HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO. 988 OF 2025 (CPC)

BETWEEN:

1. MR. GERARD STEPHEN HARRY
S/O HARRY DIAS THOMAS
AGED ABOUT 56 YEARS,
RESIDING AT NO 10/A,
NEW NO 8, CANNAUGHT ROAD,
QUEENS ROAD CROSS, VASANTHNAGAR,
BENGALURU – 560 052.

...APPELLANT

(BY SRI. L M CHIDANANDAYYA,
SRI. NAVEED AHMED AND
SRI. MOHAMMED AFROZE, ADVOCATES)

AND:

1. SMT. KAMALA BAI EDUCATIONAL TRUST
REPRESENTED BY ITS SECRETARY
EDWARD ROAD, OFF QUEENS ROAD,
BENGALURU – 560 052.

...RESPONDENT

(BY SRI. UDAY HOLLA, SR. COUNSEL A/W
SRI. GANAPATI BHAT VAJRALLI, ADVOCATE)

THIS MFA IS FILED U/O.43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DATED 28.01.2025 PASSED ON IA NO.1/22 IN O.S.NO.6654/2022 ON THE FILE OF THE XLI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, (CCH NO.42) AND ETC.,

Digitally signed by THEJAS KUMAR N
Location: HIGH COURT OF KARNATAKA

THIS APPEAL IS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

CAV JUDGMENT

The above appeal is filed by the plaintiff questioning the order dated 28.01.2025 passed on I.A.No.1/2022 filed under Order XXXIX Rules 1 and 2 read with Section 151 of CPC in O.S.No.6654/2022 on the file of XLI Additional City Civil Judge, Bengaluru (CCH-42), thereby, the application filed seeking to grant an interim order of temporary injunction was dismissed.

2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

BRIEF FACTS OF THE CASE:

3. The appellant/plaintiff has filed a suit for permanent injunction restraining the defendant, their henchmen or anyone claiming under them from interfering

with the peaceful possession and enjoyment of the plaintiff over the suit schedule property and other consequential reliefs.

4. It is the case made out in the plaint that the suit schedule property originally belonged to one late Subedar Paul Sebastian, who was the great-grandfather of the plaintiff. The said Subedar Paul Sebastian was serving in the Royal Field Artillery in the British Army/Defence. The suit schedule property belonged to British Army and was leased in perpetuity/granted on 13.06.1908 to Subedar Paul Sebastian. It is stated that after the grant, the plaintiff's great-grandfather was in possession of the suit schedule property by residing in the house situated thereon. Late Subedar Paul Sebastian had constructed the chapel/church after obtaining permission from the Army in the year 1911. Thus, late Subedar Paul Sebastian enjoyed the suit schedule property as the owner in possession and enjoyment thereof till his death on 23.06.1920. Thereafter, his son, Thomas Sebastian succeeded to the

suit schedule property. The said Thomas Sebastian after obtaining No Objection Certificate dated 22.01.1970 from the Government of India, Ministry of Defence, had constructed a compound wall over the suit schedule property. Thus, Thomas Sebastian was the absolute owner in peaceful possession and enjoyment of the suit schedule property till his death.

5. After the grant, the City Survey department has entered the name of the plaintiff's great-grandfather in its record as CTS No.1092 for the chapel and the remaining portion was allotted as CTS No.1094.

6. It is stated that an extent of 10 acres of land including the land of other allottees by the Army is assigned with CTS No.1094. The plaintiff's father had filed a petition for bifurcation before the Land Survey Department and the same is pending consideration. Further, it is the case of the plaintiff that the property succeeded by Harry Dias Thomas then devolved upon the

children namely the plaintiff, Maria Elizabeth Harry, Christian Sunita Harry, H.Derick Leonard. It is stated that the khata for the residential house stands in the name of plaintiff's father and he is paying the taxes to the concerned department regularly.

7. The plaintiff's father namely, Harry Dias Thomas had filed an application before the Bruhat Bengaluru Mahanagara Palike (BBMP) for issuance of khata for the entire extent of the suit schedule property including the vacant site. The electricity bill stands in the name of plaintiff's father in respect of the house situated on the suit schedule property; therefore, the tax paid receipts, water bills and electricity bills are issued in the name of plaintiff's father and therefore, they are in possession of the suit schedule property as owners thereof.

