

KABC0A0011852023



**IN THE COURT OF THE 74th ADDL. CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU.
(CCH-75)**

Dated: This the 19th day of October, 2024.

PRESENT:

Sri.PRAKASH CHANNAPPA KURABETT, B.Sc., LL.B.,(Spl.),
74th Addl. City Civil and Sessions Judge, Bengaluru.

O.S. No.25489/2023

Plaintiff:	Sri.Dinesh.R.
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(Rep.by Sri.PS, Advocate)

V/S

Defendant:	Sri.D.K.Prabhakar.
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(Rep.by Sri.EV, Advocate)

PARTIES IN IA No.III:

Applicant:	Sri.Dinesh.R. - Plaintiff.
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V/S

Opponents:	Sri.D.K.Prabhakar - Defendant.
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ORDERS ON IA No.III

Plaintiff has filed I.A. No.III u/O XXXIX Rule 1 & 2 r/w Sec.151 of CPC seeking temporary injunction restraining defendant from disconnecting the electricity in the suit schedule property and enjoyment of the plaintiff's schedule property.

2. *In the affidavit annexed to I.A. No.III, plaintiff has stated that, he is the absolute owner of the schedule property having acquired the same from Susilamma.K., under registered sale deed dated 21.10.2022. The said Susilamma.K., had acquired the schedule property under registered sale deed dated 18.11.1970. The khatha is standing the name of his vendor. There exists a compound wall around the schedule property and with ACC sheet shed. As such the defendant who is adjacent owner of the schedule property having no right over the schedule property is trying to interfere with his peaceful possession and*

enjoyment of the schedule property. When he has questioned the illegal acts of the defendant, he has threatened with dire consequences. He lodged complaint to the jurisdictional police against the defendant, but the police have advised him to approach the civil court as the matter is civil in nature. He has a *prima facie* case and balance of convenience lies in his favour. If, application is not allowed he would be put to irreparable loss and hardship. On the other hand no hardship would be caused to the other side. On these and other grounds stated in the affidavit annexed to I.A. No.II, plaintiff prays to allow the said application and to grant the relief of temporary injunction as prayed for.

3. Defendant resisted I.A No.II. He contend that, the application is not maintainable either in law or on facts. He has denied the entire allegations of the plaint averments. Further he contend that the schedule property is the part and parcel of the share fallen to the share of defendant's grandfather under registered partition deed dated 5.6.1950

entered into between his brother. After the demise of his grandfather, the property has fallen to the share of defendant's father under oral partition with his elder brother Muni Nanjappa and his sister Muni Nanjamma. Thereafter the defendant has got the property under registered partition deed dated 30.07.2018 entered into his uncle, father and him. Since the vendor of plaintiff and her daughter colluded with others and tried to interfere with the peaceful possession and enjoyment of the father of defendant with respect to schedule property in the year 2009, the father of defendant has filed the suit in O.S. No.7728/2009 before City Civil Court for permanent injunction. The same was decreed in favour of father of plaintiff on 3.1.2012.

4. *Further he contend that the vendor of the plaintiff Susheelamma had filed suit against the father of defendant for permanent injunction in O.S. No.7835/2009 with respect to the schedule property and the same was dismissed for non-prosecution on 25.11.2010. Thereafter the defendant*

and his father are in peaceful possession and enjoyment of the schedule property. But, suddenly in the April month of 2022 the vendor of plaintiff and her daughter tried to construct the compound wall and shed in the schedule property, then the defendant has given police complaint and when they not taken any action, given complaint to the Police Commissioner on 18.4.2022. Thereafter the defendant has filed execution case against the vendor of plaintiff in Ex.No.895/2022 before City Civil Court and the same is pending. The defendant also filed suit in O.S. No.2752/2022 against the vendor of plaintiff and her daughter before City Civil Court, which is posted for further evidence of plaintiff and there is an order of maintain status quo against the defendant.

5. *Further he contend that even though there is a suit and execution case are pending against her with ulterior motive and malafide intention, colluded with the plaintiff illegally created the sale deed on 21.10.2022, which was not*

within the knowledge of the defendant. There was a small shed constructed by the defendant which is given to rent to one Kamalamma. Suddenly in the month of March 2023 the vendor of plaintiff along with the plaintiff and others tried to interfere with the schedule property by breaking the door of the shed. The defendant also given representation to the BESCOM regarding illegal meter connection by the Susheelamma. The Assistant Executive Engineer has visited the spot and found that suit schedule property involved in O.S. No.7728/2009 and the meter connection taken property are both one and the same. Hence, he has issued letter to the Susheelamma seeking explanation on 24.3.2023. The plaintiff in the first week of June, 2023 started to put up construction by digging the property by taking the advantage of interim order of the court. The plaintiff has misrepresented the court and got the interim order against the defendant not to demolish the shed and not to disconnect the electricity connection. But, he has started to put up construction with the help of illegal elements to grab the

property from the defendant. There is a status quo order against the vendor of the plaintiff and it also have binding effect on the plaintiff. The plaintiff has suppressed the material facts and not produced the relevant documents to get favourable order against the defendant by court. Looking from any angle the plaintiff has no right, title and interest over the property and he is not in the possession of the schedule property. There is no cause of action. Accordingly, the defendant has prayed for dismissal of the application.

