the strength of the decree the khata was made out in the name of K.Kambaiah and he constructed a shed by investing huge amount and used it as godown. The defendants own their house which is situated towards southern side of the suit schedule property and in between the suit schedule property and defendant's property there is a 10 feet wide galli.

9. Earlier on account of interference and said Kambaiah has filed a suit in O.S.No.89/2006 was filed against the defendants for the relief of permanent injunction and it was dismissed. Against the said decree , RSA was filed before the Hon'ble High Court of Karnataka and it was rejected stating that, the compromise decree in O.S.No.315/1998 is binding on parties to the suit. In spite of it defendants are attempting to obstruct and interfering with their

physical possession and enjoyment of the southern portion of the suit schedule property. The defendants have filed objection stating that, application is not maintainable and contended that, the defendants are the lawful owners of the property, they purchased it on 22-09-1999 from one Sanjeevaraya S/o Late Honnurappa. Since then they are in possession and enjoyment of the suit schedule property.

10. This is a suit for declaration and permanent injunction, the plaintiffs have to prove their title over the suit schedule property by producing title deeds and also their possession over the suit schedule property. In support of their contention the plaintiffs have produced the certified copy of order sheet and decree in O.S.No.315/1998. As per this documents the husband of the plaintiff No.1 was filed suit against his vendor and it was ended in compromise stating

that, the husband of the plaintiff No.1 is the owner of suit schedule property. The plaintiff also produced tax assessment register extract for the year 2012-13 with respect to Assessment No.5931. As per the certified copy of sale deed dtd:20-09-1999 by the plaintiff, the defendants have purchased site No.10 in Krishnamurthy Badavane bearing Assessment No.3360/6718/10 bounded by towards East Sira-Banavara road, towards West site No.11 and KEB High tension wire, towards North S.N.Krishnamurthy layout and towards South road. The defendant denied the contention of the plaintiff. In support of his contention the defendants have produced xerox copy of layout plan and the certified copy of the judgment in R.A.2/2010. As per these documents the suit schedule property and defendants property are not one and the same. As per the sale deed dtd:22-09-1999, there is a

road towards southern side of the defendants property and towards Northern side S.M.Krishnamurthy layout is situated. The plaintiff is contending that, the defendants property is situated towards southern side of the suit schedule property, which shows that, there is no road between the suit schedule property and defendants property. The road is situated towards southern side of the defendants property. As per the photo produced by the plaintiff and his argument there is a road in between his property and the defendants property. But as per the documents there is no road between the suit schedule property and defendants property. The plaintiff is stating that, the road is created recently between the suit schedule property and defendants property. The plaintiff has not produced any documents to show that, the said road is recently established. As per the photos

produced by the plaintiff, the plaintiff himself encroached the road and put up a shed attaching to the defendants property.

11. Further the plaintiff has not produced any documents to show that , he is the owner of the suit schedule property except the tax register extract. Though the plaintiff has purchased suit schedule property through a oral transaction , but to prove the oral transaction there is no supportive document. The judgment and decree passed in O.S.No.315/1998 is only binding on the plaintiff and his vendor S.N.Krishna Murthy and it is not binding on the others. Therefore at this stage the plaintiff failed to prove interference by the defendants. The plaintiff failed to established prima-facie case to grant temporary injunction against the defendants. The balance of convenience not lies infavour of plaintiff

and if temporary injunction is granted the defendants will be put to loss. Therefore I answer point No.1 to 3 in **Negative**.

12. POINT No.4: In view of the finding given on above points, facts and circumstances of the case, I proceed to pass the following -

ORDER

I.A. No.5 filed by the plaintiffs
U/O. XXXIX Rule 1 & 2 CPC is
hereby rejected.

(Directly dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the Open Court on 31-07-2021).

(Smt.Geeta)
Addl. Civil Judge & JMFC.,
Sira.

Order pronounced in the open court (Vide separate Order)

ORDER

I.A. No.5 filed by the plaintiffs U/O. XXXIX Rule 1 & 2 CPC is hereby rejected.

Addl. Civil Judge & JMFC.,
Sira