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Sri. P.S Krishnaiah Setty Vs Plaintiff

Sri. Auto Ganesh Defendant

* * *

ORDERS ON

IA.NO.I & III U/O.39 RULE 1 AND 2

&

LA U/O 39 RULE 4 OF CPC ::

IA.No.I is filed under Order 39 Rule 1 & 2 of CPC, praying to restrain the defendant from dispossessing the plaintiff by way of interfering with the peaceful possession and enjoyment of the schedule property till disposal of the suit. IA No.III is filed to set aside the exparte interim order passed by this court in IA No.I.

2. In the affidavit sworn by the plaintiff, has stated that, he is the absolute owner of the suit schedule property in

possession having acquired the same through sale deed dated 06-02-2006 and executed on 13-02-2006, where the suit schedule property is carved out in Sy.No.145. The defendant without any right, title has tried to interfere to dispossess the plaintiff where he has demolish the compound wall and shed constructed by the plaintiff in the suit schedule. Hence, along with the suit have come up with the present application.

3. The defendant appeared, filed written statement by denying the averments of the plaintiff, stating that the suit schedule property claimed by the plaintiff is not carved in Sy.No.143, and claiming it to be in Sy.No.145 interfering in Sy.No.143, which is in their possession. Also the Assistant Commissioner in K.SC/ST(A)No.4/2019-20 has declared that the sale deed dated 01-08-1995 is null and void. The development agreement produced by the plaintiff does not bears Sy.No.143 and there is no cause of action to present the suit and the suit is filed only to grab the property of the defendant. Hence, along with other grounds prayed to dismiss the application and also filed IA U/o.39 Rule 4 of CPC to vary the interim order.

4. Heard arguments of both side. Perused the documents relied upon by the both counsels.

5. The points that would arise for my consideration are:-

- (1) Whether the plaintiff is entitled for the relief of temporary injunction as sought for?
(2) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : As per final orders

for the following:-

REASONS

7. **Point No.1:** The brief facts has been stated above, hence, the same is not stated again to avoid repetition. The plaintiff has filed the simplicitor suit for Injunction. In a suit for Injunction at the time of considering interim application for temporary injunction, the court needs to look into three aspects, such as Prima-facie case, balance of convenience and irreparable loss.

8. Hence keeping the same in mind, I proceed to discuss the materials on record in the below paragraphs. As stated in earlier paragraph, is well known that there are two classic ingredients has to be looked into to decide the injunction, they are (1) lawful possession and (2) interference, and to decide the application u/s. 39 Rule 1 and 2, the court should consider the prima facie case, balance of convenience and irreparable loss.

9. In the present suit, it is the dispute over the property, which is a revenue site, formed in an unauthorized

layout. As per the plaintiff Sy. No.145 belonging to one Chinnaiah and Chinnappa and the said Chinnaiah and Chinnappa have sold Sy. No.145 to one N.M Paramesh on 29.04.1995. The said N.M Paramesh out of 1 acre sold 20 guntas in favor of Harinath on 09.12.1996. The said N.M Paramesh and Harinath in order to develop the Sy. No.145 has entered into development agreement in favor of Nirman Homes Builders and developers, Rep. By its partner V. Lakshminarayana and Babu on 04.02.2004 along with registered power of attorney on the same date.

10. After the development agreement, the sites were carved out and the J. Babu Naidu sold the suit schedule property in favor of the plaintiff, where the plaintiff constructed a compound along with a small shed in the suit schedule property. The defendant without any right interfered in order to dispossess. To buttress his possession over the suit schedule property the plaintiff has produced original registered sale deed, tax paid receipts, demand registers, sale deeds, development agreement and power of attorney. Also the plaintiff has produced the Photographs to show the exact picture of the suit schedule property.

11. The defendant has contended that he is in possession of Sy. No.143, measuring 2 acre 14 guntas. The Sy. No.143 and 145 is entirely different, where Sy. No.143 is an agricultural land. Also the Assistant commissioner has declared the sale deed on Sy. No.143 dated 01.08.1995 is null

and void in K.SC/ST(A) No.4/2019. The defendant has also furnished grant certificate of Sy. No.143 in favor of Badanahalli Gurappa. Also furnished sale deed dated 01.08.1995 executed by Muniramaiah Bhovi and others in favor of Sriramulu Reddy.

