

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
J.M.F.C., AT DEVANAHALLI**

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.,
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli

Dated this the 25th Day of January, 2022

O.S.No.825/2020

1. Smt. Sunandamma and Others : **Plaintiff**

(By Sri. R. Pavithra,
Advocate)

V/s.

1. Sri. Manjunath and Others : **Defendants**

(1 to 3 - By Sri.
S.N.T., Advocate)
(4 - By Sri. N.R.,
Advocate)

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**ORDERS ON I.A.Nos.1 and 2**

The plaintiffs have filed the above I.A.No.1 under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. by seeking to restrain the defendants from interfering with plaintiffs possession over suit 'A' property measuring 8½ guntas in Sy.No.78/1 of Hunasamaranahalli Village and I.A.No.2 is filed by them under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. by seeking ad-interim injunction to restrain the defendants No.1 to 3 from putting up any further

constructions in the 'B' schedule property measuring an extent of 30 x 40 feet out of suit 'A' schedule property.

2. In support of both I.A.Nos.1 and 2, the 3<sup>rd</sup> plaintiff has deposed to affidavits and he has reiterated common averments in both the affidavits. The plaintiff No.3 has deposed in the affidavits that, the plaintiffs have filed the above suit for declaration of ownership over suit 'A' schedule property and also for permanent injunction from interference and from further construction over the 'B' schedule property. The plaintiffs are the absolute owners and they are in peaceful possession and enjoyment over the suit 'A' schedule property which was purchased by their father under a Sale Deed dated 12.09.2018. From the date of purchase, the plaintiffs father was owner in possession over the 'A' schedule property and on his death the plaintiffs have continued possession over the same.

3. The plaintiff No.3 has further deposed that, on 18.10.2020 the defendants came near the 'A' schedule property along with some anti social elements and they have tried to interfere with plaintiffs possession. With great difficulty and with the help of neighbours, the plaintiffs have prevented the interference and trespass into the 'A' schedule property. The defendants have threatened that, they will come back and put up construction in the 'A' schedule property by denying the ownership of plaintiffs. On 19.10.2020 the defendants once again came near the 'A' schedule property and they have put up construction in an extent of 30 x 40 feet on the Westernside of 'A' schedule

property which is described as 'B' schedule property. The defendants are not having any manner of right, title or interest over the suit schedule properties and the defendants are having support of rowdy elements and therefore, without the interference of the Court, the plaintiffs cannot resist the high handed acts of defendants. As such, the plaintiffs have prayed for temporary injunction as per their I.A.Nos.1 and 2.

4. The defendants have filed a memo to treat their written statement as the objections to the I.A.Nos.1 and 2.

5. In their written statement, the defendants have totally denied the allegations of the plaintiffs and they have submitted that, they are the absolute owners in possession and enjoyment of the plaint schedule property. Originally, the plaint schedule property belongs to Government Kharab Land in Sy.No.78 totally measuring 4 acres 27 guntas. Out of which an extent of 2 acres 10 guntas of land was granted in favour of one Chakrapani, 2 acres 10 guntas of land was granted in favour of one Seshachar and remaining 7 guntas is the kharab land. The defendants family is in possession and enjoyment of 5 guntas out of 7 guntas of kharab land for more than 30 years till 1999. The defendants family is in possession and enjoyment of the said written statement schedule properties bearing H.L.No.173/1 measuring 18.29 x 9.14 meters, H.L.No.173/2 measuring 18.29 x 9.14 meters and H.L.No.173/3 measuring 18.29 x 9.14 meters from the past 52 years. The uncle of the defendants by name Dasappa had made application for grant of 5 guntas in the year 1999 and by considering the said application, the Tahsildar has passed

orders in RRTJCR 23/99-2000 dated 30.04.1999 and ordered for inspection and spot mahazar. The Revenue Inspector has conducted spot inspection and filed report to the Tahsildar. Accordingly, the Hunasamaranahalli Village Panchayath has issued house list and demand register in favour of Dasappa by considering his long term occupation. The said Dasappa was died issueless and the 2<sup>nd</sup> defendant is the foster son of Dasappa and therefore, after the death of Dasappa the Forms No.9 and 11 are entered in the name of defendants father by name Krishnappa who also happened to be brother of Dasappa. The said Krishnappa was also died and on his death the Items No.1 to 3 of written statement properties are standing in the respective names of defendants No.1 to 3.

6. The defendants have obtained building license on 01.08.2016 and they have again renewed their license during 2020-21 and they have also applied for construction of house under the scheme of the Government and they have applied for electricity supply. The vendors of the plaintiffs father who executed the sale deed have not challenged the panchayath entries in favour of the defendants before the competent authorities. The sale deed of plaintiffs father dated 12.09.2018 was kept pending for want of survey sketch and therefore, the said sale deed is illegal and void without identification by way of survey sketch. The suit schedule property has no identification and therefore, on the basis of Sale Deed dated 12.09.2018 the Mutation and RTC entries are not effected in favour of plaintiffs and their father. The boundaries mentioned in the plaint schedule and their sale deed does not tally with each other and therefore, the

boundaries are wrong. The defendants have obtained license for construction from the authorities in respect of written statement schedule properties and the sale deed of the plaintiffs father as well as compromise decree alleged by the plaintiffs was created by mentioning wrong boundaries. For these reasons, the defendants have prayed for dismissal of the I.A.Nos.1 and 2.

