

O.A.No.1288 of 2015
in
C.S.No.961 of 2015

M.M.SUNDRESH, J.

Applicant is the plaintiff and the suit has been filed by her for permanent injunction against the respondent, who is none other than her brother. The applicant has purchased the suit property by a registered sale deed dated 20.04.2007 by appointing her mother as a power agent. Now the case of the applicant is that the respondent, without any authority, trespassed into the property of the applicant. Thereafter, the respondent vacated the suit property and at present, it is not in the hands of the respondent. Thus, being the owner of the property, the attempt being made by the respondent will have to be prevented by an order of injunction. The applicant has also given a complaint, based on which, a case was registered in Crime No.3406 of 2015. Before the police, the respondent has also given an undertaking on 01.09.2015 by which he has agreed to vacate two persons inducted by him in the suit property, which was stated to be under his control and hand over the vacant possession within a period of one week subject to payment of a sum of Rs.4 lakhs towards maintenance charges by the applicant.

2.Learned counsel for the applicant submits that the respondent is residing in Plot No.12A/1 which is opposite to the suit property. Therefore, the contention that he is residing in the suit property is not correct. Taking advantage of the fact that the applicant is residing in U.S.A., the respondent is trying to grab the suit property. There is no oral agreement between the parties. The documents produced including the encumbrance certificate and the property tax receipt would show the possession of the applicant. As the respondent does not have any semblance of right, placing reliance upon the judgment of the Apex Court in **Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira ((2012) 5 SCC 370)**, it is submitted that an order of injunction will have to follow.

3.Learned counsel for the respondent submits that the documents would show that the respondent is in possession at least from the year 2012 onwards. It is not as if the respondent is residing in the suit property but only having his office. No importance can be given to the undertaking given before the police, which is inadmissible. Even the said document shows that the respondent is in possession, as also seen from the complaint given by the applicant. As the respondent has been in possession from the year 2012 onwards, the suit ought to have been filed for recovery of possession. Reliance has been made on

the judgment of the Apex Court in **Rame Gowda Vs. M.Varadappa Naidu (2004 (1) SCC 769)**.

4.Learned counsel for the respondent makes yet another submission that the suit has to be laid only for injunction and not for possession. This Court is unable to accept the said contention for two reasons. Firstly, there is no dispute on the title of the property and secondly, the respondent has not shown the factum of possession as on today though a submission is sought to be made based upon certain documents that the respondent is in possession from the year 2012 onwards. Hence once title is made out, it is for the respondent, even assuming in possession, to establish the nature of possession. Therefore, the said contention cannot be accepted on the basic principle that an order of interim injunction would follow title.

5.The relationship of the parties is not in dispute. Similar is the title of the applicant. The property was purchased by the applicant through her mother. From the pleadings and submissions, it is also clear that the respondent is not residing in the suit property but it is his case that he is carrying on business. According to the respondent, the undertaking before the police has been obtained by coercion. Therefore, the contents of the undertaking that he would vacate the

tenants cannot be stated to have been obtained by duress. In other words, the element of duress can be attributable to the handing over of possession alone which was with the tenants, even according to the respondent and thus not with him physically. Now it appears that there are no tenants in the suit property as submitted by both sides.

6.The only defence which is sought to be put forth by the respondent is that he has paid some monies to the applicant on different occasions, much prior to the sale deed executed in her favour and it was orally agreed that the respondent has to pay some amount to the applicant after deducting the amount paid by him. For this, there is no material available. Even assuming, there is an agreement, the respondent cannot claim possession, based upon it. There cannot be any possession, which could be protected pursuant to the oral agreement, in the eye of law. Therefore, considering the above said facts, this Court is of the view that the application deserves to be allowed especially in the light of the principles enunciated in **Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira ((2012) 5 SCC 370)**. As there is no settled possession with the respondent, the decision in **Rame Gowda Vs. M.Varadappa Naidu (2004 (1) SCC 769)** does not apply to the case on hand.

7. Accordingly, there shall be an order of interim injunction as prayed for and the application is allowed.

16.08.2016

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Note: Issue copy of the order on 18.08.2016

M.M.SUNDRESH, J.

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