

**IN THE COURT OF THE XVI ADDL.CITY CIVIL AND
SESSIONS JUDGE, (CCH 12), BENGALURU**

DATED: THIS THE 17th DAY OF JANUARY 2024

PRESENT: **SMT. JYOTHSNA D., LL.B., LL.M.,**
XVI ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU

ORIGINAL SUIT No.3904/2023

PLAINTIFF/S	SMT. DEEPIKA Represented by Smt/Sri N.R., Advocate
-- Vs --	
DEFENDANT/S	THE STATE OF KARNATAKA AND OTHERS
	Defendant No.5 represented by Smt/Sri N.R.J., Advocate Defendant No.1 to 4 and 6 - Exparte

ORDER ON IA Nos.1 AND 2

IA Nos. 1 and 2 are filed by the plaintiff separately under Order 39 Rule 1 and 2 of CPC.

2. In IA No.1, it is prayed for the grant of an ad-interim order of temporary injunction restraining the defendants, their agents or anybody claiming under them from alienating or creating third parties interest in respect of 'B' Schedule Property till the disposal of the suit in the interest of justice and equity.

3. In IA No.2, it is prayed for grant of an ad-interim order of temporary injunction restraining the defendants, their agents or anybody claiming under them from changing the nature or put-up any construction on 'B' Schedule Property till the disposal of the suit in the interest of justice and equity.

4. In support of both the IAs plaintiff has filed separate affidavits which contains same averments. In the affidavits, it is stated that the above suit is filed for declaration and other consequential reliefs. The facts pleaded in the plaint are adopted as an integral part of the affidavit.

5. It is submitted by the plaintiff that she acquired 'A' Schedule Property by virtue of registered partition deed dated 17-04-2006. Subsequently, an order of conversion was passed by the Deputy Commissioner. Further, since 'A' schedule property comes within jurisdiction of BBMP, she paid tax to BBMP and BBMP also effected 'A' Katha in her name and she is in possession of the 'A' Schedule Property.

Further stated that on 15-02-2023, at about 6.00 A.M., the defendants have encroached the 'B' Schedule Property on the guise that it belongs to Government. By encroaching upon 'B' Schedule Property, with police force, they have taken the possession. Her repeated request for conducting survey did not

yield any result. Even, the higher authority of the Home Department also declined to take action against the defendants' authority. Having no alternative, she made an application for conducting of HADDUBAST of her property. Under the Haddubast, it was revealed that the defendants have encroached upon 'B' Schedule Property, which absolutely belongs to her only. But, it is learnt that, the respondent Nos.2 and 3 have authorized the third parties to put-up the construction of Traffic Police Station on the Schedule B property. If, in the event, the illegal construction is allowed, she will be put to great injustice. Without aid and assistance of this Court, she could not able to resist the illegal act of the defendants.

Further submitted that if this application is not allowed, she will be put to great hardship and loss resulting in miscarriage of justice. On the contrary no harm or injury would be caused to defendants. Hence, this application.

6. On the other hand defendant No.5 appeared through its learned counsel and filed written statement and adopted the written statement as objection to this IA. In spite of service of summons, the defendant Nos. 1 to 4 and 6 did not appear before the court and hence, they are placed ex-parte.

7. In the written statement of defendant No.5, it is contended that the suit is not maintainable for the reason that the plaintiff has suppressed the material facts and she has not approached this Court with clean hands. It has denied all plaint averments as they are not within the knowledge of defendant No 5 and the plaintiff is claiming the government property by the virtue of alleged partition deed dated 17/04/2006 and the plaintiff has not produced any title deed to show how the plaintiff and her family has got the alleged property and there is no whisper in the said partition deed and not entitled to claim the B scheduled property as of her home. Further the boundary shown in the plaint A and B schedule shows that there exists a government gomala land and the plaintiff is trying to grab the said land by filling the above privilege suit as against the State and statutory body and the plaintiff is not in alleged possession of the suit schedule property and plaintiff has to identify her property by conducting the survey and in the absence of the survey sketch prepared by the concerned authority, the property cannot be identified as A and B schedule property as claimed in the plaint and therefore plaintiff ought to have filed comprehensive suit for declaration and consequential reliefs.

Therefore the suit of the plaintiff is liable to be dismissed and there is no cause of action to institute the above suit.

