

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

**Present: Sri.Prakash Arjun Banasode B.A. LL.B.,  
Civil Judge & JMFC.,  
Harapanahalli.**

**ORIGINAL SUIT No.50/2013**

**Dated 28<sup>th</sup> Day of March-2015**

**Plaintiff/s:** Smt.Vasuramma

**V/s**

**Defendant/s:** Smt.Vadra Jayamma and others

**I.A.No.IV**

**Petitioner/s:** Smt. Vasuramma

**V/s**

**Respondent/s:** Smt. Vadra Jayamma and others

**-:: ORDER ON I.A.No.IV U/o 39 R.1 AND 2 OF CPC FILED  
BY THE PETITIONER/ PLAINTIFF::-**

1. This is an application U/o 39 Rule 1 and 2 of CPC filed by the petitioner/plaintiff for seeking ad-interim exparte temporary injunction order against the respondents/defendants, their agents, friends, anybody claiming under them from interfering with peaceful possession and enjoyment of the plaintiff over the petition schedule property till the disposal of the suit in the interest of justice and equity.

2. The petitioner/plaintiff has contended in his annexed affidavit in support of I.A.No.IV that her father Vadra Hanmappa S/o Gorappa was the owner, possessor and

enjoyment of the suit schedule property. He died about 16 years back leaving behind herself and her sister Durugamma as his sole legal heirs. The said Durugamma was also died intestate after 2 years of death of her father. Now she is only the legal heir of the deceased Vadra Hanmappa. The mother of the petitioner was also died. After death of her father, she has been in peaceful possession and enjoyment of the suit schedule property along with other family properties. The defendants are the strangers to her family and suit property. But the defendant No.1 was managed to got mutated her name in RTC extract of suit schedule property behind her back in collusion with revenue officials by taking undue advantage of her innocence and illiteracy. By knowing the same, the plaintiff filed a Revenue Appeal bearing No.RACR-281/2011-12 before Assistant Commissioner's Court at Harapanahalli which is still pending against the said illegal mutation of the defendant No.1.

3. The defendant No.1 sold the suit schedule property in favour of defendant No.2 by taking advantage of her name entered in RTC of the suit schedule property. Now the defendant No.2 is trying to alienate the suit property to third parties in order to deprive the rights of plaintiff. Therefore it is just and necessary to restrain defendant No.2, his henchman, coolies, followers and etc from interfering with her peaceful possession and enjoyment of the suit schedule property till the

disposal of the suit. Therefore, it is prayed to allow the application.

4. Per contra, the defendant No.1 resisted the claim of the plaintiff by filing objections to I.A.No.IV wherein it is contended that the application filed by the plaintiff is not maintainable under law or facts. The suit schedule property was transferred in the name of the defendant No.1 in M.E.No.63/2010-11. After the death of the deceased Hanumappa, the plaintiff had admitted to change the khata in favour of the defendant No.1 before the revenue authorities. The revenue authorities have issued notice to plaintiff before changing the name in the R.T.C of suit properties. The defendant No.1 was in peaceful possession and enjoyment of the suit schedule property during the life time of Vadra Hanumappa. The plaintiff and deceased Vadra Hanumappa were not at all cultivating the suit schedule property at any point of time. The khata was standing in the name of the Vadra Hanumappa namakavaste but plaintiff or Vadra Hanumappa have never cultivated the suit schedule property. The defendant No.1 only the owner of the suit schedule property and she sold to the defendant No.2. Now the defendant No.2 is in peaceful possession and enjoying the suit schedule property. Therefore, it is prayed to reject the application with exemplary costs.

5. The defendant No.2 also resisted the claim of the plaintiff by filing separate objection to the I.A.No.IV wherein it

is contended that the petition filed by the petitioner is false, vexatious and not maintainable. The petition and affidavit contents are false and vexatious. The petitioner is put to strict proof of all the allegations made in the petition and affidavit which are not expressly admitted by this defendant. There are no any valid and sufficient grounds to grant the temporary injunction as prayed by the petitioner. There is no prima-facie case and balance of convenience lies in favour of plaintiff. In fact, the prima-facie and balance of convenience lies in favour of defendant No.2. If the injunction is granted this defendant will be put heavy and irreparable loss which cannot be compensated in terms of money. The petitioner is not the owner and possessor of the suit schedule property. The suit property stands in the name of this defendant by virtue of registered sale deed dated 18.12.2012. The defendant No.1 sold the suit schedule property in his favour through registered sale deed dated 18.12.2012. This defendant is bonafide purchaser and therefore he is owner and possessor of the suit schedule property. Therefore it is prayed to dismiss the application.

