

**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE,  
BENGALURU RURAL DISTRICT, BENGALURU**

PRESENT: **SRI. CHANDRAIAH. B. P.**, B. A. LLB.,  
I Additional Civil Judge, Bengaluru Rural District,  
Bengaluru.

**Dated this the 26<sup>th</sup> day of May 2023**

**O. S. No.1390/2022**

**PLAINTIFF:**

Rajanna B. C., S/o. Late. Chikkanna,  
aged about 63 years, R/at No.160/2,  
Amulya Form, Kyalasannahalli  
Village, Shivaramakaranth Nagar  
Post, Bengaluru -560077.

***(By Sri. Ravikumar B. R., Advocate)***

***- Versus -***

**DEFENDANT:**

Rathnamma, W/o. late. Venkatappa,  
aged about 55 years, R/at.  
Kyalasannahalli Village, K. R. Puram  
Hobli, Bengaluru East Taluk.

***(By Sri. S. M. Sriramareddy., Advocate)***

**PARTIES ON INTERLOCUTORY APPLICATION. No.I.**

**APPLICANT:** Rajanna B. C.

***V/s***

**OPPONENT:** Rathnamma.

**ORDERS ON INTERLOCUTORY APPLICATION No.I.**

This application is filed by the plaintiff under order XXXIX rule 1 and 2 R/w Section 151 of Code of Civil Procedure and prays to pass an order of temporary injunction restraining the defendant, her agents, servants or anybody claiming through her from interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property in any manner till disposal of the suit.

2. This application is supported with an affidavit sworn by the plaintiff and stated that he is the absolute owner of the converted land bearing Sy No.50/3, measuring 37 guntas (converted by the DC Bengaluru vide ALN(PU)SR)KRU.HO)41/11-12 situated at Kyalasannahalli Village, K. R. Puram Hobli, Bengaluru East Taluk, now coming under BBMP ward No. 25, Bengaluru, along with RCC roof house and go-down, bounded on east by 12 feet road, property belonging to Rathnamma and Hanumaiah, west by property allotted to the PC Gopal, North by Bengaluru Road and south by property belonging to Doddabasappa (hereinafter called as suit schedule property).

3. It is further stated that originally land Sy No. 50/3 measuring 1 acre 24 gunta including 2 guntas karab land belonging to one late. Munishamappa who is the grand father of plaintiff. After death of said Munishamappa, his children's and grand children's were partitioned their ancestor property through partition dated 31.01.2020. As per partition, the suit schedule property was allotted to the share of plaintiff and from the date of partition the plaintiff is in possession and enjoyment of the suit schedule property by excising all rights of ownership. It further stated that the plaintiff has constructed a RCC roof building having a go-down in the portion of the suit schedule property. All the documents were standing in the name of plaintiff.

4. It is further stated that defendant is the sister of the plaintiff and portion of land bearing Sy. No.50/3 measuring 03 guntas of land towards eastern side of the suit schedule property was allotted to the share of the defendant. It is further stated that land bearing Sy. No.50/3 of Kyalasananhalli village is not phoded. On 25.09.2022 by taking advantage of the same, the defendant is trying to interfere with the suit schedule

property and also trying to encroach the suit schedule property. It is further stated that the defendant was falsely contended that she has acquired the land bearing Sy. No.2/1 measuring 04 guntas through sale deed dated 18.06.2005 from B. M. Ramaiah S/o. Munitamaiah @ Muniramappa. It is further stated that the plaintiff has resisted the illegal act of the defendant with the help of public and neighbors. But, the defendant has threaten that she will come again and interfere with the possession of the plaintiff over the suit schedule property.

5. It is further stated that on 26.09.2022 the defendant had lodge a false complaint against the plaintiff. The defendant has created fake documents in support of their claim. The defendant by using created documents, she has trying to encroach the property belonging to plaintiff.

6. It is further stated that plaintiff have a prima facie case and balance of convenience lies in favour of plaintiff. The plaintiff will be put to great injustice in case if the plaintiff is dispossess from the suit schedule property. On the other hand no injustice will be caused

to other side, if the defendant is restrained from illegally interfering with the possession of the suit schedule property. On these grounds the plaintiff prays to allow this application.

7. In the objection the defendant has stated that application filed by the plaintiff is not maintainable either in law or on facts. It is further stated that suit of the plaintiff is not maintainable and the plaintiff is not having any manner of right, title or interest over the property belonging to the defendant. There is no nexus between the plaint schedule property and property belonging to defendant. The plaintiff is trying to encroach the property belonging to the defendant by filing this suit.