8. It is further stated that in the first week of September 2022, the defendant along with some anti-

social elements came near the suit schedule property and tried to interfere with the plaintiff's peaceful possession and the plaintiff resisted the same. However, the defendant interfered on 05.10.2022. Therefore, the plaintiff has filed a suit for permanent injunction.

9. Further, it is stated that the defendant is a charitable institution running a girls' school situated on Edward road and the suit schedule property is situated on Cannaught road. Therefore, the defendant has no right, title or interest over the suit schedule property and has colluded with the revenue officials and is trying to create documents to grab the property belonging to the plaintiff; therefore, the present suit is filed.

WRITTEN STATEMENT:

10. The defendant entered appearance and filed written statement. It is the case made out by the defendant in the written statement that no property described by the plaintiff in the schedule of the suit is in

existence. It is the defence that the plaintiff is neither the owner nor in possession of the suit schedule property and is trying to identify the suit schedule property with that of the property belonging to the defendant and thus the ownership, title and identify of the property are in dispute; therefore, a mere suit for permanent injunction is not maintainable.

11. It is contended that the suit schedule property bearing CTS No.1094 belongs to the defendant and that the defendant has been running a school in the said property for more than 90 years. The entire extent of CTS No.1094 measuring 37,736.70 sq. mtrs. (4,06,046.90 sq. fts.) has been compounded by the defendant. Hence, it is pleaded that there is no property belonging to the plaintiff within the boundaries stated in the suit.

12. It is the case made out by the defendant in the written statement that Subedar Paul Sebastian was allotted certain property on 13.06.1908 by way of lease

for the purpose of construction of church. He expired in the year 1920 leaving behind his only daughter Lusia (Wife of F.B. Dyas). Lusia Dyas expired leaving behind her only son R.S. Dyas. The British Regiment restored and returned all the cantonment properties including the property leased to Subedar Paul Sebastian in favour of His Highness Maharaja Bahadur of Mysore.

13. Subsequently, His Highness Maharaja of Mysore executed a sale deed on 04.08.1947 in respect of St. Ann's Chapel Area in favour of R.S. Dyas. R.S. Dyas died on 09.07.1959 and the property devolved upon his family members. Subsequently, the family members of R.S. Dyas executed a release deed on 04.02.2008, releasing their right in favour of Mario Alphonse Dyas S/o. R.S. Dyas. By virtue of the release, Mario Alphonse Dyas become the absolute owner of the property and the khata was also transferred to his name in respect of property No.8 (Old No.10/A), Cannaught Road, Vasanthanagara, Bengaluru.

14. Later on, Mario Alphonse Dyas executed a sale deed dated 05.01.2016 in respect of property No.8 (Old No.10/A), Cannaught Road, Vasanthanagara, Bengaluru in favour of Sheela Anish. The said Sheela Anish has put up a residential-cum-commercial building having a super built-up area of 13,000 sq. ft. on the said property and she is in possession and enjoyment of the same.

15. It is a specific contention that the plaintiff and his family members are not related to Subedar Paul Sebastian. It is stated that the plaintiff's father, T. Harry Dias had filed a petition in P and SC No.44/2001 before the Trial Court claiming to be a legatee under the Will. The said petition was opposed by the children of R.S. Dyas. Upon contest, the petition in P and SC No.44/2001 was converted into original suit as O.S.No.9006/2003. After a full-fledged trial, the Trial Court has dismissed the said suit on 26.07.2006. In the said judgment, it was held that T. Harry Dias is not a family member of R.S. Dyas and in

turn not related to Subedar Paul Sebastian and therefore the execution of the Will is not proved.

16. Further, the suit schedule property mentioned and claimed by T. Harry Dias in O.S.No.9006/2003 is a similar property which is now claimed in the present suit. The defendant has taken contention that the defendant has title and is in possession of the property and not the plaintiff by making averment that one V.S. Thiruvengadaswamy Mudaliar submitted an application dated 14.07.1930 to the President, Municipal Commission, Civil and Military Station, Bengaluru, for grant of plot Nos.14 to 16 and 21 to 28, West Cubbon Lines and a bit of Cannaught Road either free of cost or at a nominal price for constructing a building for establishing Girls' High School.