6. Heard learned counsel for the parties.
7. The points that arise for my consideration are as under:-
  1. Whether the plaintiffs have made out prima facie case for granting ad interim exparte T.I.Order against the defendants as sought for?
  2. In whose favour the balance of convenience lies?

3. Who will be put irreparable loss or injury if T.I is not granted?
4. What Order?
8. My findings on the above points are as under:-
  - Point No.1 : In the affirmative.
  - Point No.2 : In favour of plaintiff.
  - Point No.3 : To the plaintiff.
  - Point No.4 : As per final order for the following...

**-:: REASONS ::-**

**9. Points No.1 to 3:-**

These points are interconnected to each other, to avoid the repetition of facts and for the sake of convenience, I have taken-up these points together for common discussion.

The plaintiff has instituted this suit against the defendants for declaration and consequential relief of perpetual injunction in respect of suit schedule property. The plaintiff contends that her father by name Vadra Hanmappa was owner, possessor and enjoyer of the suit schedule property. The said Vadra Hanmappa died leaving behind plaintiff as sole legal heirs. The mother of the plaintiff and also her sister by name Durugamma were also died. After death of her father, she has been in possession and enjoyment of the suit schedule property. The defendant No.1 and 2 are strangers to the family and suit property. The defendant No.1 illegally got mutated her name in the ROR of the suit schedule property by taking undue advantage of illiteracy and

innocence of the plaintiff. On the strength of illegal mutation the defendant No.1 sold suit schedule property to the defendant No.2. The plaintiff challenged the illegal mutation of the defendant No.1 before the Assistant Commissioner Harapanahalli. The said case is still pending. But the defendants are interfering and obstructing in the peaceful possession and enjoyment of the suit schedule property. But the defendants contended that they are the owners and possessors of the suit schedule property by virtue of sale deed dated 18.2.2012. In order to prove the possession of the suit schedule property the plaintiff has got produced ROR of the suit schedule properties for the year 1983-84 to 2012-13. The said ROR's stands in the name of Vadra Hanmappa since 1983-84 to 2001-2002. The column No.9 and 10 of the said RORs in respect of the suit schedule property stands in the name of Vadra Hanumappa who is none other than the father of the plaintiff. The said RORs of the suit schedule properties prima-facie discloses that the plaintiff is the owner and possessor of the suit schedule property. The defendant No.2 has got produced registered sale deed dated 18.2.2012 and ROR of the suit schedule property. I have gone through the said registered sale deed 18.2.2012 it reveals that the defendant No.2 P Basavarajappa purchased the suit schedule property from ne Vijayamma W/o Dasappa and her husband Dasappa S/o Siddappa. But it is very pertinent to note here that the boundaries mentioned in the property under sale

deed is different as compared to the boundaries of the plaint schedule properties. Therefore even though the defendant No.2 has got sale deed in his favour in respect of suit schedule property. But boundaries of the property under said sale deed and boundaries of the plaint schedule properties are different. At this stage, I have no grounds to disbelieve the case of the plaintiff. Therefore the documents produced by the defendants not made out prima-facie case and balance of convenience lies in favour of defendants. On the other hand, the plaintiff has made out prima facie case for granting temporary injunction order against the defendants. The balance of convenience also lies in favour of plaintiff. If application is allowed no harm or loss would be caused to the defendants. On the other hand, if the application is not allowed the plaintiff will be put heavy and irreparable loss which cannot be compensated in terms of money. Under these circumstances, I am of the opinion that the defendants have to be restrained from interfering and obstructing in the peaceful possession and enjoyment of the suit schedule property till the disposal of the suit. Hence **I answer point No.1 in the in the affirmative. Point No.2 in favour of plaintiff. Point No.3 to the plaintiff.**

10. **Point No.4:-** In view of the above findings , I proceed to pass the following:

**:-: O R D E R :-:**

I.A.No.IV U/o 39 Rule 1 and 2 of CPC  
filed by the petitioner is hereby allowed.

The respondents/defendants, their agents, friends, anybody claiming under them are hereby restrained from causing interfering with peaceful possession and enjoyment of the plaintiff over the petition schedule property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on computer, corrected and signed by me and then pronounced in the open court on the 28<sup>th</sup> day of March- 2015)

**(PRAKASH ARJUN BANASODE)**  
**Civil Judge & JMFC.,**  
**Harapanahalli.**