7. The plaintiffs and defendants both have filed written arguments and they have relied on a number of documents. On perusal of the documents and on appreciation of the material placed on record, the points that arise for consideration are as follows:

**POINTS in both I.A.Nos.1 and 2**

- 1. Whether the plaintiffs have made out a prima-facie case for grant of an order of equitable relief of temporary injunction against the defendants?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether the plaintiffs will be put to irreparable injury and hardship, in case an order of temporary injunction is not granted against the defendants?**
- 4. What Order?**

8. Now, the Court answers the above points as follows;

**Point No.1: In the Negative**

- Point No.2: Does not survive for consideration**
- Point No.3: Does not survive for consideration**
- Point No.4: As per the final order for the following;**

### **REASONS**

9. **Points No.1 in both I.A.Nos.1 and 2:-** The plaintiffs case as per their plaint averments is that, originally the Sy.No.78 was measuring 4 acres 20 guntas and out of the same an extent of 2 acres 10 guntas was granted in favour of one Chakrapani vide Order dated 07.07.1992 in LRF(INA)24/91-92. The said Chakrapani had filed a suit for declaration and permanent injunction against the father and uncle of defendants No.1 to 3 as per O.S.No.128/1998. In the said suit decree dated 04.12.2002 was passed in favour of Chakrapani by declaring him as the absolute owner in possession of 2 acres 10 guntas in Sy.No.78 and injunction was also granted against the father and uncle of defendants No.1 to 3. The said Chakrapani has executed a Sale Agreement in respect of 20 guntas out of 2 acres 10 guntas in Sy.No.78 by Agreement dated 20.05.1998 in favour of K.V. Nagaraj who was the husband of plaintiff No.1 and father of plaintiffs No.2 to 4. Since, the executant of sale agreement did not come forward to execute the sale deed, 1<sup>st</sup> plaintiff's husband had filed O.S.No.1826/2006. During the pendency of the said suit, the executant of sale agreement had also executed two registered sale deeds in favour of Muralikrishnareddy in respect of 1 acre 5 guntas and in favour of Smt. Srilatha in respect of 1 acre 5 guntas each in Sy.No.78 and both the said

persons were also impleaded as defendants in O.S.No.1826/2006. On 03.08.2018 the 1<sup>st</sup> plaintiff's husband K.V. Nagaraj had entered into a compromise in the suit with Muralikrishnareddy and Srilatha and in the compromise he got allotted suit 'A' property to his share and consequently, Muralikrishnareddy and Srilatha have executed a registered Sale Deed dated 12.09.2018 in respect of 4¼ gunta each totally measuring 8½ guntas of 'A' property.

10. Therefore, the plaintiffs are seeking the releif of declaration of ownership over suit 'A' schedule property measuring 8½ guntas on the strength of registered sale deed executed by Muralikrishnareddy and Srilatha in favour of 1<sup>st</sup> plaintiff's husband K.V. Nagaraj. On the other hand, the defendants have denied the case of the plaintiffs and their case is that, for want of survey sketch, the sale deed of K.V. Nagaraj was kept pending for registration and for want of identification, neither K.V. Nagaraj nor the plaintiffs have obtained Mutation and R.T.C. entries and the defendants have specifically disputed the boundaries of the plaint schedule properties and boundaries mentioned in the sale deed.

11. In that background, if the boundaries of suit 'A' and 'B' schedule properties in the sale deed are compared with those of the plaint we can find support for arguments of defendants No.1 to 3 in respect of variations in boundaries. In the registered sale deed of K.V. Nagaraj, the boundaries of suit 'A' schedule property are mentioned as

|        |                                                         |
|--------|---------------------------------------------------------|
| East : | Government Voni                                         |
| West:  | Remaining Land in Sy.No.78/1<br>(Schedule 'B' Property) |

North: Hosahalli Main Road  
South: Remaining Land in Sy.No.78/1  
belonging to Muralikrishnareddy.

In the plaint and I.A.Nos.1 and 2, the boundaries of 'A' schedule property are mentioned as

East : Government Voni  
West: Road and Land in Sy.No.78/2  
North: Hosahalli Main Road  
South: Remaining Land in Sy.No.78/1

Similarly, in the registered sale deed of K.V. Nagaraj, the boundaries of suit 'B' schedule property are mentioned as

East : Remaining Land in Sy.No.78/1  
'A' Schedule Property  
West: Sy.No.78/2  
North: Hosahalli Main Road  
South: Remaining Land in Sy.No.78/1  
belonging to Srilatha.

