



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.6140 OF 2022 (CPC)

BETWEEN:

1. SRI.HANUMANTHAPPA
S/O LATE YELLAPPA
AGED ABOUT 57 YEARS
2. SRI.KAVERAPPA
S/O LATE YELLAPPA
AGED ABOUT 55 YEARS
3. SRI.PILLAPPA
S/O LATE YELLAPPA
AGED ABOUT 45 YEARS

ALL ARE R/AT: CHOODASANDRA VILLAGE
SARJAPURA HOBLI
ANEKAL TALUK
BENGALURU DISTRICT

...APPELLANTS

(BY SRI.D.R.RAVISHANKAR, SENIOR COUNSEL
A/W SRI.SARAVANA S, ADVOCATE)

AND:

1. SRI. VENKATAPPA
S/O. LATE YELLAPPA
AGED ABOUT 70 YEARS
2. SMT. MUNIRATHNAMMA
D/O. LATE RAMAIAH
AGED ABOUT 50 YEARS



3. SMT.KANTHAMMA
D/O LATE RAMAIAH
AGED ABOUT 48 YEARS
4. SMT.KAVERAMMA
D/O LATE RAMAIAH
AGED ABOUT 46 YEARS
5. SMT. MANJAMMA
D/O LATE RAMAIAH
AGED ABOUT 42 YEARS
6. SMT. RADHAMMA
D/O LATE RAMAIAH
AGED ABOUT 40 YEARS
7. SMT.NAGAMMA
D/O LATE RAMAIAH
AGED ABOUT 44 YEARS
8. SMT.BHAGYAMMA
D/O LATE RAMAIAH
AGED ABOUT 38 YEARS
9. SMT.MUNIRATHNAMMA
D/O SRI.VENKATAPPA
AGED ABOUT 47 YEARS
10. SMT.MANJULA
D/O SRI.VENKATAPPA
AGED ABOUT 47 YEARS
11. SRI.G.V.NAGARAJA
S/O SRI.VENKATAPPA
AGED ABOUT 39 YEARS
12. SRI.G.V.GOVINDAKUMAR
S/O SRI.VENKATAPPA
AGED ABOUT 39 YEARS



13. SMT.SUBBAMMA
W/O CHIKKA CHALLAPPA
AGED ABOUT 56 YEARS

ALL ARE R/AT
GUNJUR VILLAGE
VARTHUR HOBLI
BENGALURU EAST TALUK

14. SRI.N.ANANDA REDDY
S/O NARAYANA REDDY
AGED ABOUT 65 YEARS
R/AT NO.618, SUDHANVI
22ND 'B' MAIN, 21ST CROSS
2ND SECTOR, HSR LAYOUT
BENGALURU - 560 102

15. SRI.SHIVARUDRAIAH
S/O LATE VEERABHADRAIAH
AGED ABOUT 65 YEARS
R/AT SHIVANAHALLI
KASABA HOBLI
KANAKAPURA TALUK
BENGALURU DISTRICT

16. M/S.AKARSHA REALITY PVT LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956
HAVING REGISTERED OFFICE AT NO.10
VITTAL MALLYA ROAD
BENGALURU - 560 001
REP BY ITS DIRECTOR
SRI B M JAYASHANKAR

...RESPONDENTS

(BY SRI.V.B.SHIVAKUMAR, ADVOCATE FOR R.16;
NOTICE TO R.1 TO R.15 IS D/W V/O/D 16.09.2022)



THIS MFA IS FILED U/O.43 RULE 1(r) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED 06.04.2022 PASSED ON IA NO.2 AND 3 IN O.S.NO.822/2008 ON THE FILE OF THE V ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING IA NO.2 AND 3 FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF CPC AND ETC.

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

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

This appeal is filed by the plaintiffs questioning the order dated 06.04.2022 passed on the applications - I.A.Nos.2 and 3 filed under Order 39 Rule 1 & 2 of CPC., in O.S.No.822/2008 on the file of the V Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru.

2. The above said applications are filed for temporary injunction restraining defendant No.16 from alienating or creating encumbrance over the suit schedule properties and has also sought for restraining defendant No.16 from interfering with the plaintiffs' peaceful possession over the suit schedule properties.



