

KAMS020024932023



**IN THE COURT OF III ADDL. SENIOR CIVIL JUDGE &
CJM., AT MYSURU**

:Present:

**Smt. N. Anupama, B.A.L.,LL.B.,
III Addl. Senior Civil Judge and CJM,
Mysuru.**

M.A.No.69/2023

DATED ON THIS THE 20th DAY OF SEPTEMBER- 2023

APPELLANTS:

1. Sri.P.Sudarshan Hanagodu,
S/o H.K. Pranesh,
aged about 49 years.
2. Smt.C.Nandini,
W/o Sri.P.Sudarshan Hanagodu,
aged about 46 years.
Both are residing at No.305,
F4/4, 305/1, 306, F4/2, F4/3,
307, F/4 and 308 F4/1,
Ramanuja Road, Fort Mohalla,
Mysuru.

[By Sri. M.H.G., Advocate]

V/s

RESPONDENTS:

1. Smt.Sarojamma,
W/o Late. Chikkanna,
aged about 73 years.
2. Sri.C.Rajashekar,
S/o Late. Sri. Chikkanna,
aged about 52 years,
Both are residing at No.331,
Ramanuja Road,
Fort Mohalla,
Mysuru.

[By Sri. C.P.K., Advocate]

Date of Appeal	11.08.2023		
Nature of Judgment/Order	Against the Order passed by the II Addl. Civil Judge & JMFC., Mysuru on I.A.No.1 in O.S.No.31/2023 dated:08.08.2023.		
Date of Order	20.09.2023		
Total Duration:	Year/s	Month/s	Day/s
	00	01	09

ORDER

The ***appellants*** who are the defendants before the
Trial court – II Addl. Civil Judge & JMFC, Mysuru, being

aggrieved by the order dated 08.08.2023 passed on ***I.A.No.1 in O.S.31/2023 has filed this appeal under Order 43 Rule 1 of CPC.***

2. The ***respondents*** are the plaintiffs before the trial court. For the sake of convenience, the parties would be hereinafter referred to as per their rank before the trial court.

3. *The schedule property is:*

SCHEDULE

*Shop premises bearing No.305/1 and 306/1 and 306(New No.F4/2 and F-4/3), situated at Ramanuja Road, Fort Mohalla, Mysuru, both shops measuring 8 * 8 Ft individually and bounded on : **East by:** House No.307, **West by:** Ramanuja Road, **North by :** House No.307, **South by:** Narasamma's House.*

4. **I.A.No.1** is an application filed by plaintiffs seeking to restrain the defendants from interfering with the task of repair undertaken by them in the schedule-property, pending disposal of the suit.

5. The order on I.A.No.1 dated 08.08.2023 is hereinafter referred to as the '**impugned order**'.

6. **The facts of the case in brief are as under:**

As per the plaint, plaintiff no.1 is the mother and plaintiff no.2 is the son. It is the specific case of plaintiffs that they have been running their business under the name 'Ganapathi Stores' in the schedule-property which was originally taken on **oral lease** of Rs.15/- per month by their ancestor-Eeraiah (great grand-father of plaintiff no.2) from one Dr.G.S.Rajan; after the demise of Eeraiah, his son – Veerabhadrappa, then his son-Chikkanna (husband of plaintiff no.1 and father of plaintiff no.2) and

now the plaintiffs have continued in possession of the same. After the death of Dr.G.S.Rajan, the rent was being paid to his wife-Dayarajan. These being the facts, in April 2005, the defendants approached the plaintiffs, proclaimed that they have purchased the schedule-property and tried to dispossess them. Hence the plaintiffs filed O.S.No.988/2005 seeking to restrain the defendants from dispossessing them from the schedule-property without due process of law. The suit came to be decreed on 02.08.2006. These being the facts, in 2022 the defendants started to put-up a new structure in the property purchased by them; and while doing so, they threw demolition debris upon the roof of the schedule property, so as to ouster the plaintiffs from the schedule property unlawfully. The defendants did not allow the plaintiffs to repair the damage caused to the roof of the schedule-property and thus they were forced to approach

the jurisdictional police but in vain. Hence the suit & application.

7. **Defendants** have filed the written-statement cum **objections** and have contended that:

- (i) there is no land-lord and tenant relationship between them and plaintiffs;
- (ii) that the plaintiffs have been in unauthorized possession of the schedule-property;
- (iii) that they had asked the plaintiffs to vacate the schedule-property within 3-4 months and on failure to do so, pay the rent of Rs.10,000/- per month;
- (iv) that the plaintiffs have not paid the rent as agreed by them.

On these grounds, it is prayed to dismiss the application.

8. Based on the rival contentions, the trial court has formulated the following points for its consideration on I.A.No.1:

POINTS

- 1. Whether the plaintiff has made-out prima-facie case in his favour ?***
- 2. Whether the balance of convenience lies in favour of the plaintiff ?***
- 3. Whether plaintiff will be put to hardship and injury if the order of Temporary injunction is not granted?***
- 4. What Order?***

9. Having heard both-sides, the trial court has answered Points on I.A.No.1 in the Affirmative and has allowed I.A.No.1 vide impugned order. Thus, being aggrieved by the same, the present appeal has been filed by the appellant on the following amongst other grounds:

(i) the trial court has failed to observe that no notice has been caused to the appellants by the respondents under Section 108 of T.P.Act;

(ii) by the impugned order, the trial court has granted licence to the respondents to put-up construction in the schedule-property although their rights over the same is very limited;

(iii) the trial court has erred in considering the facts and has wrongly passed the impugned order;

On these grounds, the appellants have prayed to allow the appeal and set-aside the order of the trial court.