17. On 30.07.1930, G.K. Cooke, Esq. M.C.I.C.S., President, Municipal Commission, Civil and Military Station, Bengaluru, wrote a letter to V.S. Thiruvengadaswamy

Mudaliar, stating that the Municipal Commission had resolved to sell plots No.14 to 16 and 21 to 28, West Cubbon Lines and a bit of Cannaught Road, for a lump sum amount of Rs.15,000/- and directed him to remit the amount to the Revenue Department of the Municipality and to intimate the fact of making payment to the office of the Municipal Commissioner. Subsequently, V.S. Thiruvengadaswamy Mudaliar paid Rs.15,000/- to the Municipal Commission and the same was accepted by the Commissioner and the aforesaid plots were delivered to V.S. Thiruvengadaswamy Mudaliar on 23.08.1930.

18. Thereafter, the said V.S. Thiruvengadaswamy Mudaliar, constructed a school building and established an educational institution by name ***"SMT. KAMALABAI EDUCATIONAL TRUST".*** The said Kamalabai Educational Trust was registered on 25.02.1932. V.S. Thiruvengadaswamy Mudaliar is the founder member on the one part and on the other part, the Collector of Civil and Military Station and one C.N. Surya Prakash are the

founder members. Under the trust deed, plot Nos.14 to 16 and 21 to 28 were sold to the trust and is administered by Board of Trustees and the Government is also one of the permanent trustee.

19. The said Kamalabai Educational Trust, represented by its trustees established educational institutions during the year 1930 as aforesaid and the same is being run smoothly. On 11.01.1938, the Municipal Commission of Civil and Military Station, Bengaluru, gifted two more plots, viz., plot Nos. 11 and 12, which are adjacent to the existing plots as per the registered gift deed. The said plot Nos.11 and 12 are abutting the plots already sold to the trust as aforesaid.

20. It is further raised defence that on 15.03.1955, the then Municipal Corporation of City of Bengaluru represented by its Commissioner Sri. K. Henjarappa, based on the application made by the trust for grant of additional land executed one more registered gift deed

gifting the land measuring 10,651 sq. yards. Therefore, by virtue of the three registered documents i.e., trust deed dated 25.02.1932, registered gift deed dated 11.01.1938 and registered gift deed dated 05.03.1955, therefore, Smt. Kamalabai Educational Trust has become the absolute owner of the properties mentioned therein and has established various educational institutions. The trust has also provided playgrounds and other required amenities for use of the students. It is claimed that the trust is engaged in providing education to the needy students. It is stated that the said trust and school is encompassed by a compound wall and the trust is in possession over the property for more than 90 years.

21. Further stated that the local survey was conducted by the City Survey Department and a survey map was drawn and in the said survey map, the extent of the property owned and possessed by the defendant is shown as 37,736.70 sq. mtrs. Further raised a defence that the defendant had filed a suit against the caretakers

of St. Ann's Chapel in O.S.No.195/1948-49 before the District Munsiff, Civil Station, Bengaluru, for an order of injunction to restrain the caretakers of St. Ann's Chapel from interfering with the defendant's possession. The said suit was decreed and St. Ann's Chapel preferred an appeal in R.A.No.04/1953 before the Sub-ordinate Judge, Civil Station, Bengaluru, and the said appeal was allowed.

22. Later on, the defendant preferred the second appeal No.584/1954, wherein it was clearly stated that the property bearing Nos.21 to 28 are the exclusive properties of the defendant and St. Ann's Chapel has an entrance from the eastern side and not from the southern side.