6. *Heard the arguments on both side and perused record.*

7. *The following points would arise for consideration:-*

1. Whether the plaintiff has made out any prima facie case in his favour?

2. Whether the balance of convenience lies in his favour?

3. Whether plaintiff will be put to irreparable loss and injury, if the relief of temporary injunction is not granted?

4. What order?

8. *My answer to the aforesaid points are as under:-*

Point No.1: In the Negative,

Point No.2: In the Negative,

Point No.3: In the Negative,

**Point No.4: As per final order,
for the following:-**

REASONS

9. POINT Nos.1 TO 3: *All these three points are interrelated, they have been taken up for consideration together.*

10. *I have perused the list of documents produced by the plaintiff; i.e., xerox copies of sale deed of plaintiff, sale deed of plaintiff's vendor, B-Khatha and tax paid receipts.*

11. *I have peruse the list of documents produced by the defendant; i.e., copies of the partition deed dated 5.6.1950, partition deed dated 30.07.2018, plaint in O.S. No.7728/2009, judgment and decree in O.S. No.7728/2009, IA filed in O.S. No.7835/2009, order sheet in O.S. No.7835/2009, complaint dated 18.04.2022, representation given to BBMP, Ex.Petrn. in Ex.No.895/2022, plaint and status- quo order, acknowledgement given by police, letter issued by BESCO, complaint given to Assistant Commissioner of Police, representation given to BBMP and photographs.*

12. *Perusal of the same, the schedule property is the part and parcel of the share fallen to the share of defendant's grandfather under registered partition deed dated 5.6.1950 entered into between his brother. After the demise of his grandfather, the property has fallen to the share of defendant's father under oral partition with his elder brother Muni Nanjappa and his sister Muni Nanjamma. Thereafter*

the defendant has got the property under registered partition deed dated 30.07.2018 entered into his uncle, father and him. Since the vendor of plaintiff and her daughter colluded with others and tried to interfere with the peaceful possession and enjoyment of the father of defendant with respect to schedule property in the year 2009, the father of defendant has filed the suit in O.S. No.7728/2009 before City Civil Court for permanent injunction. The same was decreed in favour of father of plaintiff on 3.1.2012.

13. *Perusal of the material available on record, clearly goes to show that the vendor of the plaintiff Susheelamma had filed suit against the father of defendant for permanent injunction in O.S. No.7835/2009 with respect to the schedule property and the same was dismissed for non-prosecution on 25.11.2010. Thereafter the defendant and his father are in peaceful possession and enjoyment of the schedule property. But, suddenly in the April month of 2022 the vendor of plaintiff and her daughter tried to construct the*

compound wall and shed in the schedule property, then the defendant has given police complaint and when they not taken any action, given complaint to the Police Commissioner on 18.4.2022. Thereafter the defendant has filed execution case against the vendor of plaintiff in Ex.No.895/2022 before City Civil Court and the same is pending. The defendant also filed suit in O.S. No.2752/2022 against the vendor of plaintiff and her daughter before City Civil Court, which is posted for further evidence of plaintiff and there is an order of maintain status quo against the defendant.

14. *Perusal of the same even though there is a suit and execution case are pending against her with ulterior motive and mala fide intention, colluded with the plaintiff illegally created the sale deed on 21.10.2022, which was not within the knowledge of the defendant. There was a small shed constructed by the defendant which is given to rent to one Kamalamma. Suddenly in the month of March 2023 the vendor of plaintiff along with the plaintiff and others tried to*

interfere with the schedule property by breaking the door of the shed. The defendant also given representation to the BESCOM regarding illegal meter connection by the Susheelamma. The Assistant Executive Engineer has visited the spot and found that suit schedule property involved in O.S. No.7728/2009 and the meter connection taken property are both one and the same. Hence, he has issued letter to the Susheelamma seeking explanation on 24.3.2023. The plaintiff in the first week of June, 2023 started to put up construction by digging the property by taking the advantage of interim order of the court. The plaintiff has misrepresented the court and got the interim order against the defendant not to demolish the shed and not to disconnect the electricity connection. But, he has started to put up construction with the help of illegal elements to grab the property from the defendant. There is a status quo order against the vendor of the plaintiff and it also have binding effect on the plaintiff. The plaintiff has suppressed the

material facts and not produced the relevant documents to get favourable order against the defendant by court.

15. Perusal of the material available on record clearly goes to show that looking from any angle the plaintiff has no right, title and interest over the property and he is not in the possession of the schedule property. There is no cause of action. Hence, plaintiff failed to prove prima facie case against the defendant. Hence, plaintiff is not entitled injunction as against the defendant. Hence, if the TI is granted the defendant put into irreparable loss, which cannot be compensated in terms of money and balance of convenience lies in favour of the defendant. Hence, it is just and necessary to reject the IA. Thereby, I answer point for consideration Nos.1 to 3 **in Negative.**

16. POINT NO.4: In view of my reasons and findings on point Nos.1 to 3, I proceed to pass the following:-

ORDER

***IA No.III filed by the plaintiff u/
O XXXIX Rule 1 & 2 r/w Sec.151 of
CPC is rejected.***

No order as to costs.

*(Dictated to the Stenographer, transcript thereof, corrected
and then pronounced by me in the open court on this the 19th
day of October, 2024).*

(PRAKASH CHANNAPPA KURABETT)
*LXXIV Addl. City Civil & Sessions Judge,
Mayohall Unit, City Civil Court,
Bengaluru. (CCH – 75)*

Order pronounced in the open court (vide separate order).

ORDER

***IA No.III filed by the plaintiff u/
O XXXIX Rule 1 & 2 r/w Sec.151 of
CPC is rejected.***

No order as to costs.

(PRAKASH CHANNAPPA KURABETT)
LXXIV Addl. City Civil & Sessions Judge,
Mayohall Unit, City Civil Court,
Bengaluru. (CCH – 75)

