

**IN THE COURT OF THE CIVIL JUDGE JMFC AT
HARAPANAHALLI**

**Present: Sri. YATHISHA R, B.A.L, LL.B.,
Civil Judge AND JMFC,
DAVANGERE.**

O.S No. 03/2018

Dated: this 1st day of March- 2018

Plaintiff: H.Vasanthappa S/o H. Biddappa, aged
(Applicant) about 58 years, R/o 12th Ward, Mailara
Road, Harapanahalli Town,
Davanagere District.

(By Sri. P.J.G. learned Advocate)

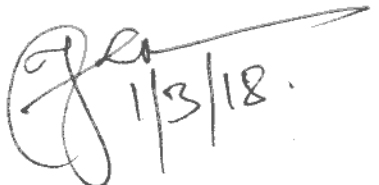
-V/s-

Defendant: The Chief Officer, Town Municipality,
Harapanahalli Town, Davangere
(Opponent) District.

(Sri. T.H.M.V. learned Advocate)

-: ORDERS ON I.A. No.II :-

The plaintiff has filed the present application U/o
39 Rule 1 and 2 r/w section 151 of C.P.C seeking an
order of Temporary Injunction against Defendant
/employees of Defendant/ Servants/ Coolie or anybody
authorized by Defendant to restrain them from


1/3/18.

interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till the disposal of the suit.

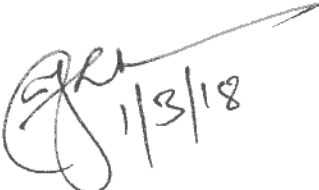
2. Defendant appeared through his learned counsel and filed written statement along with a memo praying to adopt the averments made in the written statement as part and parcel of the statement of objection to the Interim application on hand for consideration.

3. It is the case of plaintiff that the he has acquired the right over the suit schedule property vide registered sale deed dated 25.03.2004 executed by one E.Sangappa for valuable sale consideration. Evensince the date of purchase of property he got the site mutated into his name and after obtaining licence from the Defendant authority he has put up construction of the Dwelling House i.e. Suit schedule property and residing peacefully with his family members such being


11/5/18.

the case all of a sudden on 27.12.2017 defendant men went near the house of plaintiff and have tried to evict the plaintiff from the suit schedule property and caused interference into his peaceful possession and enjoyment of the same. Moreover in the notice issued by the Defendant calling upon this plaintiff to vacate the premises within stipulated period of time mentioned in that notice itself constitutes that the possession of the plaintiff over the suit schedule property is admitted by the Defendant. As such plaintiff is before this court by way of this suit seeking relief of Injunction as against Defendant. And hence the present interim application is also filed. Accordingly prays to allow the application.

4. On the other hand the Defendant has filed the written statement contending that the plaintiff is not at all the owner of the suit schedule property as claimed

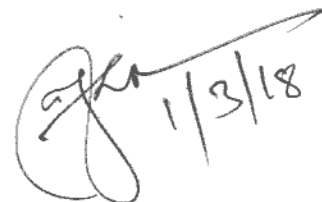

1/3/18

in the plaint. The suit of the plaintiff is for the prayer of bare injunction without seeking the relief of declaration of title is not maintainable in the eyes of law. Accordingly, when the very suit itself is not maintainable the question of granting relief as prayed for by the plaintiff in the interim application on hand does not survive for consideration of this court. Accordingly prays for the rejection of application.

5. I have heard the arguments of learned counsel for the plaintiff and the learned counsel for the defendant and also gone through the documents placed by the parties before this court.

6. Having heard the learned counsel for plaintiffs and on perusal of the materials on record, the following points that would arise for my consideration:-

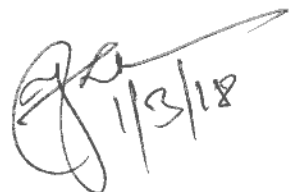
1. Whether the plaintiff has made out prima-facie case?

 1/3/18

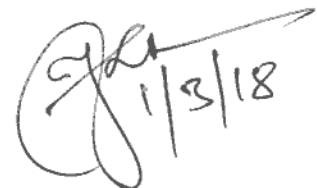
2. Whether the balance of convenience lies in favour of plaintiff?
 3. If temporary injunction granted or if not granted, who will put to irreparable loss or hardship?
 4. What order?
7. My findings on the above points are as under:
- Point No.1 : In the affirmative.
- Point No.2 : In the affirmative.
- Point No.3 : If, an order of temporary injunction is not granted in favour of plaintiff, the plaintiff will be put to hardship.
- Point No.4 : As per final order, for the following..

