

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

Dated this the 12th day of November 2020

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

O.S.NO. 283/2019

PLAINTIFF : Narasamma,
W/o. R. Thimmaiah,
Aged about 55 years,
Residing at
Kerehindalahatti (KOTE)
Sira Town,
(By Sri. Javanaiah,
Advocate)

/Vs/

DEFENDANTS :1 Rangaraju @ Guddi,
S/o. Guddadarangappa,
Aged about 35 years,

2. Ranganatha @ Tailor Ranganatha,
S/o. Guddadarangappa,
Aged about 32 years,

3. Guddadarangappa
S/o. Poojar Rangappa,
Aged about 70 years,

4. Thimmakka,
W/o. Guddadarangappa,
Aged about 62 years,
All are Residing at

Kerehindalahatti (KOTE),
Sira Town,
**(Sri. P.B.S. Bhoopathi Gowda,
Advocate)**

Parties in I.A. No.3

APPLICANTS : Rangaraju & others

/Vs/

OPPONENT : Narasamma

ORDERS ON I.A. NO 3

This is an application filed by applicant/defendant No.1 U/Or. XXXIX Rules 4 CPC with a prayer to vacate the exparte order of temporary injunction.

2. In the affidavit annexed to the application, applicant has stated that the plaintiff has filed suit for permanent injunction against him and other defendants. It is further stated that, the plaintiff is not in possession of the schedule property. In respect of schedule property, O.S. No. 43/2017 is pending for consideration. In the said suit, status quo order granted against the plaintiff. Even though it is within the knowledge of plaintiff, by suppressing the fact, she filed false suit against these defendants. There are no merits in the suit.

If the application is not allowed, the defendants will be put to great loss and hardship. Hence, prays to vacate an order of ex parte temporary injunction.

3. The plaintiff has filed objections and contended that the defendants filed false affidavit and there are no merits in the application. The defendants filed false suit in O.S. No. 43/2017 and obtained status quo order by suppressing the material facts. It is further contended that, originally schedule property belong to Lakshamma and her legal heirs executed sale deed on 01.08.2016 in favour of plaintiff's daughter Yashodamma. Thereafter, Yashodamma executed registered gift deed in favour of plaintiff on 04.09.2019. As such, the plaintiff became the owner of the schedule property. Only to harass the plaintiff and to protract the proceedings, the dependants filed this false application. Hence, prays to dismiss the I.A.

4. The following points that arise for consideration:

1. Whether the Applicant has made out ground to allow the I.A. No.3. filed U/Or. XXXIX Rule 4 of CPC?

2. 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 : **As per Final Order**

for the following:

REASONS

7. **Points No.1** : 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 constructing house, the defendants tried to obstruct the construction work. On the basis of alleged obstruction, the plaintiff filed this suit and thereafter, this court has granted an order of exparte temporary injunction. After issuance of suit summons, the defendants appeared and filed written statement and I.A. for vacating ad interim order of exparte temporary injunction.

8. The plaintiff claiming right under the gift deed dated 4.09.2019 executed by her daughter. The defendants are the public and they are disputing the title of the plaintiff and her daughter over the schedule property. As per defendants, Yashodamma's vendor had no right to execute sale deed in her favour. In such circumstances, Yashodamma had not acquired any right under the sale deed. As such the plaintiff also not acquired any right under the gift deed. The plaintiff and her daughter colluding with each other, created documents.

9. On perusal of record, it is noticed that the plaintiff has produced gift deed dated 04.09.2019, Form No.15-E.C., e-property and tax demand register extract. These documents show that plaintiff acquired the schedule property under gift deed as stated in the plaint. The defendants produced several documents i.e., plaint and order sheet in O.S. No. 43/2017 on the file of this court, Order in MUN(A) No. 08/2019-20 on the file of Deputy Commissioner and Order sheet in O.S. No. 326/2019. All these documents show that there are litigations in respect of schedule property. It is also noticed that in O.S.

No. 43/2017 and MUN(A) No. 08/2019-20 also, status quo order granted and also directed to not to put up construction. Even though there is an order against the plaintiff to maintain status quo, the plaintiff is trying to get an order for construction. The parties and property involved in both the suits and appeal are one and the same. At the time of arguments, advocate for plaintiff herein not explained whether said status quo order vacated or not. Order sheet in O.S. No. 43/2017 produced by the defendants show that status quo order is still in force against the plaintiff. In such circumstances, question of continuation of an order of exparte injunction does not arise. Another suit in O.S. No. 326/2019 filed by the public in representative capacity against the plaintiff herein is also pending. Even though it is within the knowledge of plaintiff, by suppressing all these aspects, the plaintiff obtained an order of exparte temporary injunction.

10. On perusal of documents placed by the defendants, it is came to the knowledge of court that, there is no piece of document to show that, the plaintiff started construction work. The schedule property is situated at Sira town. To

construct any building, public has to obtain license from the concerned authority. In this case, the plaintiff has not produced any such license or other documents to show that she has obtained permission to construct house. In the plaint, plaintiff has nowhere pleaded that she has obtained license from the concerned authority. Plaintiff is seeking permission of this court to construct house in the absence of license or any other documents. The court can protect the possession and rights of parties to the suit, but court itself cannot grant license or permission to construct house and court cannot deviate the rules and regulations as prescribed by the government.

11. The plaintiff has obtained an order of ex parte temporary injunction with a prayer to restrain the defendants from obstructing the construction work. To continue earlier order, plaintiff must establish prima facie case regarding construction work. It is also duty of the plaintiff to show that that, she is legally constructing house by obtaining necessary permission from the authority. As stated above, there are no documents in respect of license or permission. In the

documents produced by the defendants, it is also noticed that the Chief Officer, CMC, Sira also party in O.S. No. 43/2017. In the said suit, CMC, Sira submitted no objection to grant status quo order against this plaintiff. It also shows that CMC, Sira has not granted any license to the plaintiff to construct house.

12. In this case, title of the schedule property is in dispute and there are much litigation in respect of schedule property. Moreover, there are no documents to believe that the plaintiff has started construction work. Before approaching this court, plaintiff has not approached the concerned authority to get license. In such circumstances, the court cannot protect the plaintiff's alleged construction work. The plaintiff has intentionally suppressed the material fact regarding the pendency of other suits in respect of suit schedule property. There is no prima facie case in favour of plaintiff. The applicant has made out grounds to allow the I.A. The applicant has placed sufficient documents to believe that the plaintiff has suppressed the materials facts. In such circumstances, if the I.A. is not allowed, irreparable loss cause

to the defendants than the plaintiff. Accordingly, this point is answered in the **Affirmative**.

13. Point No.2: In view of findings on Point No.1, this court proceed to pass the following;

ORDER

I.A.No.3 filed by applicant/defendant
No.1 U/Or. XXXIX Rule 4 CPC is allowed.

An ad interim order of exparte temporary
injuncton granted on 13.11.2019 is hereby
vacated.

(Dictated to the Stenographer, computerized and printout taken by her, then corrected, singed and pronounced by me in the open Court on **12.11.2020**)

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