12. The defendant has also furnished the order copy of the Assistant Commissioner, where sale deed dated 01.08.1995 over Sy. No.143, measuring to an extent of 2 acre 14 guntas is declared as null and void. Also furnished the RTC and the MR along with other documents, such as endorsement dated 18.11.2021, where the Shantipura Grama Panchayathi has stated that Sy. No.143 is not converted nor plan is accepted by the Panchayathi over it. The defendant has also furnished Akharband and survey sketch of Sy. No.143.

13. It is the vehement contention of the plaintiff that the suit schedule property is carved in Sy. No.145 and the plaintiff is in possession but the defendant taking the order of the Assistant Commissioner as tool, has tried to dispossess by interfering. The counsel for the plaintiff has also furnished photographs to show that defendant is making efforts to demolish and interfere.

14. The counsel for the defendant vehemently stated that the plaintiff is claiming possession in Sy. No.143 but the same is not converted nor plan is accepted by the Shantipura Grama Panchayathi and moreover, Sy. No.143 is not the part

and parcel of the development agreement. Also stated that Sy. No.143 is in the possession of the defendant and Sy. No.145 is far away and the plaintiff need to identify his property in Sy. No.145.

15. The counsel for the plaintiff also furnished another development agreement, where even Sy. No.143 is also part and parcel of the development agreement. Also has furnished order copy of the Hon'ble Deputy Commissioner in PTCL No.03/2022, where the order of the Assistant commissioner has been stayed. The counsel for the plaintiff submitted that the possession of the plaintiff is not disputed but the defendant is claiming it to be in Sy. No.143, however, even if the plaintiff is in Sy. No.143 he need to be dispossessed only in accordance with law.

16. Counsel for the plaintiff also stated that after the passing of the orders of Assistant Commissioner there is no procedure taken place known to the law, where possession needs to be handed over to the defendant, however, the defendant without following the procedure as per the Sec.5 of the PTCL Act has got the khata changed in the RTC and all of a sudden has rust to dispossess the plaintiff.

17. Certainly, as per records the possession has not been handed over to the defendant in accordance with law, moreover, as per the photographs the defendant has tried to dispossess the plaintiff from the suit schedule property. Whether the plaintiff is in Sy. No.143 or in Sy. No.145 needs a

full fledged trial, moreover, even if the plaintiff is in Sy. No.143 the defendant can not dispossess by taking law into his hands. He has to prove before the court by filing appropriate suit for possession. For this I rely upon the judgment of the **Hon'ble Supreme Court in Ramegowda V/s Varadappa Naidu, cited 2004(1) SCC 769.**

18. The confirmation deeds produced by the plaintiff establish that the defendant and his family members have received amount from the prospective purchasers and thereby confirmed their title. As of now the order of the Assistant Commissioner is stayed and the sale deed dated 01.08.1995 gets validity till the disposal of the petition by the Hon'ble Deputy Commissioner. The documents produced by the plaintiff at this stage better establishes the prima-facie case and possession with the plaintiff.

19. The entire records on hand prima-facie establishes that the plaintiff has made out a case to go for trial and if injunction is not granted infavour of plaintiff a serious hardship will be caused and the plaintiff will be put to irreparable loss and cannot be compensated even through damages. The court need to protect the property, till the disposal of the suit. Hence, with these observations, I answer the point no. 1 in the Affirmative.

20. Point No.2:- In view of my findings on points No.1, I proceed to pass the following:-

ORDER

The application filed by the plaintiff in IA No.I, U/o. XXXIX rule 1 & 2 of CPC is allowed.

Consequently, the defendant, their agents, servants, laborers, workers, representatives, assignees, power of attorney holders and legal heirs are hereby restrained from interfering with the suit schedule property till disposal of the suit.

IA No. III filed by the defendant U/o 39 rule 4 of CPC is hereby dismissed.

(Dictated to the stenographer directly on computer, typed by her and corrected by me and then pronounced in open Court, this the 06th day of April 2022)

(Ram Prashanth.M.N)
Prl.Civil Judge & JMFC., Anekal