



CNR: KAHC010345522021

NC: 2026:KHC:42016
MFA No. 4607 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 4607 OF 2021 (CPC)

BETWEEN:

1. SRI V CHANDRASHEKAR
S/O LATE K VEERACHAR
AGED 46 YEARS
2. V UMASHANKAR
S/O LATE K VEERACHAR
AGED 38 YEARS

SL.NO.1 AND 2 ARE RESDING
AT NO 487, 2ND PHASE
GOKULA 1ST STAGE
BENGALURU 560022

Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA

(BY SRI. MANJUNATHA H.,ADVOCATE)

...APPELLANTS

AND:

1. SRI K GURURAJ
S/O SRI Y V KRISHNAPPA
AGED 65 YEARS
R/AT NO 599



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RAILWAY PARALLEL ROAD
YESHWANTHPURA
BANGALORE 560022

...RESPONDENT

(BY SRI.UMESH.B.N ., ADVOCATE)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 19.08.2021 PASSED ON I.A.NO.3 IN OS.NO.6626/2020 ON THE FILE OF THE XVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-12, DISMISSING THE I.A.NO.3 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants, who are the plaintiffs before the trial Court in O.S.No.6626/2020 challenging the impugned order passed by the XVI Additional City Civil and Sessions Judge CCH- 12,



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Bengaluru, dated 19.08.2021 passed on the IA No.3 filed under Order 39 Rule 1 and 2 read with Section 151 of CPC whereby the learned trial judge dismissed the application of the plaintiff.

2. Parties to the proceedings shall be referred to as plaintiffs and defendant for the sake of brevity.

3. The notice to respondent/defendant has been served, but there is no representation for respondent/defendant. Plaintiffs had filed an application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking an order to restrain the defendant from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. It is the case of the plaintiffs that their father Sri.K.Veerachar, was the absolute owner of the 'A' schedule property by virtue of a registered sale deed dated 22.03.1979. It also contended that during the lifetime of their father, the defendant filed original Suit O.S.No.7509/1999 for the relief of perpetual



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injunction and later on amended and converted the suit for specific performance in respect of the suit schedule 'A' property based upon the agreement of sale dated 18.06.1989. It is stated that the original suit came to be decreed on 14.09.2004, and thereafter the original defendant had filed execution case No.393/2005 on 07.02.2005 for execution of the said decree. On 16.02.2005, the court allowed defendant to deposit the balance sale consideration of Rs.2,65,000/-. A notice was ordered to JDR.

4. It is further contended that after several adjournments on 30.08.2007, a sale deed draft was prepared, and the Court ordered to execute the sale deed. The document was presented before the office of the Sub Registrar, Rajajinagar on 14.09.2007. Subsequently, the execution case was adjourned further. This being the state of affairs, the decree holder in the execution petition filed IA under Order 21 Rule 95 of CPC for delivery of



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possession of suit 'A' schedule property from the judgment debtor, and on 18.03.2008, the court ordered issuance of delivery warrant for delivery of the suit schedule property to the decree holder. But the same was un-executed, as it was obstructed by the JDR. Subsequently, the executing Court passed an order on 31.08.2009 as under:

"The sale deed is executed through Court, perused terms of decree. The decree never directs the JDR to hand over possession. Even then, DHR on 27.11.2007 filed application for delivery of position and sought for police protection. Hence, IA is dismissed with cost of Rs.1,000/- for misguiding the Court. Petition is dismissed as fully satisfied."

5. It is contended by learned counsel for the appellants/plaintiffs that pursuant to the dismissal of the execution petition and even prior to that, the appellants/plaintiffs have been in peaceful possession and enjoyment of the suit schedule property. Learned counsel further contends that the very fact of the original defendant/decreed holder filed an application seeking



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possession and delivery of possession from the JDR, that is, the plaintiffs herein, apparently proves the fact and establishes without any doubt that the appellants/plaintiffs are in peaceful possession and enjoyment of the suit schedule property. Therefore, he contends that the trial Court ought to have allowed the application filed under XXXIX Rule 1 and 2 read with Section 151 of CPC on this sole ground itself that the defendant/deGREE holder in the execution petition had admitted the JDR therein and the appellants/plaintiffs herein to be in possession and sought for vacant possession and delivery of possession also through the police help by filing a separate application.

