

IN THE COURT OF C.J. & J.M.F.C,HOOVINAHADAGALI.

Present

Sri Yamanappa Kare Hanumanthappa,B.A.LL.B.,
Civil Judge & JMFC, Hoovinahadagali.

Dated this the 20th day of January 2016.

O.S. No.170/2015

I.A.No.I

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D.Ismail Sab S/o Shabuddin ...Plaintiff/Petitioner.

(By Sri Ameer Ahmed H. Bagali, Advocate)

V/s.,

D.Shaserabanu & another., ...Defendant/Respondent.

(By Sri Suresh Soppina, Advocate)

ORDER ON I.A.No.I

This I.A.No.I is filed by the plaintiff/petitioner U/O. XXXIX Rule 1 and 2 R/W sec.151 CPC and prayed for the Court to grant the ad-interim temporary injunction order restraining the defendants from further construction in the subject matter of the suit in any manner till disposal of the suit.

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2. Along with the application, the petitioner has filed the affidavit stating that he has filed the suit against the defendants for declaration, possession and permanent injunction in respect of the suit property. The defendant is no way concerned to the suit property and she has no right, title and interest over the suit property. The defendant No.1 who is the daughter of D.Nazeer Sab who is the elder brother collusion with the other have illegally created some fictitious, bogus and sham sale deed in respect of Grama Panchayath property No.280 situated at Holagundi village of Hadagali Taluk under the registered sale deed dated 30.5.2012. By virtue of the alleged sale deed, the defendant No.1 in his absence, in 1st week of November of 2013 by encroaching the suit land, though land, he has no interest in the suit property. The defendant No.2 collusion with her father and husband of defendant No.1 have created fictitious and bogus sale deed in respect of part of R.S.No.586/D/2/3 situated at Holagundi village of Hadagali Taluk under registered sale deed dated 2.9.2013. By virtue of the alleged sale deed, the defendant No.2 in his absence, the 1st week of November 2015 encroached the western portion of the suit property. Further stated that the defendant did not heed the advise of the elders and their society, contrary to this defendant asserted him many times and used the criminal force, in this regard he was lodged the complaint against the defendants. The concerned Police have not taken any steps against the defendants and they stated that the matter is in civil nature. Further stated that the plaintiff has made out

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the prima facie case and balance of convenience is in his favour and irreparable loss will cause to him rather than the defendants, which cannot be compensate in terms of money. On these grounds, the petitioner/plaintiff prayed the Court to allow this application.

3. After service of copies to the defendants, the defendants appeared before the court and filed a memo stating that the contents of the written statement may be treated as objection to I.A.No.I.

In the written statement the defendants have denied the averments of the plaint. Further contended that the suit property is the ancestral property of the plaintiff and defendants. The suit property was fallen to the share of the plaintiff in the year 2012. The plaintiff No.1 has sold out the suit property to the husband of defendant No.1 by name Nabi Sab as per the unregistered agreement of sale dated 14.5.2012 for valuable consideration of Rs.6,25,000/- and he has received the entire consideration amount and on the same day, he was delivered the possession of the suit property to the husband of the defendant No.1. By virtue of agreement of sale, the defendant No.1 is in peaceful possession and enjoyment of the suit property. The defendant No.1 is the absolute owner of the suit bearing No.280 measuring East – West - 105 feet and North – South – 40 feet situated at Holagundi village. The said property was fallen to the share of defendant No.1 by name D.Nazeer Sab.

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D.Nazeer Sab has sold out the above site No.280 through the registered sale deed dated 30.5.2012 for valuation consideration of Rs.1,01,000/- to the defendant No.1 and the defendant No.1 was obtained the construction licence from Grama Panchayath, Holagundi and constructed the building. Further contended that the defendant No.1 has not encroached the suit property at any point of time because the boundaries of the suit property and the boundaries of the defendant No.1's property are entirely different from each other and hence, the question of interference of the defendants into the suit property does not arise. Further contended that the plaintiff was not mentioned in plaint in which site the defendant No.1 was encroached the suit property. The 2nd defendant is the absolute owner of the land bearing Sy.No.586/D/2/1 measuring 0.10 cents situated at Holagundi village. The above land is the ancestral property of the defendant No.1 and plaintiff. The 1st defendant and plaintiff are sold out the Sy.No.586/D/2/1 to one Channabasavana Gouda S/o Shivarudra Gouda on 13.8.1998 for consideration of Rs.20,000/-. The said Channabasavana Gouda has sold out the above said survey number to the 2nd defendant on 20.2.2013 through the registered sale deed for valuation consideration of Rs.30,000/-. Further contended that the defendant No.2 is in peaceful possession and enjoyment of the above said survey number and he has started to construct the complex in the above said property in October 2015 and said complex is in completing stage.