3. It is the case of the plaintiffs that the suit schedule land bearing Sy. No.143/1 of Gunjur Village is totally measuring to an extent of 1 acre 5 guntas, which is referred as Schedule 'A' property. The grandfather of the plaintiffs namely Muniyellappa had two wives namely Smt.Kaveramma and Smt.Muniyamma. The plaintiffs' father namely Rayasandra Yellappa was the son of Muniyellappa through his 1st wife Kaveramma. The said Muniyellappa had one more son namely Mariyappa through his second wife Muniyamma. The said Rayasandra Yellappa and Mariyappa have succeeded to the suit schedule 'A' property. The said Mariyappa, during his life time, has sold half extent of the land in Sy.No.143/1 towards eastern portion to one Yellappa s/o Doddakaverappa under the registered sale deed dated 12.05.1956, which is shown as Schedule 'B' property and according to the plaintiffs, Rayasandra Yellappa had retained remaining portion of the land in Sy. No.143/1 measuring 22½ guntas towards western side, which is



shown as Schedule 'C' property. After his death, the name of the widow Smt.Yellamma was continued in the records of rights till the year 1994-95 vide IHC No.7/1994-95. Thereafter, defendant Nos.1 to 13 had executed the sale deed in favour of defendant No.14 under registered sale deed dated 02.02.2007 to an extent of 1 acre 5 guntas. Thereafter, defendant No.14 sold the said property to defendant No.15 under registered sale deed dated 27.09.2007 and thereafter, defendant No.15 sold the said property to defendant No.16 under registered sale deed dated 12.08.2011 during pendency of the suit.

4. The case meted out by the plaintiffs in the plaint is that even though defendant Nos.1 to 13 were having right only to an extent of 22½ guntas out of 1 acre 5 guntas in Sy. No.143/1, they have sold the entire extent of the land measuring 1 acre 5 guntas. The plaintiffs have been in possession of the remaining portion of the land measuring 22½ guntas, which is retained by them. Hence, the plaintiffs are claiming declaration by way of adverse



possession in respect of the remaining 22½ guntas in Sy. No.143/1 and also declaration regarding 22½ guntas by way of inheritance from Rayasandra Yellappa.

5. The case of the defendants is that Mariayappa had succeeded to the entire extent of the land measuring 1 acre 5 guntas and accordingly, defendant Nos.1 to 13 have sold the land bearing Sy. No.143/1 measuring 1 acre 5 guntas in favour of defendant No.14 under registered sale deed dated 02.02.2007 and then, defendant No.14 sold the said land to defendant No.15 under the registered sale deed dated 27.09.2007 and thereafter, defendant No.15 sold the said land to defendant No.16 under registered sale deed dated 12.08.2011 and defendant No.16 has been in continuous possession over the suit schedule 'A' property and contend that they never in possession of the entire extent of the suit schedule 'A' property.

6. The plaintiffs have filed applications - I.A.Nos.2 and 3 under Order 39 Rule 1 & 2 of CPC., praying for



restraining defendant No.16 from alienating suit schedule lands and also restraining the defendants from causing interference with the plaintiffs' property. But, the said applications were dismissed by the Trial Court.

7. The documents produced by the defendants established that the names of the defendants are standing in the revenue documents but not the names of the plaintiffs. Also, the documents produced by the defendants shows that the defendants are in possession. Therefore, the possession follows title. Hence, the plaintiffs have failed to make out *prima facie* case. Further, assailed the reason that the defendants have invested a huge amount for the alleged developing of the suit schedule property. Therefore, for all these reasons dismissed the applications.

8. Being aggrieved by the dismissal of the applications, the plaintiffs have filed the present appeal by raising various grounds and learned counsel for the appellants/plaintiffs submitted in consonance with grounds raised in memorandum of appeal that Rayasandra Yellappa



and Mariyappa are two sons of Muniyellappa, having succeeded the suit schedule 'A' land to the extent of 1 acre 5 guntas equally. When this being the fact, Mariyappa has sold only half extent of land towards eastern side to the extent of 22½ guntas in the year 1956 and the remaining half extent to the extent of 22½ Guntas was retained by Rayasandra Yellappa and after the demise of Rayasandra yellappa, the name of his wife was continued in the records till 1993-1994. But defendant Nos.1 to 13 have illegally sold the suit schedule 'A' land to the entire extent of 1 acre 5 guntas, but where Mariayppa has sold only half extent of 22½ guntas as stated. Therefore, the sale deed executed to the entire extent of 1 acre 5 guntas is illegal as having no title to the extent of 22½ guntas and therefore, the plaintiffs are in possession of 22½ guntas of land through inheritance from Rayasandra Yellappa and for the remaining 22½ of guntas, the plaintiffs are in possession. Hence, they have perfected title by adverse possession.