In the plaint and I.A.Nos.1 and 2, the boundaries of 'B' schedule property are mentioned as

East : Remaining Land in 'A'  
Schedule Property  
West: Sy.No.78/2  
North: Remaining Land in 'A'  
Schedule Property  
South: Remaining Land in 'A'  
Schedule Property



12. Therefore, if we compare the boundaries given by the plaintiffs to their suit 'A ' and 'B' Schedule Properties with the boundaries mentioned in the registered sale deed, we can find that, in the western boundary of plaint 'A' schedule **Road and Sy.No.78/2** is mentioned whereas, in the registered sale deed the western boundary of 'A' schedule is mentioned as **Remaining Land in Sy.No.78/1 ('B' Property)**. There is no explanation in the plaint about phoding of Sy.No.78 into sub-numbers 1 and 2. As per the plaint schedule, the 'A' Property is bounded on the west by road and Sy.No.78/2. But, the registered sale deed speaks about existence of remaining land in Sy.No.78/1 ('B' Property) on the west. The plaintiffs have specifically given the description of their 'B' property as existed in Sy.No.78/1 and therefore, the Court cannot presume that, on the west of 'A' schedule property, the 'B' schedule property is situated as per boundary furnished in the plaint.

13. Similarly, in the registered sale deed of the plaintiffs, the Northern and Southern boundaries are shown as bounded by **Hosahalli Main Road and Remaining Land in Sy.No.78/1 belongs to Smt. M. Srilatha**. But, in their plaint and I.A.Nos.1 and 2, the plaintiffs have shown the Northern and Southern boundaries of 'B' schedule property are bounded by **Remaining Land in 'A'schedule property**. It is not explained by the plaintiffs as to how the Northern side of 'B' property containing Hosahalli Main Road in the sale deed is changed as remaining land of their 'A' schedule property. Therefore, the description of boundaries by the plaintiffs to their properties clearly show that, the plaintiffs are not aware of identity of the suit 'A' and 'B' schedule properties as contended by the defendants No.1 to 3.

14. According to the plaintiffs, their property is still remained as agricultural land and in fact, they have produced R.T.C. of Sy.No.78/1 for the year 2020-21. The said R.T.C. is standing in the names of Muralikrishnareddy and Srilatha to an extent of 1.05.08 guntas and 1.04.08 guntas respectively. It should be remembered that, K.V. Nagaraj had purchased the extent of 8½ guntas in Sy.No.78/1 from the above persons under a Sale deed dated 12.09.2018. But, the R.T.C. for the year 2020-21 is still standing in the names of Muralikrishnareddy and Srilatha even after the sale deed of the year 2018.

15. In the plaint, it is specifically pleaded that, Chakrapani had executed 1 acre 5 guntas each in favour of Muralikrishnareddy and Srilatha in Sy.No.78 and going by the R.T.C. entries for the year 2020-21 it can be seen that, even for the present year Muralikrishnareddy and Srilatha are having katha of 1 acre 5 guntas each in Sy.No.78/1. Therefore, the case of the plaintiffs can only be considered after recording of evidence and it is only after proving of their ownership and possession by way of evidence, the Court can grant the relieves asked by them. At present there is no piece of document showing katha in the names of plaintiffs or K.V. Nagaraj in respect of the suit schedule properties and the R.T.C. produced by the plaintiffs is standing in the name of vendors in spite of purchase of property by K.V. Nagaraj in the year 2018. In respect of alleged trespass and construction over the 'B' schedule property, the plaintiffs have not produced any document like lodging complaint against the defendants with the jurisdictional police. The non-filing of any

complaint in spite of alleging interference on two days on 18.10.2020 and 19.10.2020 caused by the defendants, causes doubts about the plaintiffs case. Therefore, the plaintiffs have not proved any prima-facie case to issue ad-interim temporary injunction to restrain the defendants from interfering with the possession of 'A' schedule property and restraining the defendants from construction over the 'B' schedule property. Accordingly, the **Point No.1 in I.A.Nos.1 and 2 is answered in the Negative.**

16. **Points No.2 and 3 in I.A.Nos.1 and 2:-** Since, the plaintiffs have failed to make out a prima-facie case, therefore, as held by the Hon'ble High Court of Karnataka in **ILR 1989 KAR 1701** the Court need not go for considering the balance of convenience and irreparable loss and injury. Accordingly, the **Points No.2 and 3 in I.A.Nos.1 and 2 does not survive for consideration.**

17. **Point No.4 in I.A.Nos.1 and 2:-** For the above discussion the Court proceeds to pass the following:

### **ORDER**

**The I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 C.P.C. by seeking temporary injunction in respect of suit 'A' property is hereby dismissed.**

**The I.A.No.2 filed by the plaintiffs under Order 39 Rule 1 and 2 C.P.C. by seeking temporary**

**injunction in respect of suit 'B'  
property is hereby dismissed.**

**Consequently, the exparte  
T.I. Order dated 22.10.2020 is set-  
aside.**

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 25<sup>th</sup> day of January, 2022).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**