-: REASONS :-

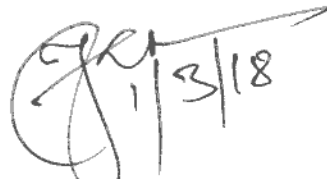
8. **POINT No.1:-** The plaintiff has filed the present suit for the relief of permanent injunction in respect of suit schedule property. As discussed above the plaintiff's case is that in view of the registered sale deed dated: 25.03.2004 he has become the absolute owner of the vacant site No.142 situated at the


1/3/18

Harapanahalli town, 12th ward, Mailara Road, Davanagere district. Since then he is in peaceful possession and enjoyment of the same and after obtaining the license from the defendant plaintiff has put up the construction of dwelling house in the said site which constituted the suit schedule property. Such being the case all of a sudden defendant called upon the plaintiff to vacate the house and also gave caution of evicting plaintiff out of the suit schedule property and also caused the interference in plaintiff's peaceful and lawful enjoyment and possession over the suit schedule property. Accordingly, the plaintiff without any recourse has approached this court by way of this suit. According to the plaintiff, the Defendant is trying to evict the plaintiff and also to demolish the suit schedule property without following any due process of law. If at all the Defendant is succeeded in his attempt, the very purpose of this suit will be defeated and same

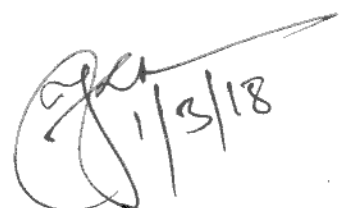

1/3/18

may also result in multiplicity of proceedings. Moreover, the Defendant in his written statement/statement of objections filed to the application on hand has nowhere denied about the plaintiff's possession over the suit schedule property. In view of settled position of law as held by the Hon'ble Supreme Court of India in Rame Gowda (D) By Lrs v/s M. Varadappa Naidu (D) By Lrs. & Anr on 15 December, 2003 - "In English Law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his

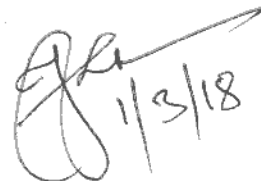

1/3/18

possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law."

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim □ 'Possessio contra omnes valet praeter eum cuius sit possessionis (He that hath possession hath right


1/3/18

against all but him that hath the very right)' and said, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In Nagar Palika, Jind Vs. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

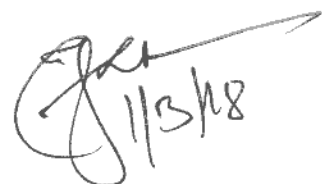

11/3/18

It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of


1/3/18

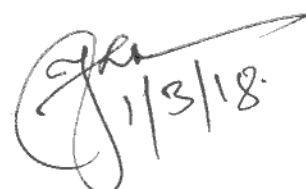
force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted.

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual

 11/3/18

physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
- iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and
- iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the


1/3/18

true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

In the present case the Court has found the plaintiff at this stage has shown that he is in the possession of the suit schedule property since many years. The question of title over the suit schedule property would be decided only upon full fledged trial of the suit. At this stage the plaintiff has made out prima facie case in his favour. Accordingly, the plaintiff's right over the suit schedule property has to be protected. With all these observations Point No.1 is answered in the affirmative.

9. **Points No.2 and 3:-** As per the observations made while answering point No.1 points 2 and 3 are taken up together for discussion in order to avoid repetition of facts. As observed above the plaintiff at this stage has made out prima facie case in his favour. The balance of convenience also lies in his favour. The



11/3/18

question as to whether the plaintiff is entitled for the relief prayed for in the suit or not can only be ascertained only after full fledged trial. Further, it is also significant to note here that if the prayer as sought for by the plaintiff by way of application which is considered for discussion on hand is not granted in favour of plaintiff in my opinion the plaintiff will be put to irreparable loss and injury under such circumstances I answer point No.2 in the **affirmative** and also to answer point No.3 as If, an order of temporary injunction is not granted in favour of plaintiff, it is the plaintiff who will be put to hardship.

10. **Point No.4** :- In view of my reasons and findings given to points No.1 to 3 I proceed to pass the following:-

-: ORDER :-

**I.A. No.II filed by the plaintiff U/o
39 Rule 1 & 2 R/w 151 of CPC is**

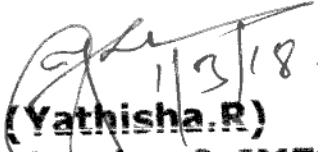

1/3/18.

allowed. The defendant or any other person claiming right over the suit schedule property on behalf of Defendant are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property till 4 months from today.

This order will be inforce for the period of 4 months from today. Within which both the parties shall cooperate for speedy disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on computer, revised and corrected by me then pronounced in the open court, this the 1st day of March 2018)


(Yathisha.R.)
Civil Judge & JMFC,
Harapanahalli.

:: Schedule ::

1. RCC dwelling house situated at 12th ward of Harapanahalli town Municipality, Davangere District


bearing door No.618/144 measuring 20X30 bounded
on:

East : House site No.141

West : House of Akkamahadevi

North : Road

South : House of Diddigi Mahadevappa.


(Yathisha.R)
Civil Judge & JMFC,
Harapanahalli.