9. On the other hand, learned counsel for the respondents/defendants submitted that Mariyappa has succeeded the entire extent of 1 acre 5 guntas and in the sale deed of the year 1956, the boundary of half extent was sold out is not mentioned. But the boundary to the extent of 1 acre 5 guntas is tallied with the subsequent sale deeds. Therefore, the Mariyappa by virtue of becoming owner of the entire extent of 1 acre 5 guntas of land, has sold out the land and the sale deeds were executed during transactions of defendant No.16 are valid and therefore defendant No.16 is in possession of the property and also has formed the road on the said land to the extent of 1 acre 5 guntas and in this regard, produced photographs and sketches. To this contrary, learned counsel for the appellants/plaintiffs submitted the photographs and sketch showing that they are in possession of the property.

10. Heard the arguments from both sides and perused the materials furnished in the appeal.



11. The following points arises for consideration of this Court are:

- (i) Whether, under the facts and circumstances of the case, the plaintiffs make out *prima facie* case on the basis of the materials produced before the trial court?
- (ii) Whether, under the facts and circumstances of the case, the plaintiffs make out case of balance of convenience on the basis of the materials produced before the trial court so as to grant an order of temporary injunction?
- (iii) Whether, under the facts and circumstances of the case, if an order of temporary injunction is not granted then plaintiffs would suffer any irreparable loss or injury?

12. Upon considering the materials produced at this stage for considering the submissions, it is not disputed that Muniyellappa had two wives namely Kaveramma and Muniyamma. The father of the plaintiff's namely Rayasandra yellappa who was the son of Muniyellappa through his first wife Kaveramma and Muniyellappa had



one more son namely Mariyappa through his second wife Muniyamma. Therefore, both Rayasandra Yellappa and Mariyappa are the children of Muniyallappa who have succeeded to the suit schedule 'A' property to the extent of 1 acre 5 guntas of land. These facts are not disputed.

13. The plaintiffs have produced document of sale deed dated 12.05.1956 stating that the father and grandfather of defendant Nos.1 to 13 namely Yellappa S/o. Dodda Kaverappa have purchased half extent of the said land in Survey No.143/1 to the half extent towards western side. Therefore, Mariyappa has sold the suit schedule 'B' property to one Yellappa S/o. Dodda Kaverappa. It is clearly revealed in the said registered sale deed. Hence, *prima facie* the name of Rayasandra Yellappa was continued in the revenue records to the entire extent of 1 acre 5 guntas till the year 1994-95 and even after the death of Rayasandra Yellappa, the name of his wife has continued in the revenue records. Therefore, on the basis of the continuation of the name of the mother of plaintiffs



namely Yallamma, the plaintiffs are claiming declaration of title to the entire extent of land. When this being the fact, defendant Nos.1 to 13 have sold the entire extent of 1 acre 5 guntas of land through registered sale deed dated 02.02.2007 in favour of defendant No.14. Thereafter, the defendant No.14 sold the said extent of 1 acre 5 guntas to defendant No.15 through sale deed dated 27.09.2007. Thereafter, the plaintiff's have filed the suit for reliefs prayed in the plaint. During pendency of the suit, defendant No.15 sold the land to the extent of 1 acre 5 guntas to defendant No.16 through registered sale deed dated 12.08.2011 and defendant No.16 has been in continuous possession over the suit schedule 'A' property. It is the submission made by the learned counsel for the respondents/defendants that though the suit is filed in the year 2008, the plaintiffs have not filed application for temporary injunction till the year 2025 and only when the defendant No.16 has started carrying out construction of apartment, then the plaintiffs have filed these applications.



