



This appeal coming on for hearing this day the Court delivered the following:

**JUDGMENT**

This appeal is filed under Order 43 Rule 10 CPC against the order dated 18-7-2000 passed in O.S.No.3825/1998 by the VII Addl. City Civil Judge, Bangalore dismissing I.A-II filed under Order 39 Rule 1 and 2 CPC and allowing I.A-IV filed under Order 39 R.4 CPC.

2. The ranks of the parties shall be followed as in the lower Court.

3. The plaintiff has filed the suit for permanent injunction praying not to evict him from the suit schedule property, interalia I.A-II was filed by the plaintiff under Order 39 Rules 1 and 2 CPC and the defendant has filed I.A-IV under Order 39 Rule 4 CPC.

4. According to the plaintiff, he is a permanent resident in the suit schedule property



and he has been residing in it for the last 45 years without any disturbances or obstruction from any one including its original owner Shettiyappa. The suit property is P-44 out of Sy.No.56/2 measuring East to West 20' and North to South 30' with 2 sq. asbestos sheeted residential accommodation in Ashwathanagar, Shettiyappa Compound, 80 ft Road, Bangalore-94. This suit property was part of revenue land bearing Sy.No.56/2. After the death of the original owner Shettiyappa, when partition took place, it has fallen to the share of his son S.Srinivas. The said Srinivas on 23-3-1983 gifted the suit property to the plaintiff and since then - plaintiff has been residing therein for the last 30 years. This property was given to him because he was working in the Garden of S.Srinivas. The gift deed is also produced. It is unregistered gift. The khatha and other necessary documents are also produced. Grama Panchayath, Geddalahalli after making necessary spot verification and after confirming the actual possession and enjoyment of the suit property issued form No.10 in favour of the

5. The defendant has opposed this application stating that the documents are created just to suit the purpose of the plaintiff; the gift deed is denied; the possession is denied; that there is no such property called P.44 in Sy.No.56/2 and the gift

deed dated 23-3-1983 is not admitted. The defendant also states that there exists no structure nor there was any construction as alleged by the plaintiff. The allegations in the plaint that the plaintiff is residing for more than 45 years is false. It is further stated that the suit property was purchased from one Rajavardhan under registered sale-deed dated 22-7-1991. In pursuance of this sale-deed, he has been put in possession of the property. It is further stated that he has built up an ACC sheet roofed building in the area of 1½ Sqs. It is further contended that Rajavardhan got the sale deed executed in his name from S.Srinivas, Son of Shettiyappa, the owner of the property under the registered sale deed dated 4-12-1986. Therefore the plaintiff is not in possession of the property, as such, he is not entitled for any relief.

6. Heard Mr.Chandrashekar, learned counsel for the appellant. According to him, the suit schedule property was gifted by one S.Srinivas by gift deed dated 23-3-1983. In pursuance of this,

he has built up a building with asbestos roof and he has also taken water and electricity connections and he has received the demand bills from the concerned departments. Since the plaintiff was working in the land of Srinivas, he has got this land from Srinivas.

7. By the contentions of both sides, now it has to be seen who is in actual possession of the property. Mr.Chandrashekar also relied upon two decisions viz., **C.BHASKAR V. STATE OF KARNATAKA AND ANOTHER (1995(5) KAR.L.J. 69)** . Relying upon this decision he has gone to the extent of submitting that even assuming for a moment that the plaintiff has no better title than the defendant, it stands established that he is in possession of the property. When one is in possession of the property, he should be evicted after taking recourse to the due process of law. The another decision is **P.FATESH AHAMED SAHEB v.SANDUR USMAN SAHEB & ORS (ILR 1997 KAR 999)** wherein it is stated as follows:



"A) SPECIFIC RELIEF ACT, 1963 (Central Act No.47 of 1963) Section 38- appellant filed suit for title and perpetual injunction having purchased suit property from vendor who claimed to have derived title by gift from his mother, who had no absolute right and title - Trial Court decreed suit but Appellate Court dismissed - in second appeal, though claim of title failed, appellant not being a rank trespasser, held, entitled to possessory relief of perpetual injunction."

8. Looking to the facts that plaintiff has taken the water and electricity connections, produced kandayam receipts and that the khatha is effected, it goes without saying that the appellant is in possession of the property. However, if the defendant can establish better title than the plaintiff, he can take recourse to such remedy as is permissible in the eye of law. Left as on this date, I am inclined to hold that the appellant has made up a case to set aside the impugned order. Therefore the following order is passed:



In the result, the appeal is allowed. The order passed on I.As-II and IV are set aside. The appellant is entitled for the grant of temporary injunction against the respondent pending disposal of the suit.

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Sd/-JUDGE

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