

IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated the 6th day of June 2001.

BEFORE

THE HON'BLE MRS. JUSTICE MANJULA CHELLUR

C.R.P.No. 2108/2001.

BETWEEN:

1. Sidrammayya,
S/o Siddayya Shirahattimath,
Aged about 40 years.
2. Veerayya S/o Siddayya
Shirahattimath, Aged
About 35 years.
3. Smt. Sangawwa W/o Siddayya
Shirahattimath, aged about
60years,

All are residents of
Malagilane, At Hombal,
Ta. & Dist. Gadag.

PETITIONERS.

(By Sri. R.A. Mali and Sri. S.P.
Kulkarni for petitioner)

AND:

1. Yellappa S/o Sharanappa
Alagwadi, Aged about 16 years
(Minor)

2. Shankarappa S/o
Sharanappa Alagawadi,
Aged about 12 years (Minor)

Both respondents are
Minor represented by
Their guardian and
Natural father Sri. Sharnappa
S/o Hanumappa Alagwadi,
R/o Malagi Lane, at
Hombal, Ta. & Dist. Gadag.

RESPONDENTS.

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This C.R.P. is filed under Section 115 of
C.P.C. against the order dated 9.4.2001 passed on
I.A. No.V in O.S. No. 62/99 on the file of the III
Addl. Civil Judge (Jr. Division), Gadag, dismissing
I.A.No.V filed under order 14, Rule 2 read with 151
CPC.

This petition coming on for admission this day,
the court delivered the following:

ORDER

This revision petition is filed assailing the
order on I.A. No.V in O.S. No. 62/99 on the file of
the III Additional Civil Judge, (Junior Division),
Gadag.

The revision petitioner herein is the
defendant. According to the plaintiff, he is in

...3/-

possession and enjoyment of V.P.C. No. 1234 by virtue of a sale deed and therefore he sought for permanent injunction restraining the defendant and his people from interfering with the peaceful possession and enjoyment of his property by him. This is disputed by the defendant - revision petitioner contending that the sale deed issued in favour of the plaintiff do not cover such property and the V.P.C. Numbers are wrongly mentioned. It is well settled that in a bare suit for injunction the Court while deciding the issue regarding lawful possession of the property can incidentally look into the title to come to the conclusion whether the plaintiff is in lawful possession of the property or not?

I.A. V was filed for framing additional issue with regard to the above facts. Relying on K.L.J. 1996(5) 306 the learned Judge of the trial Court has

rightly dismissed the application by holding that the declaration need not be passed if the plaintiff proves the possession and title. If such relief is not sought for by the plaintiff which would go to the root of the case of the plaintiff and he would be taking the risk. The dismissal of I.A.V do not prejudice the right of the defendant - revision petitioner in any manner. There is no illegality or irregularity in the order.

Accordingly, the revision petition is dismissed.

Sd/- JUDGE

Csk/-