10. On service of notice in appeal, the respondent appeared through his counsel.

11. I have heard the arguments of both-sides and perused the materials placed on record.

12. The following points arise for determination of this court:

POINTS

1. Whether the order impugned in appeal is perverse, arbitrary, and calls for interference by this court?

2. What order?

13. My findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per final order for the following:

REASONS

14. **Point No.1:** It is the specific case of plaintiffs that they have been running their business in the schedule-property which was originally taken on ***oral lease*** of Rs.15/- per month by their ancestor-Eeraiah (great grand-father of plaintiff no.2) from one Dr.G.S.Rajan; after the demise of Eeraiah, his son –

Veerabhadrappa, then his son-Chikkanna (husband of plaintiff no.1 and father of plaintiff no.2) and now the plaintiffs have continued in possession of the same. After the death of Dr.G.S.Rajan, the rent was being paid to his wife-Dayarajan. These being the facts, in April 2005, the defendants approached the plaintiffs, proclaimed that they have purchased the schedule-property and tried to dispossess them. Hence the plaintiffs filed O.S.No.988/2005 seeking to restrain the defendants from dispossessing them from the schedule-property without due process of law. The suit came to be decreed on 02.08.2006. These being the facts, in 2022 the defendants started to put-up a new structure in the property purchased by them; and while doing so, they threw demolition debris upon the roof of the schedule property, so as to ouster the plaintiffs from the schedule property unlawfully. The defendants did not allow the plaintiffs to repair the damage caused to the roof of the

schedule-property and thus they were forced to approach the jurisdictional police but in vain. Hence the suit & application.

15. **Defendants** have filed the written-statement cum **objections** and have contended that:

- (i) there is no land-lord and tenant relationship between them and plaintiffs;
- (ii) that the plaintiffs have been in unauthorized possession of the schedule-property;
- (iii) that they had asked the plaintiffs to vacate the schedule-property within 3-4 months and on failure to do so, pay the rent of Rs.10,000/- per month;
- (iv) that the plaintiffs have not paid the rent as agreed by them.

16. The plaintiffs have produced the copy of the registered sale deed dated 19.02.2004, copy of the khata

extract and photographs. On the other hand, the defendants have produced the copy of judgment in O.S.No.988/2005 and photographs.

17. From the facts pleaded, it is clear that:

- i) the defendants have been in possession of the suit-property;
- ii) that there has been the decree dated 02.08.2006 in O.S.No.988/2004 restraining the defendants from dispossessing the plaintiffs from the schedule-property without due process of law.

18. It is relevant to note that the defendants have purchased the schedule-property along with the other portion in the said property vide registered sale deed dated 19.02.2004 from Dayarajan. It is after the such purchase that the plaintiffs have filed O.S.No.988/2005 and have obtained the decree for permanent injunction

against the defendants as aforesaid. But after such decree, the defendants have not initiated any action to evict the plaintiffs. However, in the present suit as well as in O.S.No.988/2005: **(a)** the defendants have ***indirectly*** admitted the tenancy of plaintiffs; and **(b)** the plaintiffs have ***indirectly*** admitted the purchase of schedule-property by defendants. Further, on one hand, the defendants deny the jural-relationship and on the other, claim that the plaintiffs have failed to pay the rent of Rs.10,000/- per month as agreed. Thus the defendants approbate and reprobate at the same.

19. Further, in O.S.No.988/2005 itself, the defendants have taken-up a specific-defence that the schedule-property was in dilapidated-condition, but the plaintiffs refused to vacate the same unless an amount of Rs.5,00,000/- was paid to them. This goes to show that the schedule-property has been in dilapidated condition

since 2005 itself (as could also be seen from the photographs produced by plaintiffs). But as discussed above, the defendants have not at all initiated any action to evict the plaintiffs from the schedule-property till now, and the schedule-property has continued to remain in the same condition. Thus with no other alternative, the plaintiffs have filed the suit seeking to restrain the defendants permanently from interfering with the task of repair to be undertaken by them in the schedule-property.

20. The learned counsel for appellants/defendants argued that the respondents/plaintiffs were bound to give notice to the defendants as provided under Section 108 of T.P.Act before taking-up any repair in the schedule-property. But when the defendants do not in clear terms admit their jural-relationship with plaintiffs, and term the possession of plaintiffs as ‘unauthorized’, where can there

be any question of issuing such notice?? Thus the plaintiffs have found the remedy in the form of suit and consequent interim-application, on which the impugned order has been passed.

21. Considering all these aspects, the trial court has rightly allowed I.A.No.1. Moreover, carrying-out repairs in the schedule-property does not in any way entitle the plaintiffs to claim their ownership over the same.

Lastly, the learned counsel for respondents/plaintiffs has filed the copy of the interim-application filed in O.S.No.1062/2023; a perusal of which shows that it is a suit filed by the present defendants/appellants against the present plaintiffs/respondents for eviction in which they have maintained an application seeking to restrain the plaintiffs from carrying-out any repairs in the schedule-property. And O.S.No.1062/2023 is a proper suit for the

defendants to agitate all the matters in controversy between them and plaintiffs.

In view of the above, the order impugned in appeal is **not** perverse, arbitrary and capricious. Accordingly, I answer Point no.1 in the '**Negative**'.

22. **Point. No.2:** In view of the above discussion and in the result, I proceed to pass the following:

O R D E R

Appeal filed by the appellants is dismissed. No order as to costs.

The impugned order of the trial court passed on I.A.No.1 is confirmed.

Send the copy of this Order to the trial court.

(Dictated to the Stenographer on computer, corrected by me and then pronounced in Open Court on this 20th day of September-2023).

(N. ANUPAMA)
III Addl. Senior Civil Judge,
Mysuru.