23. It is further defence raised that the defendant has instituted a suit in O.S.No.2335/1984 against St. Ann's Chapel and the said suit was decreed in favour of the defendant and no appeal has been preferred against the said judgment. The plaintiff and other siblings have filed a suit in O.S.No.1425/2008 against the defendant

and the said suit was withdrawn. The pleadings in the said suit are contrary to the present suit. It is stated that the plaintiff has suppressed about the earlier suit. It is further stated that the property bearing CTS No.1092 never belongs to the plaintiff, but it belongs to St. Ann's Chapel. Thus, the documents produced by the plaintiff do not indicate the existence of the property; the khata produced by the plaintiff shows that the khata has been made out only in respect of property bearing No.8 measuring 5924.46 sq. ft. The plaintiff has not produced any documents to establish that he is the owner and in possession of 03 acres 29 guntas. Therefore, prays to dismiss the suit.

24. In the suit, the plaintiff has filed I.A.No.1/2022 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, praying to pass an interim order of temporary injunction, but the said application was dismissed. Against this, the present appeal is filed.

25. The defendant/respondent in pursuance of notice issued has appeared through Advocate.

26. Heard the arguments from both sides and perused the voluminous documents produced by both sides.

ARGUMENTS OF LEARNED COUNSEL APPEARING FOR THE APPELLANT/PLAINTIFF:

27. Learned counsel appearing on behalf of the appellant/plaintiff submitted that after considering the *prima facie* case the Trial Court had granted an ex-parte order of injunction, but later on vacated the interim order of injunction, which was erroneous. The plaintiff has produced a document of Office Commanding 125 Rifiles granting lease of the schedule land in favour of Subedar Paul Sebastian on 13.06.1908 measuring 03 acre 28 guntas and the plaintiff derived title from Subedar Paul Sebastian. Further, the defence authorities by No Objection Certificate (NOC) dated 22.01.1970 issued in favour of Thomas Sebastian, grandfather of the

appellant/plaintiff. Further, fortified the fact that plaintiff derived title from Subedar Paul Sebastian; thus, the title is continued and the plaintiff's predecessors were in possession, for which the documents are produced.

28. Further, it is submitted that the plaintiff has produced documents such as death certificates of Subedar Paul Sebastian, Thomas Sebastian S/o. Paul Sebastian, T. Harrys Dyas S/o. Thomas Sebastian, family tree issued by the Tahasildar, NOC issued from defence in favour of Thomas Sebastian dated 22.01.1970 certifying the grant in favour of a Subedar Paul Sebastian, but these documents were not considered by the Trial Court.

29. It is further submitted that the plaintiff, in order to prove possession over the land has produced documents such as, gas bills, BWSSB bills, consumption endorsement and BESCOM bills and supply endorsement, postal covers received and Aadhar card. Further submitted that the document notices issued by the BBMP dated

22.02.2025, 25.02.2022, 14.12.2022, *prima facie* shows that the plaintiff derived title of the property, but the Trial Court has not considered these documents.

30. Further, the plaintiff has produced a Court Commissioner report dated 19.07.2024 pursuant to the order passed by this Court in W.P.No.1847/2024 and it shows towards the north-eastern side of the property, there is a pathway leading to sheet-shed in which the representatives of the plaintiff including plaintiff's mother are residing with a gutter running along the rear of the shed, thereby recording the family's residential occupation of a distinct portion of the large premises, but this was not considered by the Trial Court. Hence, it is submitted that these documents *prima facie* show and makes out balance of convenience in favour of the plaintiff to grant an order of temporary injunction, but erroneously declined the application.

31. Further, it is submitted that it is also an admitted fact by the defendant that Subedar Paul Sebastian was granted land measuring 03 acre 28 guntas on 13.06.1908 and this can be found in the written statement at Paragraph No.16(a). Hence, this admission *prima facie* shows that the plaintiff is having title over the suit schedule properties.

32. Further, it is submitted that the document on which the defendant is claiming title, namely the trust deed and two gift deeds are created and do not confer any title on the defendant, but the Trial Court has heavily relied upon these documents rendering unjustifiable order. Hence, prays to grant an order of temporary injunction. Further, it is submitted that from these three documents, at the most, the defendant's claim is 8,905 sq. mtrs. (95,859 sq. ft.) approximately 02.02 acres, but the defendant has an eye over 03 acre 16 guntas; therefore, the defendant does not have a genuine defence.