It is submitted by the defendant No.5 that the Deputy Commissioner - 3rd defendant herein vide its order dated 18/04/2022 has granted 0.14.8 Guntas in favour of 6th defendant herein, 0.35 Guntas in favour of B.B.M.P. for waste management and 0.10 Guntas for the purpose of park and the widening of the road in favour of the B.B.M.P., out of gomala survey number 13 of Abbigere Village, Yashwanthpura Hobli and these defendants are in possession of the said property and the plaintiff has filed the present suit in respect of the said property even though plaintiff is not having right to claim over the same. There is no cause of action for the suit and alleged one is false and created for the purpose of the case. The suit is not valued properly and no proper court fee is paid on the plaint and prayed to reject the same.

8. Heard the arguments. Perused the materials placed on records.

9. The points that would arise for consideration of this Court are:-

Point No 1. Whether applicant/plaintiff has made out a prima facie case to allow IA No 1 and 2?

Point No 2. Whether balance of convenience lies in favour of the plaintiff ?

Point No 3. Whether applicant/plaintiff proves that if the Temporary Injunction is not granted she will be put to irreparable injury and loss than the defendants ?

Point No 4. What order?

10. The findings of this Court on the above Points are as follows:

Point No.1 to 3 -In the Negative;

Point No 4 - As per final order,

for the following -

REASONS

11. **Point Nos.1 to 3 :-** As all these points are interconnected, in order to avoid repetition of facts, they are taken up together for consideration.

12. Admittedly, this suit is filed by the plaintiff against the defendants for declaration and permanent injunction. It is prayed

for declaration that the plaintiff is the absolute owner of plaint B Schedule property and consequently direct the defendant authority to hand over the possession of said property to the plaintiff. It is further prayed for the grant of permanent injunction restraining the defendants and their agents or anybody claiming under them from developing/ creating any 3rd parties interest over B Schedule property and for other consequential reliefs.

13. The case of the plaintiff is that she is the absolute owner and lawful possession and enjoyment of the property bearing Sy.No. 12/1A7 measuring to an extent of 7 guntas situated at Abbigere Village, Yeshwanthapura Hobli, Bengaluru North Taluk having acquired the said property by virtue registered partition deed dated 17-04-2006 registered as document No.3323/2006-07 registered in the office of the Sub-Registrar, Bangalore North Taluk, Bangalore. Subsequent to the acquisition, the revenue authority effected the mutation in the name of the plaintiff vide MR 24/2008-09. Accordingly the plaintiff is in possession and enjoyment of the said property. Further the plaintiff has also moved for conversion of land before the Deputy Commissioner and on her request, the Deputy Commissioner, Bangalore conducted an enquiry and then passed an order of conversion and accorded permission for conversion

from agriculture to residential purpose vide order of conversion bearing No. ALN(N)(Y)SR 101/2014-15 dated 10-09-2015.

14. Further averred that consequent upon an order of conversion, since the property lies within the jurisdiction of BBMP, the plaintiff also paid development charges to the BBMP and thereupon the BBMP authority also issued A-Katha in the name of the plaintiff and she is in possession of the said property. Further she is also paying tax to the BBMP continuously.

15. It is stated that on 15-02-2023 at 6.00 A.M., the plaintiff received information from public at large that the defendant authority trespassed into the property of the plaintiff and started to level the portion of the plaintiff's property along with local police. Immediately after receipt of information from public at large, she rushed to the spot and questioned about the alleged trespass of the defendant authority and requested them not to indulge in any illegal activities. During that point of time, the 3rd and 4th defendants have canvassed that the property which was encroached by the defendant authority belongs to the Government, since Sy.No.13 belongs to the Government which is adjacent to Southern Portion of "A" schedule property. Despite

repeated request, the defendant authority did not heed to the request of the plaintiff on the ground that, a portion of the property which belongs to the plaintiff is a Government Land. Further the 3rd defendant canvassed that the aforesaid property has been handed over to 6th defendant, Home Department for construction of Traffic Police Station. Based on the aforesaid assertion, the defendants have encroached upon an extent of 1.1/4 guntas of the land out of "A" schedule property which belongs to the plaintiff. Even the jurisdictional police also declined to receive the complaint filed by the plaintiff. Further the DCP, Bangalore North also when requested to take action against the defendants on 15-02-2023, did not receive the complaint and advised to conduct the survey. Hence, this suit.

