IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26 TH DAY OF JULY 2002

BEFORE

THE HON'BLE MRS.JUSTICE MANJULA CHELLUR MISCELLANEOUS FIRST APPEAL NO.7076/2001(CPC)

BETWEEN:

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

... APPELLANT

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

AND:

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

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

...RESPOEDENTS

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 &

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Sides Jacks III in OS No.500/98 on the file of the V Addl.City Civil Judge, Bangalore, allowing IA No.I filed under Order 39 Rules 1 and 2 r/w Section 151 of CPC for TI and rejecting IA NO.III filed under Order 39 Rule 4 r/w Section 151 of CPC to vacate TI and etc.,

This Miscellaneous First Appeal coming on for admission this day, the Court delivered the following:-

JUDGMBNT

Heard the learned Counsel for the appellant.

- 2. This appeal is filed challenging the orders on I.A.Nos.I and III filed under Order 39 Rules 1 and 2 and also under Order 39 Rule 4 r/w Section 151 of the Code of Civil Procedure.
- It is not in dispute that the suit 3. property is a part of Sy.No.152 of schedule Laggere Village measuring totally about two acres guntas of Yeshwanthapura Hobli, No.48 is the number given to the site in the said Sy.No.152. There is no dispute with identity af the property. the regard to According to the plaintiff, he entered into an agreement of sale and also general power

ligition (Simple) 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 of attorney. he even has put DOWEL and started living in the construction property along with his family members.

On the other hand, it is the contention the second defendant/appellant that he power of attorney and also purchased the suit schedule property under agreement of possession from one Sri Ravindra Gurunathappa Siddappa Sirur 30-1-1986 and ever since then, he 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

case of the appellant/second defendant before the trial Court that after putting up construction, he let out the premises to the plaintiff/first respondent herein and he continued to be possession of the same till January 1998. his further case that the plaintiff qave undertaking before the Rajagopalnagar Police to vacate the suit schedule property after months from 9-11-1997. He further contends that after vacating the premises in January 1998, without paying arrears of rent, the plaintiff in order to trouble the appellant herein has come before the Court with false case that he is still in possession and enjoyment of the suit schedule property.

5. Both the parties have filed several documents to substantiate their contentions. So far as the plaintiff is concerned, he has produced the identity card issued by the Election Commission of India in his favour and also in favour of his wife. It is not disputed by the second defendant/appellant that the plaintiff was

in possession of the property till January 1998. It is also noted from the records that the suit was filed in January 1998 itself. According to the plaintiff, when the second defendant with the assistance of defendant Nos.1 and 3 started interfering with his peaceful possession enjoyment of the suit schedule property, he had to approach the Court seeking for an order of injunction. It is also noted that an ex-parte injunction was granted in his favour and the same was made absolute after hearing both the parties on merits. No doubt, the address given in the cause title of the plaint and the suit schedule property are different. Admittedly, the property in question is a revenue land, which seems to have come into the purview of the Corporation now and they are yet to be regularised. Probably, in order to have intimation to him properly, he must have given the address as noted in the cause title. All the documents produced before the shows that the plaintiff had been in possession of the suit property for quite long time and it is not even the case of the second

Libe office defendant that the plaintiff was not at all in possession of the property. As a matter of fact, plaintiff till 1998, the was January possession of the suit property. So far as the Rajagopalnagar undertaking given before the denied it Police, the plaintiff has contending that under coercion such a note was It is also noticed that earlier to this, taken. the so-called undertaking before the Police, in a complaint was lodged by the July 1997, 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 9-11-1997, the plaintiff did dated handed over the vacant possession of the suit appellant/second the property to schedule

defendant. Under these circumstances, the trial Court has rightly come to the conclusion that case in favour of is a prima facie there 13 also balance of plaintiff and convenience. The documents reveal plaintiff is in possession of the property and if no order of injunction is granted, he would be put to irreparable loss of injury.

It is contended that the appellant is the absolute owner and the plaintiff is a tresspasser and therefore, there could not be injunction against the appellant herein. Both plaintiff and the second defendant depending on general power of attorney and also agreement of sale by the plaintiff and agreement the second defendant. possession by of 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 Judge. The appeal is dismissed. However, Civil

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