

**ORDER BELOW EXH. 5**

1. Present application is filed by the plaintiff seeking the relief of temporary injunction against all the defendants that they shall not construct anything in the suit property.

Case of plaintiff

2. It is averred by the plaintiff that, suit property B is part of suit property A. Suit property A was the ancestral property of the defendant no. 3 and his brothers. Suit property was sold by the family of defendant no. 3 for their legal necessities. The suit property was sold to the plaintiff and the defendant no. 5 to 10. Accordingly, father of defendant no. 2 executed registered sale deed of suit property B dated 02/02/2009. Since then plaintiff is in possession of the suit property B. At the time of said sale deed, defendant no. 1 was present and he signed for identifying the defendant no. 3 as a seller. However, defendants no. 1 to 3 have started obstructing the possession of the plaintiff over the suit property and have started construction in the suit property B. Hence, plaintiff has prayed to allow the application.

Case of defendant no. 1 to 3

3. Defendants filed their say to the present application at Exh. 20. They have strongly resisted the present application. They have denied all the allegations made by the plaintiff. They have contended that, plaintiff has not come before the Court with clean hands. Plaintiff has suppressed material facts from the Court. Plaintiff is not in possession of the suit property B. Plaintiff and defendant no. 1 to 3 had cordial

relations with the each other. Defendant no. 3 was liquor addict. Husband of plaintiff from time to time had financially assisted the defendant no. 3. By taking disadvantage of the addiction of the defendant no. 3, plaintiff and her husband executed the sale deed from the defendant no. 3. It is further contended that, name of the plaintiff is not mutated in the suit property and the mutation entry no. 16796 in the name of the plaintiff is cancelled. Defendants are running their business of the Hotel and zerox in the suit property since long. Therefore, plaintiff is not in possession of the suit property. Hence, defendants have prayed to reject the application.

4. Perused the application, say at Exh. 20. Perused the documents filed. I have heard the Ld. Advocate for both the parties at length. From the rival pleadings of the parties, following points arise for my determination alongwith their findings for the reasons recorded thereof.

POINTS

Sr. No.	Points	Findings
1.	Whether the plaintiff proves that, he has prima facie case?	Yes
2.	Whether the balance of convenience lies in the favour of plaintiff?	Yes
3.	Whether irreparable loss will be caused to the plaintiff if relief of temporary injunction is not granted?	Yes
4.	What order?	As per final order

5. To prove her case, Ld. Advocate for the plaintiff has relied on documents filed along with the list at Exh. 3. He has filed certified

copy of sale deed dated 02/02/2009, 7/12 extract of the suit property, mutation entry no. 16796, photographs of suit property.

Ld. Advocate for the plaintiff has argued that, plaintiff is the owner of the suit property. The extract submitted by the plaintiff shows that, plaintiff is the owner of the suit property. It is clear that, defendants have started constructing upon the suit property B. Therefore, plaintiff has prayed to allow the application.

6. In support of their case defendants have filed on record, photographs of suit property, mutation entry no. 12934, laon letter from of Jotirling Society, letter given to the Nagar Panchayat, order passed in RTS Revision no. 88/2014, 7/12 extract of the property, gift deed dated 04/06/2020, loan application. On the other hand, Ld. Advocate for the defendants have argued that, they are in possession of the suit property since inception. Defendants have their respective business in the suit property; hence they are in possession of the suit property. Accordingly, defendants have started the construction in suit property, for their hotel business. The sale deed dated 02/02/2009 is falsely executed. Mutation entries are in the name of the defendants. Documents filed support the claim of the defendants. Suit is bad for the non joinder of necessary parties. Plaintiff do not have any prima facie case. Hence prayed for rejection of the application.

Admitted facts

- a) Sale deed dated 02.02.2009.
- b) Construction by the defendant no. 1 to 3.
- c) Cancellation mutation entry no. 16796.
- d) Cordial relations between the parties in their past.

Point no. 1

7. To prove her case, plaintiff has relied upon the sale deed of the suit property. Therefore, it is clear that, plaintiff has interest in the suit property. From the perusal of the record, it also reflects that, defendants have their shop, hotel and restaurant in the suit property. Plaintiff has come before this Court on the basis of sale deed. Upon perusal of said sale deed, it appears that, it is registered one and the recital shows that, possession was handed over to the plaintiff. It is the settled law that, conveyance follows the instrument and it is also the settled law that, title follows possession. Therefore, if the analogy is to be applied to the present case, it reflects that, plaintiff has right and interest in the suit property. The fact that, name of the plaintiff is not mutated to the 7/12 extract of the suit property is also true. However, it is also the settled law that, merely name in the property extract does not define the title of the person over a property. Same is for the fiscal purpose. Therefore, the possession of the plaintiff over the suit property needs to be considered. It also needs to be considered that, plaintiff has filed sale deed on record showing that, she has title in the suit property and same is followed by the possession. On the contrary, defendants have submitted on record the extracts and entries showing that, they had borrowed loan over the suit property and the gift deed executed in between themselves in the year 2002. Same also needs to be considered. Upon perusal of the documents filed by the defendants, it cannot be denied that, they have borrowed loan for the suit property. However, mere borrowing of loan does not confer possession over the suit property. As far gift deed is considered, it is executed in the year 2020 whereas the sale deed of the year 2009 is still in existence. It is important to note that,