6. Under the circumstances, he contends that whether he succeeds in the suit or not is a matter of trial, which will have to be decided in the course of trial, but he has made out a sufficient ground and valid case to go in for trial by way of prima facie case. Hence, the trial Court has failed to see these aspects and has clearly come to the



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conclusion that there was a judgment and decree as against the father of the plaintiffs, which is not challenged, and that there is the suit filed by the appellants/plaintiffs for the relief of adverse possession. When such being the case, the plaintiffs have not made out a valid case, a prima facie case and accordingly, dismissed the application, which is illegal and perverse and the same requires to be set aside and reversed.

7. Though notice is served to original defendant K. Gururaj, he is not represented before this Court.

8. This Court is of the opinion that when an application is filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC restraining the defendant/opponent from interfering with the suit schedule property, the Court is required to consider three essential aspects: prima facie case, balance of convenience and the hardship that would be caused more to which of the parties. In the present case on hand, the



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suit of the plaintiffs itself is for declaration to declare their rights having perfected by way of adverse possession against the original defendant. The issue with regard to the defendant having filed suit for specific performance, and the same having been decreed and the execution petition having been filed, having been dismissed are all not disputed and are admitted by the appellants/plaintiffs.

9. It is the specific contention of the appellants/plaintiffs that despite the agreement of sale and the judgment going against their father and an execution petition being filed, which was dismissed consequently, the appellants are in peaceful possession and enjoyment of the property of their father. They have bifurcated the property into two portions, which is shown in the 'B' schedule property and they are in peaceful possession and enjoyment of the same. It is also relevant to see that the application of the original defendant before the executing Court for delivery of possession through the Court and



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seeking assistance from the police for delivery of possession from the JDR apparently is evident that the JDR therein the appellants/plaintiffs herein are in possession and enjoyment of the suit schedule property. Whether the plaintiffs eventually succeeds in the suit or not is for the trial Court to decide after a detailed trial and now that it is stated that defendant No.2 who is a subsequent purchaser from the original defendant, is already brought on record before the trial Court, it is for the trial Court to hear the defendant No.2 to pass suitable orders in accordance with law.

10. Be that as it may, when an interim injunction is sought against the original defendant, based on these factual aspects of the appellants/plaintiffs being in possession and the suit being filed for the relief of declaration of having perfected the right by way of adverse possession and having shown possession over the suit schedule property by placing several sufficient materials,



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the trial Court ought to have allowed the application for the reason that the prima facie case has been made out by the appellants/plaintiffs to show that they can go for trial to establish their case and made out a valid case, balance of convenience would tilt in favour of the appellants/plaintiffs and so also much hardship will be caused to the appellants/plaintiffs if they are dispossessed from the suit schedule property. Under the circumstances, being satisfied with the case made out by the appellants/plaintiffs and in view of the discussions made herein above, I pass the following Order.

ORDER

- 1) The appeal is ***allowed.***
- 2) The impugned order passed by the learned trial Judge in O.S.No.6626/2020 on IA No.3 filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC dated 19.08.2021 is



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hereby set aside. Consequently, the application is allowed.

3) The respondent herein, who is the original defendant before the trial Court is restrained by an order of temporary injunction from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit.

4) It is made clear this Court has not expressed any opinion on the merits of the matter, so also the rights of the subsequently added defendant No.2 and the documents so produced and placed before the trial Court by the defendant No.2.

5) All contentions of the parties are kept open.

6) In view of the fact that the original suit is of the year 2020 and already six years having been passed, the trial Court shall make



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an endeavour to dispose of the suit
expeditiously. Parties to cooperate in the trial
before the trial Court for the expeditious
disposal.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

RCK
List No.: 1 Sl No.: 17