

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE 2020

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

W.P.107540/2019 (GM-CPC)

BETWEEN:

SRI.BASANAGOUDA S/O KAREGOUD  
AGE: 67 YEARS, OCC: AGRICULTURE,  
REPRESENTED BY HIS GPA  
BASANAGOUDA MALIPATIL,  
AGE:36 YEARS, OCC: AGRICULTURE,  
R/O JEERALKALGUDI, TQ: GANGAVATHI,  
DIST: KOPPAL.

.. PETITIONER

(BY SRI.C.S.SHETTAR, ADV. FOR SRI.NEELENDRA.D.GUNDE, ADV.)

AND:

SRI.BASAVARAJ S/O LAKKAPPA  
AGE: 37 YEARS, OCC: AGRICULTURE,  
R/O: JEERALKALGUDI, TQ: GANGAVATHI,  
DIST: KOPPAL.

.. RESPONDENT

(BY SRI.H.N.GULARADDI, ADV)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED  
20.02.2019 AT ANNEXURE-G PASSED BY THE HON'BLE SENIOR CIVIL  
JUDGE AND JMFC, GANGAVATHI IN M.A.NO.13/2018 &  
CONSEQUENTLY. B) CONFIRM THE ORDER ON I.A.NO.1 PASSED BY  
THE LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, GANGAVATHI IN  
O.S.NO.245/2017

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The top noted writ petition is filed challenging the order passed by the appellate Court in M.A.No.13/2018 granting injunction in favour of respondent/plaintiff.

2. The brief facts leading to this writ petition are as under:

The respondent/plaintiff has filed a bare suit for injunction by contending that he has purchased 6 guntas of land in Sy.No.125 measuring 5 acres 34 guntas from petitioner/defendant under registered sale deed dated 02.07.2003 for a valid sale consideration of Rs.2,500/-. The further case of the respondent/plaintiff is that, pursuant to sale deed by petitioner/defendant, possession was delivered in favour of the respondent/plaintiff. The case of respondent/plaintiff is that since the date of sale deed, he is in exclusive possession over the suit land measuring 6 guntas. The respondent/plaintiff has

contended at para 8 of the plaint that, on 15.10.2017 petitioner/defendant interfered with respondent's possession over the suit property and also threatened to dispossess respondent/plaintiff over the suit property. It is further contended in para 8 of the plaint that, present petitioner/defendant denied the title of the respondent/plaintiff over the suit property. Hence, respondent/plaintiff was compelled to file a bare suit for declaration and injunction in O.S.No.245/2017. On receipt of summons, petitioner/defendant contested the proceedings by filing written statement. At para 3, the present petitioner/defendant though admits the sale deed in favour of respondent/plaintiff but however he is seriously disputing the boundaries. The contention of the petitioner/defendant is that eastern boundary shown in the sketch is wrong.

3. The respondent/plaintiff apprehending threat of dispossession filed an application in I.A.No.1 under Order

XXXIX Rule 1 and 2 of CPC seeking the relief of temporary injunction. The said application was strongly resisted by the petitioner/defendant. The Trial Court having examined the pleadings of the parties and prima facie material rejected the application on the ground that respondent/plaintiff has failed to establish exact location of the suit property. The trial Court on the premises that description of the property in question is vague has proceeded to reject the application.

4. The respondent/plaintiff being aggrieved by the rejection of the application preferred an appeal in M.A.No.13/2018. The appellate Court on re-appreciation of the prima facie material has allowed the appeal and granted the injunction in favour of the respondent/plaintiff. The appellate Court has reversed the reasoning assigned by the Trial Court by recording a finding that the petitioner/defendant has admitted that he has sold 6 guntas of land to the respondent/plaintiff. The appellate

Court was of the view that the boundaries mentioned by the petitioner/defendant when compared to the boundaries mentioned in the sale deed, it is forthcoming that there is a mistake in respect of boundaries mentioned in eastern, northern and southern side. Since prima facie the respondent/plaintiff has furnished title documents and since petitioner/defendant is denying very execution of the sale deed, the appellate Court was of the view that since prima facie there is a sale deed in favour of respondent/plaintiff to an extent of 6 guntas, the appellate Court has set aside the order passed by the trial Court and has proceeded to allow the appeal and thereby has granted the interim injunction in favour of the respondent/plaintiff.

5. Heard the learned counsel for the petitioner and respondent, perused the material on record, photographs and also sketch.

6. Admittedly, respondent/plaintiff has purchased the suit property under registered sale deed dated

02.07.2003. There is a recital in the registered sale deed indicating delivery of possession in favour of the respondent/plaintiff to an extent of 6 guntas. This material aspect would clinch the issue insofar as granting interim injunction in favour of the respondent/plaintiff. The controversy in regard to description and location of the property is concerned, this Court is of the view that it is a matter of trial. Further, it is also evident that respondent/plaintiff has filed comprehensive suit seeking the relief of declaration and consequential relief of injunction. In that view of the matter, it is open for the parties to lead evidence and demonstrate as to the existence of the suit property.

7. At this stage, the appellate Court was of the view that since there is a registered sale deed in favour of respondent/plaintiff, finding of the trial Court in rejecting the application suffers from serious infirmity and this compelled the appellate Court to interfere with the order

passed by the trial Court. I am of the view that, reasoning assigned by the appellate Court is in accordance with law. In that view of the matter, the discretion exercised by the appellate Court is judicious and in accordance with law and the said finding recorded by the appellate Court is based on prima facie material and admitted set of facts.

8. In that view of the matter, the order under challenge does not call for any interference by this Court. Accordingly, the writ petition is dismissed.

No order as to costs.

MBS/-

Sd/-  
JUDGE