

IN THE COURT OF THE CIVIL JUDGE & JMFC
HEGGADADEVANAKOTE

PRESENT

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)
Civil Judge & JMFC.,
Heggadadevanakote

Dated: 25th day of November 2021

O.S.No.63/2021

Plaintiff/s : J.V.Narasimhaprasad S/o.Late N.Venkatanagappa,
Aged about 63 years, R/o.Jinnahalli Village,
Hampapura Hobli, H.D.Kote Taluk.

(By Sri.S.Srinath, Advocate)

V/s

Defendant/s : H.M.Manju S/o.Late Marimuthegowda,
Aged about 55 years, R/o.Hampapura Village
and Hobli, H.D.Kote Taluk.

(By Sri.A.C.R., Advocate)

Applicant : J.V.Narasimhaprasad (Plaintiff)

V/s

Opponent : H.M.Manju (Defendant)

ORDER ON I.A.No.I FILED UNDER ORDER 39

RULE 1 AND 2 OF C.P.C.

This instant application is filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., to restrain the defendant or anybody acting on his behalf from interfering in the possession of the plaintiff over the suit schedule property till the disposal of the suit.

2. The suit schedule property bearing Janjar No.83, Assessment No.102, Property No.99, measuring 40 X 60 feet situated at Hampapura Village, H.D.Kote Taluk and within the boundaries described in the plaint schedule is purchased by the plaintiff from its previous owner-N.Purushothama S/o.Late R.Nagappa, through Registered Sale Deed No.1117/11-12, dated 20/06/2011, followed by delivery of possession to the vendee. On the strength of the application given by the plaintiff, the Grama Panchayath, Hampapura, mutated the name of the plaintiff in the property records and issued Form No.11(B). Thereafter, a new property was assigned as property No.83/102/99. The plaintiff is paying property tax on the suit property.

3. According to plaintiff, he intends to construct a building over the suit property. However, the defendant though having no manner of right, title or interest, came near the suit property on 12/02/2021 and obstructed the construction activities. The plaintiff resisted the illegal interference by the defendant and thereafter summoned the Panchayath in the village, however the defendant has not yielded to the advice by the Panchayathdars, but continued to cause illegal interference. According to plaintiff, he has got *prima-facie* case and balance of convenience is also in his favour. If the application to restrain the defendant from

interfering is not allowed, much hardship would be caused to him. On these grounds, the plaintiff prayed to allow the application.

4. After service of summons, the defendant though appeared through his learned Counsel, but failed to file either written statement or objections to I.A.No.I.

5. Heard the learned Counsel for the plaintiff. Perused the records.

6. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would caused to him if injunction is not granted?
4. What order?

7. My answer on the above points are as follows:-

- | | | |
|------------|---|---|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Affirmative |
| Point No.3 | : | In the Affirmative |
| Point No.4 | : | As per final order
for the following:- |

REASONS

8. **POINT NO.1 TO 3:-** It is the specific case of the plaintiff that, he has purchased the suit property through

Registered Sale Deed No.1117/2011-12, dated 20/06/2011, which got registered on 06/07/2011, from its previous owner- N.Purushothama S/o.Late R.Nagappa, for a valuable consideration, followed by transmission of his name in the property records. The plaintiff has produced the original Registered Sale Deed above referred along with the property records.

9. In order to show that, previously the suit property was standing in the name of N.Purushothama S/o.Late R.Nagappa, the plaintiff has produced Assessment Register, which reveals the name of his vendor. The Grama Panchayath, Hampapura, has also issued Form No.11(B) in the name of plaintiff. On perusal of the description of the property described in the plaint schedule, Registered Sale Deed and also in Form No.11(B), the boundaries mentioned therein are one and the same, though the old property number is mentioned in Registered Sale Deed along with the new number. The Registered Sale Deed confers absolute title on the vendor-plaintiff. On plain perusal of the Registered Sale Deed, it complies all the requirements of Section 54 of T.P.Act.

10. In order to show that, the plaintiff has obtained Licence for the construction of the building, has produced

the Licence issued by P.D.O., Grama Panchayath, Hampapura, dated 23/02/2021. Even in the said Licence, the boundaries mentioned therein tally with the boundaries described in the plaint schedule and the Sale Deed. The plaintiff has also paid property tax on the suit property. On perusal of these documents, it *prima-facie* proves the case of the plaintiff. The plaintiff has contended that, the defendant is illegally interfering in his possession over the suit property. The plaintiff has got *prima-facie* case in his favour. Therefore, if the injunction is not granted, irreparable loss would be caused to him, since he has obtained construction licence from the concerned Authority. The balance of convenience appears to be in favour of the plaintiff. Therefore, there is no embargo on this Court to grant temporary relief in favour of the plaintiff against the defendant. Hence, I answer Point No.1 to 3 in the **Affirmative.**

11. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

The I.A.No.I filed by the plaintiff
U/O.39 Rule 1 and 2 of C.P.C., is hereby
allowed.

The defendant, his men, agents are
hereby restrained from interfering in the

possession and enjoyment of the plaintiff over the suit schedule property till the disposal of the suit.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **25th day of November 2021**).*

(MD SHAIZ CHOUTHAI)
CIVIL JUDGE & JMFC.,
H D Kote