

KARN320033352023



IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA

Present:

Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)
Prl. Civil Judge & JMFC, Kanakapura

O.S No.412/2023

Dated this the 28th day of February 2024

PLAINTIFF:

Smt. Honnamma

-Versus-

DEFENDANTS:

Sri. Nagesh and others

PARTIES ON I.A.II

APPLICANT:

Plaintiff

Smt. Honnamma

-Versus-

OPPONENTS:

Defendants

Sri. Nagesh and others

ORDER ON I.A No.II

The Plaintiff filed this application U/o 39 Rule 1 and 2 r/w Section 151 of CPC to restrain the defendants from putting up construction over the suit schedule "A" property, pending disposal of the suit.

2. In the affidavit contended that, the plaintiff has filed the suit for permanent injunction against the defendants. The plaintiff is the absolute owner in possession and enjoyment of the suit schedule "A" property in respect of Katha No.51 situated at Mullahalli Village, Uyyamballi Hobli, Kanakapura Taluk. The suit schedule properties were acquired by way of the unregistered panchayath parikath between the husband of the plaintiff and deceased Chikkachudaiah and his own brother's namely Basavaiah, he was dead and his wife Doddamma and Donne Chudaiah on 04.08.2009. After partition, plaintiff and her husband are separately put in possession and enjoyment of the suit schedule "A" and "B" properties. Both the suit schedule properties

katha stands in the name of husband of the plaintiff namely Chikkachudaiah and mentioned his grandfather name Mullallaiah, not mentioned his father name Purdi Basavaiah. The plaintiff's husband and plaintiff paying taxes to the concerned authority regularly since from the date of the partition till today. Sri.Chikkachudaiah who is the husband of plaintiff died on 11.04.2018. After his death, the plaintiff and her family members are the absolute owners in peaceful possession and enjoyment of the suit schedule A & B properties. The plaintiff filed application before the Panchyath Development Officer, Mullahalli Grama Panchayath office, Mullahalli, Kanakapura Taluk on 17.11.2023 for changing the Pouthi katha in the name of plaintiff in respect of the property No.51 measuring East to West North side 0.33 feet, South side measuring 0.19 ½ feet and North to South West side measuring 0.84 feet, East side 0.86 feet as per panchayath parikath. The Panchayath officer has changed the khatha of the suit schedule "B" property in

the name of the plaintiff but intentionally not changed the suit schedule "A" property in the name of plaintiff. Now it is necessary to be changed the khatha of the suit schedule "A" property in the name of plaintiff. The plaintiff's husband and her family members have not executed registered or unregistered documents in respect of the schedule properties either in favour of the defendants or in favour of any third parties. The defendants are utter strangers to the suit schedule "A" property and they have no manner of right, title or interest over the suit schedule "A" property. The defendants are powerful persons having men and money power and the plaintiff being the poor and innocent old aged lady. On 12.12.2023 at 12.30 A.M. the defendants along with a group of henchmen came near the suit "A" schedule property and tried to interfere with the peaceful possession and enjoyment of the property of the plaintiff. With great difficulty the plaintiff could able to resist the illegal act of the defendants. The plaintiff lodge the

complaint before the jurisdictional police but the police have never taken any action and they have pleaded their inability to take any action as the matter is civil in nature and they have advised to approach the Court, Hence, prays to allow the application.

3. On the other hand, the defendants appeared through counsel and filed their written statement and also filed memo to consider the written statement as objection to the I.A No.2.

4. In the written statement, the defendants denied the case of the plaintiff and the defendants submits that, the suit schedule properties are not properties of the defendants. The defendant No.1 to 5 are not having house or properties beside the suit schedule properties. The suit schedule properties are belonged to Anekulada Chikkamma Temple. The plaintiff with an intention to grab the suit schedule properties of Anekulada Chikkamma Temple just to file the above false suit without made department of Mularayi as well as

Government as necessary party in the above suit. So the suit is bad for non-joinder of necessary parties. Further contended that, the husband of the plaintiff was dead and he had three children viz., (1) Basavaraju, (2) Eraiah and (3) Choodaiah. The said Choodaiah was dead and his wife Smt.Jyothi as his legal heir. The suit 'A' and 'B' schedule properties are one and the same. The plaintiff and her son Basavaraju and Eraiah and her daughter-in-law Smt.Jyothi have partitioned the same in three division and they are residing in separate portion. The said Basavaraju is residing in one portion of the house. The said plaintiff and Eraiah are residing in another portion of the house and the said Smt.Jyothi and her children are residing in one another portion of the house. The plaintiff has furnished wrong measurement and boundaries of the suit 'A' schedule properties. The plaintiff has suppressed the material facts. The suit 'A' & 'B' schedule properties are belongs to Anekulada Chikkamma Temple, towards southern side, there is a