Hence, it is submitted that applications are not maintainable as the plaintiffs are not in possession of the property. This is opposed by the learned counsel for the appellants/plaintiffs stating that for the last 40 years, the name of father of the plaintiffs and plaintiffs are continued in the revenue records. Thus, they have perfected their title by their predecessors. When this being the fact, *prima facie* case was asserted on the basis of pleadings and documents produced at this stage.

14. As per the sale deed dated 12.05.1956, Mariyappa has sold only to the extent of 22½ guntas out of 1 acre 5 guntas towards eastern side to one Yellappa S/o. Dodda Kaverappa who is the father of defendant Nos.1 to 13. Therefore, defendant Nos.1 to 13 are having right and title over this property. Therefore, *prima facie* the title of defendant Nos.1 to 13 is to the extent of 22½ guntas of land throughout sale deed dated 12.06.1956 but defendant Nos.1 to 13 have executed registered sale deed



in favour of defendant No.14 to the extent of 1 acre 5 guntas which is continued to subsequent transactions till purchase made by defendant No.16. Therefore, how the defendant Nos.1 to 16 have acquired title to the entire extent of 1 acre 5 guntas is to be considered at the time of trial. But, Rayasandra Yellappa retained the schedule 'C' property to the extent of 22½ guntas. Therefore, this is a question to be considered in the trial. In this regard, the plaintiffs have made out *prima facie* case and balance of convenience so far as 22½ guntas of land as shown in the schedule 'C' property.

15. The title of defendant Nos.1 to 16 is to be traced out through Yellappa S/o. Dodda Kaverappa who has purchased only to the extent of 22½ guntas as per the sale deed dated 12.05.1956. Though the plaintiffs are claiming that they are in possession of the other remaining 22½ guntas and claiming title through registered sale deed which does not make a *prima facie* case and balance of convenience so as to grant temporary injunction for the



remaining 22½ guntas which is in possession of defendant No.16. Therefore, when this is considered, the plaintiffs have made out *prima facie* case and balance of convenience only to the extent of 22½ guntas but not to the entire extent of 1 acre 5 guntas.

16. On the other hand, the defendant No. 16 is in possession over the property. Though, he has purchased the property during pendency of the suit but he is in possession. *Prima facie* he is in possession to the extent of 22½ guntas and by virtue of photographs produced shows the road is formed. Therefore, defendant No.16 is in possession over the land to the extent of 22½ guntas. Accordingly, the plaintiffs have made out *prima facie* case and balance of convenience to the extent of 22½ guntas only towards western side but not to the entire extent of 1 acre 5 guntas. Therefore, the plaintiffs have made out a *prima facie* case and balance of convenience in part to the extent of 22½ guntas and if an order of temporary injunction is not granted to the extent of 22½ guntas, then



the plaintiffs would suffer injury/loss in case defendant No.16 is carried out construction activities on the remaining 22½ guntas. Therefore, the plaintiffs are entitled for an order of temporary injunction to the extent of 22½ guntas only towards western side but not to the entire extent of 1acre 5 guntas. Accordingly, my answer to point Nos.1 to 3 in the ***partly affirmative***. Hence, this Court is passing the following:

ORDER

- (i) The appeal is ***allowed-in-part***.
- (ii) The order dated 06.04.2022 passed on the applications - I.A.Nos.2 and 3 filed under Order 39 Rule 1 & 2 of CPC., in O.S.No.822/2008 on the file of the V Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru, is ***set aside***.
- (iii) Defendant No.16 is restrained from interfering with the plaintiffs' possession of 22½ guntas towards western side out of 1 acre 5 guntas and also defendant No.16 is restraining from making



alienation of 22½ guntas of land towards western side out of 1 acre 5 guntas.

- (iv) It is made clear that whatever construction activities to be carried out by defendant No.16 towards eastern side of 22½ guntas is subject to result of the suit as defendant No.16 has purchased the property during the pendency of the suit.
- (v) It is submitted that now the suit is set down for cross-examination of D.W.2. Therefore, prays for early disposal. Hence, the trial Court is directed to dispose of the suit as expeditiously as possible within a period of 3 months from the date of receipt of certified copy of this order.
- (vi) Pending IAs., shall stand disposed of.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE