

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C. AT ANEKAL**

Dated this the 22nd day of September, 2021

: PRESENT :

Sri. SHRIKANTA N. A., B.A., LL.B.,
Addl. Senior Civil Judge & J.M.F.C.,
Anekal

O.S. No. 502 / 2021

PLAINTIFF : Sri. M. Ramachandrappa,
Aged about 66 years,
S/o.Late Muniswamappa,
R/at Chikkanagamangala Village,
Huskur Post, Sarjapura Hobli,
Anekal Taluk,
Bengaluru Urban District.

(Represented by Sri.M.K.S./Smt.K.B./Sri.G.S.R.,
Advocates)

V/s

DEFENDANTS : 1. State of Karnataka,
Department of Revenue,
M. S. Buildings,
Bengaluru - 560 001,
Rep. by Principal Secretary

2. The Deputy Commissioner,
Bengaluru Urban District,
Kandaya Bhavan, K.G. Road,
Bengaluru - 560 009

3. The Assistant Commissioner,
Bengaluru South Sub-Division,
Kandaya Bhavan, K.G. Road,
Bengaluru - 560 009

4. The Tahasildar,
Anekal Taluk, Anekal
5. The Rajeev Gandhi Rural Housing
Corporation Limited (RGHCL),
9th Floor, Vauvery Bhavan,
Bengaluru - 560 009

(Represented by Sri. P.B.P., Advocate for D-5,
Defendant No.1 to 4 - Placed ex-parte)

-: ORDER ON I.A. No.II :-

The I.A. No.II is under Order XXXIX Rule 1 and 2 read with Section 151 of CPC filed by the plaintiff praying for an order of temporary injunction restraining the defendant No.5 from interfering with the peaceful possession and enjoyment of the plaintiff over the property described in schedule of the application and plaint. This application is supported by an affidavit of the plaintiff. In the affidavit and in the plaint, the plaintiff has raised identical contentions.

2. It is stated by the plaintiff in the affidavit filed in support of I.A.No.II that the suit property bearing Sy.No.67, measuring 2 Acres situated at Goolimangala Village, Sarjapura Hobli, Anekal Taluk (hereinafter referred to as 'suit

property' for short) was originally belonged to the Government and the father of the plaintiff - Muniswamappa has been cultivating that property unauthorizedly for many years. He filed an application before the competent authority seeking grant of the suit schedule property in his favour and the said application came to be registered in SD/31/1941-42 and after holding an enquiry and spot inspection, the competent authority was pleased to grant that property in favour of Muniswamappa. In pursuance of the said grant order, the name of the father of the plaintiff was entered in the revenue records. The said Muniswamappa died intestate on 02.07.1983 and the plaintiff succeeded the suit property and got transferred the revenue records in his favour vide M.R.No.5/1984-85. Thus, the plaintiff has acquired right, title, interest over the suit schedule property and he has been in possession and enjoyment over the suit property besides cultivating the same as absolute owner thereof. The plaintiff has also put up construction of watchman shed and obtained electricity connection to the suit schedule property.

3. It is further stated that the name of the plaintiff has been continued in revenue records pertaining to the suit property till the year 2000 and while transferring the mutation entry from manual entry to computerized RTC, the name of the plaintiff was left out inadvertently, which was gone unnoticed by the plaintiff. Therefore, the plaintiff has filed representation dated 01.07.2005, 13.08.2008 and 06.07.2012 before the Tahasildar, Anekal Taluk, seeking restoration of his name in the computerized RTC but his efforts went in vain. However, the plaintiff once again gave a representation dated 08.08.2019 seeking restoration of his name in the computerized RTC as per M.R.No.5/1984-85 and the same is pending consideration with the Tahasildar, Anekal Taluk.

4. It is further stated that recently when the plaintiff obtained the RTC extract pertaining to the suit schedule property the name of the fifth defendant has been entered vide M.R. No.H39/2018-19 in lieu of the name of the plaintiff. Being aggrieved by the same, the plaintiff filed the revenue appeal before the Asst. Commissioner, Bengaluru South Sub-

Division, Bengaluru in R.A.(A) No.26/2019-20 and the said appeal is pending consideration.

5. It is stated that the Special Deputy Commissioner, Bengaluru Urban District, without notice to the plaintiff has allotted the suit schedule property in favour of the fifth defendant vide Order No.LND(G)CR/72/2017-18 dated 24.05.2018. Therefore, the plaintiff has preferred W.P. No.27800/2019 before the Hon'ble High Court of Karnataka which came to be dismissed on 22.07.2019. Challenging the said order, the plaintiff filed W.A. No.65/2020 before the division bench of the Hon'ble High Court of Karnataka which was disposed on 29.06.2021 directing the plaintiff to approach the competent civil court and to seek appropriate relief/s.

6. It is further stated that after disposal of the above writ appeal, on 30.06.2021 and on 26.07.2021 the officials of the fifth defendant came to the suit schedule property and tried to meddle with the lawful possession of the plaintiff over that property and also tried to take over the physical possession forcibly. The plaintiff prevented the sudden

invasion of the officials of the fifth defendant with the help of neighbors and well wishers. However, the officials of the fifth defendant have left the spot proclaiming that they will come with police force and will take over the physical possession of the suit schedule property at any cost, by dispossessing the plaintiff. The plaintiff is unable to resist the illegal acts of the officials of the fifth defendant without the aid and help of this Court. Hence, plaintiff has come up with the above suit for the relief of declaration of his title over the suit property and consequential relief of permanent injunction besides other reliefs. The plaintiff has raised usual plea of prima facie case, balance of convenience and irreparable loss and injury, by contending so, he has prayed for allowing the application.

7. The defendants No.5 filed statement of objection denying the claim of the plaintiff. It is contended by the defendant No.5 that the Government of Karnataka has reserved an extent of 431 Acres 11 Guntas of Gomala land situated in Bengaluru Urban District for the purpose of implementation of 'Bengaluru One Lakh Multistory Housing Project' vide its Orders bearing No.RD 229 LGB 2017 dated

15.11.2017 and RD 19 LGB 2018 dated 19.03.2018 and subsequent Orders bearing Nos.LND(G) CR: 72/17-18 dated 13.12.2017 and 24.05.2018 issued by the Deputy Commissioner, Bengaluru Urban District.

8. It is further stated that the Defendant No.5 Corporation is the State level implementing agency for the 'Ashraya' scheme and other housing schemes formulated by the Government of India and Government of Karnataka. As such, the property bearing Sy.No.67 measuring 5 acres situated at Goolimangala Village, Sarjapur Hobli, Anekal Taluk, Bengaluru Urban District being Gomala land has been allotted to the Defendant No.5 by the Government of Karnataka for the implementation of said project as per the Orders mentioned above. The possession of entire extent of 5 Acres of land in Sy.No.67 has been handed over to the defendant No.5 vide handing over letters dated 22.12.2018. Thereafter, the Defendant No.5 has commenced implementation of 'Bengaluru One Lakh Multistory Housing Project' through a third-party Contractor in terms of an agreement entered into between them.

9. It is further contended by the defendant No.5 that the plaintiff has no right, title, interest or possession over the suit schedule property and the documents relied on by the plaintiff are not genuine. It is stated that the plaintiff is claiming right over the suit property on the basis of the Saguvali extract without producing any proof of his ownership. In view of Sec.20A of the Specific Relief Act, 1963 the relief of injunction cannot be granted in a suit where a contract relating to an infrastructure project is involved. Further, if an order of injunction is granted it would delay the progress or completion of infrastructure project undertaken by the defendant No.5. Therefore, the plaintiff is not entitled to any relief claimed by him. Hence, prayed to dismiss the I.A.No.II filed by the plaintiff.

10. Heard the arguments of the counsel for respective parties and perused the available materials on record. The counsel for the defendant No.5 has also filed written arguments.

11. Now the points that arise for consideration of this Court are as follows;

: POINTS :

- (1) Whether the plaintiff has made out a prima facie case ?
- (2) Whether the plaintiff has balance of convenience in his favour ?
- (3) Whether the irreparable loss and injury would be caused to the plaintiff if the temporary injunction is not granted ?
- (4) What order ?

12. After hearing the arguments and going through the records on the file, the findings on the above points by this Court 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 the final order for the following;

:- REASONS :-

13. **Point No.(1):** The person has to establish prima facie case, balance of convenience and irreparable loss and injury to succeed in an application seeking temporary injunction order. The applicant must make out a prima facie case in support of the right claimed by him. He should satisfy the court that there is a strong case for trial which needs

investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. With this perception, the court intends to proceed with the facts and circumstances of this case.

14. The plaintiff has filed this suit against the defendants for the relief of declaration of his title over the suit property and for permanent injunction against the defendant No.5, etc. It is not in dispute that the suit property was originally a *Gomala* land belong to the government. It is also not in dispute that the suit property along with other properties have been granted in the name of the defendant No.5 as per Government Order No.DR.19.LGB.2018 dated 19.03.2018 for the purpose of implementation of 'Bengaluru one lakh Multi-store Housing Project'.

15. Prima facie case means the plaintiff must, by making positive averments, asserts that he has a strong case and a legal right to the property in suit, which has to be preserved and protected. It is not necessary for the plaintiff to prove by evidence. But, at least he must show that he has a

strong prima facie case and there is every chance of his success in the case. Existence of prima facie case is an essential condition for the issuance of an interim injunction, provided the two other conditions namely, balance of convenience and irreparable injury are satisfied. Prima facie case does not mean prima facie title. Prima facie case exists whenever there are issues which need trial and adjudication. Necessary criteria for establishing a prima facie case is that the plaintiff has to show that he has bonafidely raised a substantial question which needs to be adjudicated at the trial of suit.