33. Further, it is submitted that the documents produced by the defendant do not *prima facie* show that the defendant is the owner of the property; whereas, the documents produced by the plaintiff shows a strong *prima facie* case and balance of convenience in favour of the plaintiff.

34. Further, it is argued that the documents placed by the defendant of BBMP Khatha certificate and Property Register Book of BBMP, do not depict the extent of the site; therefore, the defendant does not have the exact extent of the property. Further, it is submitted that the defendant initially before the survey authority claimed their property as No.8 that is to say that property No.8 was of a larger extent, which was part of the suit schedule property. The defendant declared before the survey department in writing at the time of recording statement of the parties that the plaintiff is holding 10,651 sq. yards and regarding this document produced, the Trial Court has not considered the same.

35. The defendant has produced a defective document of city survey stated to have been issued by City Survey and initially the extent was 10,480.6 sq. mtrs. and the said entry was rounded off by increasing the measurement from 10,480.6 to 37,736.7 sq. mtrs. in pencil. The said increase of measurement is illegal without the support of any authority, but this document is not looked into by the Trial Court.

36. Further, it is submitted that when the defendant has contended that the land granted in favour of Subedar Paul Sebastian was restored and returned in favour of His Highness Maharaja Bahadur of Mysore on 04.08.1947 and His Highness Maharaja Bahadur of Mysore sold the land to an extent of 7,000 sq. ft. in favour of one R.S. Dyas and in turn, the Lrs. of R.S. Dyas sold the same in favour of Sheela Anis, but the defendant has not produced any document of restoration. Therefore, this is nothing but misleading the Court just to make an attempt not to grant an order of temporary injunction. Therefore, it is

submitted that when the plaintiff has produced documents that were not considered, but when the defendant has put forth defence without documents, the version of the defendant is believed; thus, it is perverse approach of the Trial Court.

37. Further submitted that the marriage certificate of father of R.S. Dyas shows that R.S. Dyas is the son of Francis B. Dyas. Further, it is submitted that the defendant has admitted that plaint schedule property is different and the defendant's claimed property is different. It is submitted that on 26.09.2024, the learned counsel appearing on behalf of the defendant/trust proposed before the Trial Court to give an undertaking that the trust would not interfere with the plaint schedule property, thereby admitting that the trust has no claim over the plaint schedule property. The admissions in this regard by the defendant show *prima facie* title over the property by the plaintiff. Also, in judicial proceedings in O.S.No.3885/2023, the defendant has taken stand that

there are two suits with two different properties; therefore, the defendant's claimed property is different and plaint schedule property is different, but in the present suit, contrary to the earlier stand, the defendant has taken a different view. Hence, it is submitted that the suit schedule property is different from the property so claimed by the defendant/trust.

38. Further submitted that the subject matter in O.S.No.9006/2003 is different from the subject matter of the present suit, but the defendant has misled the Court and has also falsely stated that the plaintiff is not a legatee derived from Subedar Paul Sebastian. Therefore, it is submitted that the boundaries in O.S.No.9006/2003 are different and the boundaries in the suit are different and it is argued that the boundaries and identity of the property are different. Further, it is submitted that in O.S.No.7264/2025, the plaintiff is declared as owner and in possession by compromise and the suit was filed against 9 defendants, who are daughters and grand-daughters of

R.S. Dyas including the children of defendant No.1 (Mary Josephine Dyas) and defendant No.2 (Mary Regina Dyas) in O.S.No.9006/2003. Hence, the properties in the said suit and in the present suit are two different properties.

39. Further submitted that the defendant has misled the Court by stating that in O.S.No.8716/2025, the property is the same as in the present suit, but the schedule property in the said suit has nothing to do with the present suit. Therefore, the Trial Court has been misdirected by considering only the contentions and documents placed by the defendant without considering the contentions and documents placed by the plaintiff. It is submitted that in a suit for injunction simplicitor, the Trial Court has conducted an enquiry as if to be done in a full-fledged trial and erroneously came to the conclusion that the plaintiff ought to have filed a suit for declaration. It is submitted that when the plaintiff demonstrated that the plaintiff has title and is in possession and also that the identity of the property in the suit is different from the

defendant's claimed property, the Trial Court ought to have granted an order of temporary injunction. The Trial Court has been misdirected by the false assertion that the land granted to Subedar Paul Sebastian in the year 1908 was resumed, whereas the said land was not resumed and the finding regarding restoration and resumption when there is no supporting document, is nothing but perverse in nature and demonstrates non-consideration of the documents on record.