execution of sale deed is not denied by the defendants. Therefore, if defendants are admitting the sale deed, they cannot deny the recital given in the sale deed. The construction on the parts of the defendants is also not denied. Therefore, it has prima facie come on record that, defendants are constructing in the suit property B. Hence, it is crystal clear on record that, plaintiff has prima facie case her favour. Therefore, I answer point no. 1 in the affirmative.

Point no. 2

8. Balance of convenience means the comparative mischief or inconvenience caused to the parties. In arriving at prima facie conclusion, the court has to weigh the mischief likely to be caused to the applicants, if interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. As far as balance of convenience is concerned, it is necessary that, balance of convenience must be in the favour of granting injunction. While looking into the factor of balance of convenience, it is important to look into the inconvenience caused to both the parties. From the documents submitted by the plaintiff on record, it prima facie appears that, defendants are constructing in the suit property B which is owned and possessed by the plaintiff. To that extent it has already come on record that, suit property B was transferred to the plaintiff by way of registered sale-deed dated 02.02.2009. The said sale-deed is intact till today. It is neither challenged nor it is cancelled. Therefore from the discussion above made it has already come on record that, plaintiff has prima facie case. Prima facie evidence submitted by the plaintiff is challenged by all the defendants. Even if from the record it appears that, defendants

have started their construction in the suit property by borrowing a loan, it is necessary to look into the fact that, suit property B is owned and possessed by the plaintiff. Therefore if injunction is refused, mischief will be caused to the plaintiff. On the other hand if injunction is granted, no mischief will be caused to the defendants. Hence, if injunction is not granted in favor of plaintiff, then it will not cause any inconvenience to the defendants. Therefore, balance of convenience lies in the favor of the plaintiff. Accordingly, I answer point no. 2 in the affirmative.

Point no. 3

9. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before, injunction was refused. Plaintiff has prayed that, defendants be directed to stop the construction they have initiated in the suit property. The defendants have not denied the construction. If injunction is refused, plaintiff will suffer irreparably and the loss caused can not be compensated or remedied in the form of money especially when plaintiff is the owner and possessor of the suit property. On the other hand if present construction by the defendants is stopped, it will not cause any loss to the defendants. It also needs to be considered that, if the construction initiated by the defendants, it may cause loss to the defendants for the removal of said construction depending upon the decision of the suit. It is admitted fact that, defendants have initiated construction in the suit property. It is pertinent to note that, plaintiff has prima facie case in

her favour and balance of convenience do lie in her favour. Therefore, in view of prima facie material on record, it can be said that, irreparable loss will be caused to the plaintiff. In order to avail the relief of temporary injunction, it is mandatory to satisfy all the necessary conditions. In present case at hands, plaintiff has proved that, she has prima facie case and balance of convenience lies in her favour. Therefore, I answer point no. 3 in the affirmative.

Point no. 4

10. Now it is crystal clear that, plaintiff has prima facie case, balance of convenience lies in her favour and irreparable loss will be caused to her, if injunction is refused. Therefore, present application deserves to be allowed. Hence, I pass following order.

ORDER

1. Application at Exh. 5 is hereby allowed.
2. Defendant no. 1 to 3 or anyone on their behalf are hereby temporarily restrained from constructing in the suit property B by any way or in any manner till the final decision of the suit.
3. Defendant no. 1 to 3 or anyone on their behalf are hereby temporarily restrained from obstructing the peaceful possession of the plaintiff over the suit property in any way or in any manner and from ousting the plaintiff from the suit property B in any way or in any manner till the final decision of the suit.

4. All other applications are hereby filed.
5. Any other order passed is hereby vacated.
6. Both parties to take note of the same.

Date – 22/12/2022

(Priti A. Shriram)
**Jt. Civil Judge Junior Division,
Shirala.**

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	:	V. S. Patil
Court	:	Jt. C.J.J.D. & J.M.F.C., Shirala
Date	:	22/12/2022
Order signed by the Presiding Officer on	:	22/12/2022
Order uploaded on	:	23/12/2022