16. In the above IA, it is further submitted that despite her repeated request for conducting survey also, it did not yield any result. Even the higher authority of the Home Department also declined to take action against the defendants' authority. Having no alternative, she made an application for conducting of HADDUBAST of her property. Under the Haddubast, it revealed that the defendants have encroached upon 'B' Schedule Property, which absolutely belongs to her only. But, it is learnt that, the defendant Nos.2 and 3 have authorized the third

parties to put-up the construction of traffic police station on the B schedule property. If, in the event, the illegal construction is allowed, she will be put to great injustice. Without aid and assistance of this Court, she could not able to resists the illegal act of the defendants.

17. The plaint A schedule is stated as the agricultural land to an extent 0-07 guntas in Sy.No 12/1A7 of Abbigere Village which is alleged to be the property of the plaintiff acquired by her through partition deed. In support of the same, she has produced certified copy of partition deed dated 17-04-2006, but the schedule of property shown as the property allotted to the share of the plaintiff is shown in the property in Sy.No 12/1A5 of the Abbigere Village and the same is reflected in Form No.10. In B-hatha Extract, survey number is shown as 12/1AA, but in the tax paid receipt, it is shown as 12/1A7. But again in the Encumbrance Certificate, it is reflected as Sy.No.12/1A5 of Abbigere Village. Though in the plaint schedule, it is shown as agricultural land, but in the conversion Order dated 10-09-2015 produced by the plaintiff, it shows that the property measuring 0-07 guntas in Sy.No 12/1A7 of Abbigere village was converted to non-agricultural purpose in respect of application filed by the plaintiff.

18. In support of her, the case plaintiff has produced further documents such as RTC in respect of Sy.No.12/1A5 in which the name of plaintiff, her mother and brothers are reflected. But it is in respect of Sy.No 12/1A5 of Abbigere village. But both suit schedule A and B properties are coming under Sy.No 12/1A7. The HADDUBAST NAKSHE produced by the plaintiff is pertaining to Sy.No.12/1A7 which is not corresponding with schedule in the Partition Deed. Though towards South and West of A and B Schedule property, there is Gomala Land in Sy.No.13, but without trial, it cannot be concluded that whether defendants have encroached the property of the plaintiff. The plaintiff has produced photographs, but there are no documents to show the possession of the plaintiff over the suit schedule property.

19. On the other hand, the learned counsel for defendant No.5 argued that the plaintiff has not produced any other document other than the Partition Deed to show as to how her family got the title over the property shown in the partition deed which is included as suit schedule property and narrated about the grant of the property to 6th defendant.

20. As per facts and circumstances of the case and on the basis of the above discussion, at this stage, the plaintiff has not made out any prima facie ground and also failed to show that balance of convenience in her favour. The documents produced by the plaintiff make it clear that it needs full-fledged trial for disposal of the suit claim which involve relief claimed in these IAs. Hence, **this court answers Point Nos.1 to 3 in the Negative.**

21. **Point No.4 :-** For the foregoing reasons, discussions and in view of findings on the above points, IA Nos.1 and 2 filed by the plaintiff are liable to be rejected. In result proceed to pass the following;

ORDER

The IA Nos.1 and 2 filed by the plaintiff under Order XXXIX Rule 1 and 2 separately are hereby rejected.

No order as to costs.

(Dictated to Steno Grade I directly on computer, revised by me and after corrections, pronounced in open Court on this the 17th day of January 2024)

(JYOTHSNA D.,)
XVI Addl. City Civil &
Sessions Judge, Bengaluru.

17.01.2024

(Order pronounced in Open Court
vide separate Ordere)

ORDER

IA Nos.1 and 2 filed by the plaintiff
under Order XXXIX Rule 1 and 2
separately are hereby rejected.

No order as to costs.

(JYOTHSNA D.,)

XVI Addl. City Civil & Sessions Judge,
Bengaluru.

11.09.2023

Orders on
IA No.1 pronounced in
Open Court vide
separate orders :

ORDER

The IA No.1 and
2 filed by the plaintiff
under Order XXXIX
Rule 1 and 2
separately are hereby
rejected.

No order as to
costs.

XVI Addl. City Civil &
Sessions Judge,
Bengaluru