8. It is further stated that the plaintiff has suppressed the facts and he has not approach this court with clean hand. It is further stated that defendant is an absolute owner in possession and enjoyment the land in Sy. No.2/1 Kyalasannahalli Village, measuring 04 guntas, same is purchased through registered sale deed dated 18.06.2005 from one

B. M. Ramaiah. The plaintiff having no right title and interest to challenge the said sale deed.

9. It is further stated that the plaintiff is not in possession of entire suit schedule property and he has relinquished an extent of 467.50 sq. mts in favour of the Government of Karnataka, the Commissioner, BBMP, Bengaluru under relinquishment dated 25.02.2012 for winding of road by BBMP. The plaintiff has acquired the suit schedule property under partition to an extent of 37 guntas in Sy. No.50/3. Out of the said land, he had relinquished nearly 05 guntas of land in favour of BBMP. It is further stated that the land in Sy. No.2/1 of Kyalasannahalli Village, measuring 04 gunats is belonging to the defendant is adjacent land belonging to the plaintiff. The plaintiff is trying to dispossess the defendant by filing this suit.

10. It is further stated that the plaintiff is not having prima facie case and balance of convenience lies in favour of the defendant. If the present application is dismissed no harm or prejudice or injustice will be caused to the plaintiff. On the other hand if the application is allowed the defendant will be put to great

prejudice, injustice and hardship will be caused to her. On these ground the defendant prays to reject the application.

11. Heard.

12. Upon hearing arguments and perusal of material placed on records the following points would arose for consideration of this court;

- 1. Whether the plaintiff has made out a prima facie case to grant an order of temporary injunction ?***
- 2. Whether balance of convenience lies in favour of the plaintiff ?***
- 3. Whether any irreparable injury and hardship would cause to plaintiff, if an order of temporary injunction is not granted ?***
- 4. What order ?***

13. After hearing and on perusal of the materials on record, this court has proceeds to answer the aforesaid points as hereunder;

**POINT No.1 to 3:** In the Negative.

**POINT No.4:** As per the final order for the following;

### **REASONS**

14. **POINT No.1:** The plaintiff has filed this suit for declaration and permanent injunction against the defendant with respect of suit schedule property. The plaintiff has also filed the present application along with plaint and prays to pass an order of temporary injunction restraining the defendant, and her agents, servants or anybody claiming through her from illegally not interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property in any manner till disposal of the suit. Therefore, prima facie case is to be made out by the plaintiff. In order to consider, whether the plaintiff has made out prima facie case or not, the court has to look into the pleadings and also the documents available on records.

15. The plaintiff in order to prove the prima facie case he has produced the certified copy of partition deed dated 31.01.2000, RTC for the year 2022-23, MR extract, certificate copy DC conversion order dated 07.09.2011, certified copy of encumbrance certificate from 01.04.2004 to 18.10.2022, electricity bills, copy of requisition dated 15.09.2022 and endorsement dated 17.09.2022 issued by the BBMP, copy of complaint,



statement of the complainant and the plaintiff, copy of sale deed dated 18.06.2005 and copy of objection filed by the plaintiff, Tax paid receipts.

16. On the other hand the defendant has produced the copies of sale deed dated 18-06-2005, copy of relinquishment deed dated 25.02.2012, sale deed for sale of TDR dated 01.02.2013, RTC of Sy. No.2/1 for the year 2021-2022, MR No.29/2004-05 and RTC of Sy. No.2/1 for the year 2004-05.

17. Grant of interim injunction during the pendency of legal proceeding, it is matter of resting with the exercise of the court. While exercising the discretion the court has to apply the following test;

*(i) existence of a prima facie case as pleaded, necessitating protection of the Plaintiff's rights by issue of a temporary injunction;*

*(ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the Defendant's right or likely infringement of the Defendant's rights,*

*the balance of convenience tilting in favour of the Plaintiff; and*

*(iii) clear possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the Plaintiff's conduct is free from blame and he/she approaches the Court with clean hands.*

18. The primary object of granting interim injunction relief is the preservation of property in dispute till legal right and conflicting claims of the parties before the court are adjudicated. The underling object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceeding and prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

19. This Court has carefully perused the materials on record in order to ascertain the prima facie case. The plaintiff has contended that he is in possession and enjoyment of the suit schedule property, the defendant

on the guise of sale deed dated 18.06.2005 she is trying to encroach and dispossess the plaintiff from the suit schedule property. On perusal of certified copy of partition deed dated 31.01.2000 it clears that item No.3 of 'D' schedule property was fallen to the share of the plaintiff i.e., suit schedule property. As per the said partition deed name of the plaintiff was mutated and RTC was entered in the name of plaintiff, same is clears from the RTC of Sy. No.50/3 of Kyalasannahalli Village for the year 2022-2023.

