

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF JULY 2002

BEFORE

THE HON'BLE MRS. JUSTICE MANJULA CHELLUR

MISCELLANEOUS FIRST APPEAL NO.7076/2001(CPC)

BETWEEN :

T. DANANJAI AH,
S/o. late Thimmashetty Gowda,
Major, R/at.No.96/6, 3rd Cross,
Maruthi Extension, Bangalore - 21.

81 82 83 **APPELLANT**

(By Sri N.Surendra Kumar, Adv.,)

AND:

1. BHEEMANNA,
S/o. Rayanna,
Aged about 52 years,
Parvathinagara,
Bangalore North Taluk.
2. SHANTHARAJU,
Major.
3. C. JAYARAMA,
Major.

Nos.2 and 3 are R/st.
Parvathinagara,
Bangalore North Taluk.

... RESPONDENTS

This Miscellaneous First Appeal is filed under Order 43 Rule 1 Sub Rule (r) of CPC against the order dated 29-10-2001 passed on IA No.I &

attorney on 29-5-1988 with one Sri Ramanna and ever since then, he has been put in possession and enjoyment of the same as an agreement holder. It is also contended that there is no time limit within which he had to get the regular sale deed executed in his favour. He further says that in pursuance of the agreement of sale and general power of attorney, he even has put up a construction and started living in the suit property along with his family members.

4. On the other hand, it is the contention of the second defendant/appellant that he took power of attorney and also purchased the suit schedule property under agreement of possession from one Sri Ravindra Gurunathappa Siddappa Sirur on 30-1-1986 and ever since then, he is in possession and enjoyment of the property where he has put up a small house as well. He further contends that the said Sri Ravindra Gurunathappa Siddappa Sirur took the power of attorney from one Sri Ramanna, the original owner of the entire Sy.No.152 of Laggere village. It is also the

defendant that the plaintiff was not at all in possession of the property. As a matter of fact, till January 1998, the plaintiff was in possession of the suit property. So far as the undertaking given before the Rajagopalnagar Police, the plaintiff has denied it in toto contending that under coercion such a note was taken. It is also noticed that earlier to this, the so-called undertaking before the Police, in July 1997, a complaint was lodged by the plaintiff along with a note of some Minister. The said note also shows that the plaintiff was put in possession of the property for the last six years prior to July 1997. In the light of denial of undertaking dated 9-11-1997, if the plaintiff had really vacated the premises in January 1998, the second defendant ought to have taken some document in this regard from the plaintiff. There is no material on record to show that in pursuance of the alleged undertaking dated 9-11-1997, the plaintiff did take and handed over the vacant possession of the suit schedule property to the appellant/second

6. It is contended that the appellant is the absolute owner and the plaintiff is a trespasser and therefore, there could not be an injunction against the appellant herein. Both the plaintiff and the second defendant are depending on general power of attorney and also agreement of sale by the plaintiff and agreement of possession by the second defendant. Therefore, one cannot say that the appellant is the actual owner of the property as on today. Under these circumstances, I do not find any good ground to interfere with the order of the learned Civil Judge. The appeal is dismissed. However,

the Court below is directed to dispose of the matter as expeditiously as possible within six months from the date of receipt of this order.

Sd/-
Judge

bks