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The defendant No.2 was not encroached the suit property at any point of time. The boundaries of the suit property and boundaries of the 2nd defendant's property is entirely different with each other. Further contended that the plaintiff instigated to his sisters, they are filed the suit against the father of the 1st defendant in O.S.No.103/14 and in that suit, suit property is one of the property. The plaintiff has also filed the suit against the father of the 1st defendant before this Court in O.S.No.147/2015 and in that suit also the suit property is one of the property. On these grounds, the defendants prayed the Court to dismiss the application.

4. Heard.

5. The following points arise for my consideration:

- 1) Whether the plaintiff/petitioner proves that there is prima-facie case?
- 2) Whether the plaintiff/petitioner proves that the balance of convenience lies in his favour?
- 3) Whether the plaintiff/petitioner proves that if injunction is not granted, he put into heavy and irreparable loss?
- 4) What order

6. My answers to the above points are as under:

Point No.1: Is in the Negative,
Point No.2: Is in the Negative,
Point No.3: Is in the Negative,
Point No.4: Is as per final order for the following reasons;

REASONS

7. Points No.1 to 3:- Since these points inter-linked with each other, they are taken together for discussion to avoid repetition.

The plaintiff has filed this suit against the defendants for the relief of declaration, possession and permanent injunction. The case of the plaintiff is that the defendant No.1 and 2 have encroached the suit property and started their building construction work over the suit property without any right, title and interest over the suit property. The contention of the defendants is that the boundaries of the suit property and boundaries of their lands are entirely different and they are not encroached the suit property.

8. I have perused the materials placed by both the parties. The suit property is Sy.No.586/CEF/7 measuring 1.40 acres. In this regard, the plaintiff has produced the RORs which are standing in the name of the plaintiff. As per the partition the name of plaintiff mutated in the RORs. As per the Rough Sketch, the 1st defendant encroached 40 x 18 feet area in the suit property and 2nd defendant encroached 30 x 40 feet area in the suit property. I have carefully perused the photocopies produced by

the plaintiff. The defendants have constructed their buildings in half portion. The defendant has also not disputed that the plaintiff is the previous owner of the suit property. I have carefully perused the documents placed by the defendants. One agreement of sale deed reveals that the plaintiff has sold out the suit property to one Nabi Sab. I have not taken into consideration the agreement of sale deed at this stage because this document is unregistered and unstamped document. The sale deed dated 30.5.2012 reveals that one D.Nazeer Sab has sold out the site No.280 in favour of the defendant No.1 and defendant No.1 was taken permission for constructing the building from Grama Panchayath, Holagundi village. I have perused the sale deed dated 20.2.2013. It reveals that the Channabasavana Gouda was sold out the Sy.No.586 D/2/1 measuring 0.10 cents in favour of M. Nepolian. I have carefully perused the photocopies produced by the defendants. The complex construction was almost completed as per the photocopy dated 18.11.2015.

9. The plaintiff has not placed any documents before this Court to go to show that the defendants have encroached the suit property as alleged in the rough sketch and defendants also taken the permission from the competent authority to construct their buildings. As per the photocopy construction of the buildings was completed. If the plaintiff succeeded in the suit, he can remove the buildings and he can take possession of the

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encroached area. Without adjudication of the matter, the Court cannot come to the conclusion that the defendants have encroached into the suit property. In order to find out the encroachment area as alleged by the plaintiff, evidence of both the parties is needed and commissioner's report is also required to arrive the conclusion. So, at this stage, the plaintiff has not made out the prima face case and balance of convenience not lies in his favour and if T.I. Order is not granted, no loss or injustice caused to the plaintiff. Hence, I have answered the Point No.1 to 3 in the Negative.

10. **Point No.4:-** For the discussion made above, I proceed to pass the following order.

ORDER

The I.A.No.I filed by the petitioner/plaintiff U/O.39 Rule 1 and 2 R/W.151 of CPC is hereby dismissed. .

No order as to costs.

(Dictated to the stenographer, transcribed by him, corrected by me and then order pronounced in the open court on this the 20th day of January 2016.)

(Yamanappa Kare Hanumanthappa),
Civil Judge,Hadagali.