20. The defendant has specifically contended that the plaintiff is suppressed the material facts and trying to encroach the property of the defendant. The defendant has not disputed that land bearing Sy. No.50/3, measuring 37 guntas was allotted to the share of the plaintiff. But, the serious allegation of the defendant is that the plaintiff has relinquished an extent of 467.50 sq. mtrs in favour of the Government of Karnataka, Commissioner BBMP, Bengaluru under a relinquishment deed dated 25.02.2012 and again trying to encroach the property of the defendant.

21. This court has carefully perused the relinquishment deed dated 25.02.2012 it clears that the plaintiff has relinquished the 467.5 sq. mtrs in favour of the Government of Karnataka on commissioner, BBMP in Sy. No.50/3 of Kyalasannahalli Village. So, it clears that the plaintiff is not in possession of the entire suit schedule property as on the date of filing of this suit. Further, after relinquished 467.5 sq. mtrs the plaintiff has filed the requisition before the concerned office to change the katha in respect of the entire 37 gunts of the property. It shows the plaintiff has not approached this court with clean hands. Therefore, this suit requires trial for determination of the facts. Unless conducting the trial it is very difficulty to form any definite opinion regarding the plaintiff is in possession of the entire suit schedule property as on the date of filing of this suit or not.

22. Further, on perusal of copy of sale deed dated 18.06.2005 the prima facie shows that the defendant has purchased the property in Sy. No.2/1, measuring 0.4 gunta of Kyalasannahalli Village from B. M. Ramaiah. As per the said sale deed name of the defendant was mutated as per MR No.29/2004-05 and

RTC also entered in the name of defendant. So, it clears that the suit schedule property and property of defendant are different.

23. Now, the allegation of the plaintiff is that the defendant is trying to interfere and dispossess the plaintiff from the suit schedule property. But, prima facie documents shows that property of the defendant and suit schedule property are different. As per prima facie documents the plaintiff is not in possession of the entire suit schedule property. But the plaintiff is alleged that the defendant is trying to encroach the suit schedule property. On the other hand the defendant has alleged that the plaintiff is trying to encroach the property of the defendant. So, it clears that the both the parties are made allegation against each others. Further in this regard the defendant has lodge a complaint against the plaintiff. Under such circumstances, this court is of the considered opinion that this suit requires full fledged trial to determine the facts in issue. Further, unless conducting trial its very difficulty to form any definite opinion regarding entire possession over the suit schedule property by the plaintiff or not.

24. Counsel for the plaintiff argued that the property of the defendant is not in existed. But, copy of the sale deed dated 18.06.2005 shows that the defendant has purchased the 04. guntas of land in Sy. No.2/1 of Kyalasannahalli viilage from one B. M. Ramaiah. Further as per the plaint schedule, eastern side the defendant property is situated. But, the contention of the plaintiff that said property is allotted to the share in Sy. No.50/3. But, in the partition deed survey number is not mentioned. Therefore, this suit is requires trial to determine the facts in issues.

25. Further the plaintiff has produced some documents to shows the prima facie case, but said documents are not sufficient to hold the prima facie case. Because, the plaintiff has relinquished an extent of 467.50 sq. mtrs in favour of the Government of Karnataka. Therefore, this court is of the considered opinion that the plaintiff has made out case for trial. But, failed to made out prima-facie case for grant an order of temporary injunction as prayed in the present application at this stage. Hence, this court answer point No.1 in the Negative.

26. **POINT No.2 and 3:** For the sake of convenience these two points are taken up for common discussion. As per the discussion above the plaintiff has failed to establishing prima facie case. So, the question of balance of convenience and caused irreparable loss and injury to the plaintiff does not arise. Therefore, this court answer point No.2 and 3 in the Negative.

27. **POINT No.4:** For the reasons stated above this court has proceed to pass the following;

**ORDER**

**The I. A. No.I filed under  
Order XXXIX Rule 1 and 2 R/w  
Section 151 of Code of Civil  
Procedure by the plaintiff is  
hereby Dismissed.**

**No order as to costs.**

(Order is directly dictated to the typist copyist on computer, typed by her, corrected and then pronounced by me in the open court on this 26<sup>th</sup> day of May 2023)

(SRI. CHANDRAIAH B.P)  
I ADDITIONAL. CIVIL JUDGE,  
BENGALURU RURAL DISTRICT,  
BENGALURU.