Ashwatha Katte, the villagers have raised Aralimara in the said Ashwatha Katte, which was dragged and villagers removed the same. The villagers have prepared to construction for Ashwatha Katte after 3 feet of suit 'A' schedule property. There is no rearing sheep house or properties of the plaintiff. On 17.11.2023 the requisition to the P.D.O for change of E-Katha in respect of Khaneshumari No.51, measuring East-West towards north 33 feet, south 19 ½ feet, North-South towards west 84 ½ feet and east 86 feet and bounded on East, West, North and South: Panchayath Road. But the plaintiff has furnished wrong boundaries in the suit schedule properties just to grab the property of temple. The Mullahalli Grama panchayath PDO visited the spot and drawn mahazar. On 16.01.2024 the P.D.O has taken the statement from villagers of Mullahalli that, the house of the plaintiff in Khaneshumari No.51 and 51A are not damaged or not encroached and the construction of house is belongs to the plaintiff. The southern side of the

property belongs to Anekulada Chikkamma Temple. Further contended that, the plaintiff has no manner of right title or interest nor possession over the property of Anekulada Chkkamma Temple and the plaintiff has stranger to the same. Hence, the defendants prays to reject the application.

5. Heard both the sides.

6. The following points arises for my consideration;

1. Whether the plaintiff has made out the prima-facie case ?
2. Whether the plaintiff show that the balance of convenience lies in her favour?
3. Whether the plaintiff show that, if the application is not allowed irreparable injury will caused to the plaintiff?
4. What order ?

7. My answered to the aforesaid points are as under;

Point No.1 to 3 : In the Affirmative;
Point No.4 : As per final order
for the following

REASONS

8. **POINT NO.1 to 3:** The plaintiff filed the suit for bare injunction in respect of the suit schedule “A” and “B” properties. The plaintiff contended that, the defendants are trying to put up the Ashwathakatte and as the defendants have removed the sheep shed in the suit schedule “A” property. For that, the defendants specifically contended that, the defendants are not having any right over the schedule properties and around the schedule properties and the properties of the defendants were not situated and also there is a existence of Anekulada Chkkamma Temple and now the villagers prepared to construct the Aralikatte as the due to Aralimara was removed by the villagers and now they are prepared to construct Aswathakatte in the schedule “A” property. There is no existence of the property of the plaintiff and also contended that, these defendants never encroached the property of the plaintiff or damaged the property of the plaintiff. In support of their contentions,

the plaintiff and defendants have furnished the photocopies, revenue documents, tax paid receipts, notarized panchayath parikath deed and demand register extract etc.

9. After going through the entire material, there is a dispute in respect of extent of property and the same has been argued while hearing the case. After considering the photocopies and the contentions of the defendants is that, they are noway relates to the schedule properties. But in the written statement also contended that, the villagers are trying to construct Ashwathkatte after three feet of the schedule "A" property. But at this stage, prima-facie considering the photocopies and documents it shows that, earlier there was a shed existing and subsequently it was removed and in its place foundation was laid. It shows that, the contention of the plaintiff are true at this stage. If the defendants construct any structure in the "A" schedule property then it is difficult to remove the same if the plaintiff succeeds in this suit.

Now at this stage it is necessary restrain the defendants from putting up any construction over the schedule "A" property. Hence, in the interest of justice, it is necessary to allow the application and also the plaintiff has made out prima-facie case and balance of convenience also lies in favour of the plaintiff. Hence, this court answered the point No.1 to 3 in the "Affirmative".

10. **POINT NO.4:** For the reasons stated in the Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.II filed by the plaintiff
U/O XXXIX Rule 1 & 2 r/w Sec.151
of CPC is hereby allowed.

The defendants are restrained
from putting up construction over
the suit schedule "A" property, till
the disposal of the suit.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open Court on this the **28th day of February 2024**)

(SURESH ANNAPPA SAVADI)

Prl. Civil Judge & JMFC.,
Kanakapura.