



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO. 2379 OF 2020 (CPC)

BETWEEN:

R. SHANKAR
AGED ABOUT 50 YEARS
S/O LATE B.T. RAJASHEKAR
R/AT: NO.1, ABBIGERE EXTENSION
ABBIGERE, CHIKKABANAWARA POST
BANGALORE-560 090.

...APPELLANT

(BY SRI. G.L. VISHWANATH, SENIOR ADVOCATE FOR
SRI. B. RAVINDRANATH, ADVOCATE)

AND:

R V VENKATESH
AGED ABOUT 59 YEARS
S/O LATE R. VIJAYARANGA
R/AT NO.C-006, N R GREEN WOOD APARTMENT
C.L. RAMAIAH LAYOUT
SHAMPUR MAIN ROAD,
BANGALORE-560 032.

...RESPONDENT

(BY SRI. A. SAMPATH, ADVOCATE)

THIS MFA IS FILED U/O. 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 20.02.2020, PASSED ON IA.NO.1/2019 IN O.S. NO.26439/2019, ON THE FILE OF THE LXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYO HALL, BENGALURU (CCH-73), ALLOWING THE IA.NO.1/2019 FILED UNDER ORDER 39, RULE 1 AND 2 READ WITH SECTION 151 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:





CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

The present miscellaneous first appeal is preferred by the defendant assailing the order dated 20.02.2020 passed on I.A. No.I/2019 in O.S.No.26439/2019 by the LXXII Additional City Civil and Sessions Judge, Mayo Hall, Bengaluru (CCH-73) ('Trial Court' for short), whereby the application filed under Order XXXIX Rules 1 and 2 CPC came to be allowed, granting an order of temporary injunction in favour of the plaintiff.

Brief facts:

2. The plaintiff instituted suit for permanent injunction in respect of Site No.1074, HBR layout, Bengaluru, claiming possession based on an allotment made by the Bengaluru Development Authority in the year 2010. The said allotment was cancelled, as is evident from the letter dated 02.06.2010 and later stated to have been revived. The defendant/appellant contends that the suit schedule property forms part of Survey Nos.154/2 and



155/1 of Nagavara Village, which was never acquired by the BDA. The defendant had earlier filed suit in O.S. No.26987/2013 against the BDA, which was decreed on 07.02.2015. The RFA No.1095/2015 preferred by the BDA came to be withdrawn.

3. Sri G.L. Vishwanath, learned senior counsel appearing on behalf of Sri B. Ravindranath, learned counsel for the appellant, takes this Court to the pleadings and prior proceedings to contend that the very foundation of the plaintiff's claim is untenable. It is submitted that in O.S. No.26987/2013 filed by the present appellant, the suit schedule property was described as a house property bearing No.11, at present Byatarayanapura City Municipal Office Katha No.1328, formed in Survey Nos.154/2 and 155/1 situated at Nagawara Village, Bengaluru South Taluk, measuring in all 12,000 square feet with specific boundaries. It is further contended that the said suit was decreed on 07.02.2015, restraining the BDA from interfering with the plaintiff's (appellant herein)



possession and from alienating or creating any third party rights over the suit property.

4. Learned senior counsel for the appellant submits that the said decree has attained finality, inasmuch as the appeal in RFA No.1095/2015 preferred by the BDA came to be withdrawn. It is pointed out that, as per the office note of the BDA, possession of the land was never taken and further, the name of the original owner did not find place either in the preliminary or final notification. On that basis, permission was granted to withdraw the appeal. It is therefore, contended that once it is established that the BDA has neither acquired the land nor taken possession thereof, any subsequent allotment made in favour of the present plaintiff is void and unenforceable in law. The earlier allotment made in favour of the plaintiff has in fact been cancelled and no valid right subsist. Placing reliance on the judgment of the Division Bench of this Court in the case of **Smt. Shubhashekar and others Vs. The Bangalore Development**



Authority and others¹ (*Shubhashekar*), it is contended that no right can be conferred on the BDA in respect of the lands that has not been lawfully acquired and the allottee cannot claim better title than the authority itself. On these grounds, it is urged that the Trial Court has completely failed to consider the binding decree and settled proposition of law and has erroneously granted injunction in favour of a person who has no semblance of title or lawful possession.

5. *Per contra*, Sri A. Sampath, learned counsel for the respondent contends that the order passed by the Trial Court granting temporary injunction does not warrant interference. It is submitted that the respondent is in lawful possession of the suit schedule property pursuant to the allotment made by the BDA and its subsequent revival and is therefore entitled for protection of such possession. It is contended that the Trial Court, on proper appreciation of the material, has rightly held that the plaintiff has made

¹ W.A. No.3703/2012 D.D. 10.12.2019



out a *prima facie* case and that balance of convenience and irreparable injury are in his favour. Learned counsel would also submit that earlier proceedings relied upon by the appellant do not bind the respondent, as the respondent was not a party to the said proceedings and therefore, findings therein cannot defeat the respondent's independent rights arising out of the allotment made by the BDA. On these grounds, he prays that appeal be dismissed and the order of the Trial Court be confirmed.

6. This Court has carefully considered the contentions and perused the material on record. The point that arises for consideration is:

"Whether the impugned order prima facie the Trial Court warrants any interference by this Court?"

7. The Trial Court, while considering the application filed under Order XXXIX Rules 1 and 2 CPC, has proceeded to hold that the plaintiff has established a *prima facie* case based on the allotment made by the BDA. It was further held that the balance of convenience lies in



favour of the plaintiff and denial of interim protection would result irreparable injury. On such reasoning, the Trial Court restrained the defendant from interfering with the plaintiff's possession over the schedule property, without advertent to the effect of the earlier decree passed in O.S. No.26987/2013 and the subsequent proceedings. The records produced *prima facie* indicate that the BDA had not acquired the land and the appellant is in possession. The Trial Court has not considered this material aspect and proceeded on an erroneous assumption regarding plaintiff's possession. When a serious doubt exists as to the plaintiff's right and possession, grant of injunction is not warranted. However, considering the nature of the property and to avoid multiplicity of proceedings and creation of third party rights, it is appropriate to protect the property during the pendency of the suit and accordingly, the point framed for consideration is answered and this Court pass the following:



ORDER

- i. The miscellaneous first appeal is hereby ***allowed-in-part.***
- ii. The order dated 20.02.2020 passed on I.A. No.1/2019 in O.S. No.26439/2019 by LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru (CCH-73) is ***modified.***
- iii. Both parties are directed to maintain *status quo* in respect of the suit schedule property.
- iv. Since the suit is of the year 2019, the Trial Court is directed to expedite the suit, as far as possible.
- v. It is made clear that any observations made in this order are *prima facie* in nature and shall not influence the Trial Court while adjudicating the suit on its merits.

Sd/-

JUSTICE K.S. HEMALEKHA