16. According to the plaintiff, the government has granted the suit property in the name of his father and after his demise the plaintiff continued in the possession of the suit property as absolute owner thereof. On the other hand, the defendant No.5 contended that as per the Order dated 19.03.2018, the suit property along with other properties were allotted to it for implementation of housing project and it is in possession of that property. In the light of the above rival contentions, it is necessary to look into the documents placed on record.

17. The plaintiff has produced the certified copy of MR No.5/84-85 and the record of rights pertaining to suit property for the years 1969-70 up to 2001-02. The name of Munishamappa was entered at Column No.9 of the above RTC extracts up to the year 1983-84. Thereafter, his name was rounded off as per the above mutation order and name of the plaintiff was substituted. The plaintiff has produced certified copy of a register wherein the name of Munishamappa was entered in respect of the suit property. According to the plaintiff, that document is the copy of the grant order. He has also produced copy of three land revenue paid receipts in respect of the suit property for the year 1966-67, 1969-70 and 1970-71 respectively in the name of Munishamappa. Placing reliance on the above documents it is argued by the learned counsel for the plaintiff that those documents prove the prima facie title and continuous possession of plaintiff and his father over the suit property.

18. On the other hand the counsel for the defendant No.5 argued that the above documents are not the documents of

title and there are no recent revenue documents produced by the plaintiff to establish his alleged possession over the suit property. Relying on the government order dated 15.11.2017 and 19.03.2018, order of the Deputy Commissioner, Bengaluru Urban District dated 13.12.2017 and 24.05.2018, land handover letters dated 22.12.2018 issued in favour of defendant No.5 and the recent RTC extract it is argued by him that the defendant No.5 is the owner in possession of the suit property. It is also argued that the suit property was granted in the name of defendant No.5 free from all encumbrances. Therefore, it is his argument that the claim of the plaintiff is not sustainable.

19. The plaintiff claims his title over the suit property on the basis of the alleged grant order passed by the government in the name of his father. The one document produced by the plaintiff is neither the grant order nor the grant certificate. The plaintiff has produced few photographs to establish that he has constructed a shed in the suit property and obtained electricity connection to that shed. The said photographs and the documents issued by the BESCOM show that the construction is made very recently

and electricity power sanction was obtained in the year 2019 in the name of the plaintiff. Therefore, the argument of the learned counsel for the defendant No.5 that those alleged developments were done by the plaintiff just prior to filing of W.P.No.27800/2019 to strengthen his claim over the suit property cannot be considered as ill founded.

20. According to the plaintiff, he is in possession of suit property and cultivating the same. However, he has not produced any document at this stage to establish the fact of cultivation. No recent revenue documents like land revenue paid receipt or any other document entered in the name of the plaintiff are produced to prove the alleged possession of the plaintiff over the suit property. Therefore, the court is of the opinion that at this stage the plaintiff has not made out a prima facie case. Considering the overall aspects of this case, this court is of the view that the plaintiff has failed to make out a substantial question to be tried in this case. Hence, this Court answers the point No.1 in the negative.

21. **Point No.(2) and (3):** The court should also satisfy that refusal to grant injunction would result in irreparable

injury to the party seeking relief and he needs to be protected from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that injury must be a material one, which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

22. The plaintiff sought the relief of temporary injunction against the defendant No.5 from interfering with his possession over the suit property. The plaintiff has not produced any acceptable document at this stage to show that he is in possession of the suit property. On the other hand, the photographs and the documents produced show that the defendant No.5 has already commenced the undertaken construction work in the suit property.

23. It is an undisputed fact that the defendant No.5 is considered as nodal agency for implementation of One Lakh Multi-store Housing Scheme at Bengaluru and the suit land was granted by the government of Karnataka in the name of

defendant No.5 for that purpose. Therefore, the above project is an infrastructure project as specified at Sl.No.5(j) of the Schedule attached to the amended Specific Relief Act, 1963. In view of Section 20A and 41(ha) of the said Act, no injunction can be granted by a Court in a suit involving a contract relating to an infrastructure project where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

24. In light of the aforesaid facts, any injunction granted by this Court would indefinitely delay the completion of the above project. In such an event, the implementation of the project will be stalled indefinitely and thereby it will affect the society at large especially the vulnerable sections of the society. To avoid such things, grant of temporary injunction in favour of the plaintiff is refused. The balance of convenience also lies in favour of the defendant No.5 for the discussions made above. Since, the plaintiff has not established his possession over the suit property at this stage, no irreparable loss and injury would be caused to the plaintiff in the event the temporary injunction is refused. Therefore, this court holds these points against the plaintiff.

25. **Point No.(4):** In view of the above findings, this court proceed to pass the following :-

:- ORDER :-

The I. A. No. II filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby rejected.

(Typed by me in my laptop, print out corrected and then pronounced in the open court on this the 22nd day of September, 2021)

(Shrikanta N.A.)
Addl. Senior Civil Judge & J.M.F.C.,
Anekal.