40. Further submitted that the Trial Court has not considered municipal notices, khata, utility bills and Court Commissioner's report though they have probative value in showing that the plaintiff is the owner and in possession over the property, but erroneously rejected the said documents. Further submitted that the Trial Court has misinterpreted condition No.1 which requires the lessee to issue month's prior notice seeking permission of the General or Officer commanding the station for transfer by way of sale, gift, mortgage or exchange. This condition

applies only to alienation by transfer, and not to inheritance; therefore, the Trial Court has committed an error.

41. Further, the Trial Court has committed error, which can be found at Paragraph Nos.16, 17 and 18 of the impugned order by misinterpreting the Column No.12 resulting into erroneous order. Therefore, submitted that the appellant has a *prima facie* case flowing from the title of the perpetual grant of 1908 fortified by the Gazette notification, Defence NOC, unbroken genealogical documents, long-standing khata and tax paid records, utility bills and a Court Commissioner's report confirming the plaintiff's family residence in the suit schedule property. Even though the defendant's title claim is restricted to two gift deeds, the appellant is not claiming the extent mentioned in the gift deeds rather, it would be unjust to allow a party with no admitted claim over the suit schedule property to disturb a possessor of over 116

years of standing. Therefore, the plaintiff has a *prima facie* case nd the balance of convenience lies in his favour.

42. Therefore, the plaintiff and his ancestors have been in continuous possession of the suit schedule property since the year 1908 and are facing the risk of dispossession, which has not been properly considered by the Trial Court resulting into erroneous judgment. Hence, it is submitted that if an order of temporary injunction is not granted, there would be irreparable loss and injury to the plaintiff once he is dispossessed. Therefore, prays to grant an order of temporary injunction as prayed for.

43. In support of the arguments, learned counsel appearing for the appellant/plaintiff places reliance on the following judgments:

i. ANATHULA SUDHAKAR VS. P. BUCHI REDDY (DEAD) BY LRS. AND OTHERS[1]

ii. SRI. N.A. JAYARAM VS. SMT. REVATHI S. ADIGA[2]

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[1] (2008) 4 SCC 594
[2] 2017 0 Supreme(Kar) 308

iii. ***STATE OF U.P AND OTHERS VS. LALJI TANDON (DEAD) THROUGH LRS.***[3]

iv. ***STATE OF UTTAR PRADESH VS. ATUL MITTAL AND ANOTHER***[4]

v. ***JITENDRA SINGH VS. STATE OF MADHYA PRADESH AND OTHERS***[5]

vi. ***PRABHAGIYA VAN ADHIKARI AWADH VAN PRABHAG VS. ARUN KUMAR BHARDWAJ (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS***[6]

vii. ***JOSE VS. JOHNSON***[7]

viii. ***SMT. RAJAMMA AND OTHERS VS. SMT. SAKAMMA AND OTHERS***[8]

ix. ***M.S. ANANTHAMURTHY AND ANOTHER VS. J. MANJULA ETC***[9]

ARGUMENTS OF LEARNED COUNSEL APPEARING FOR THE RESPONDENT/DEFENDANT:

44. On the other hand, learned counsel appearing on behalf of the respondent/defendant submitted that the suit for injunction simplicitor is not maintainable. It is

[3] (2004) 1 SCC 1
[4] 1984 SCC OnlLine ALL 879
[5] 2021 SCC OnLine SC 802
[6] (2021) 18 SCC 104
[7] (2020) 3 SCC 780
[8] RFA No.279/2014 dated 17.04.2025
[9] Civil Appeal Nos.3266-3267 of 2025 arising out of Special Leave Petition (C) Nos.13618-13619 of 2020

submitted that the plaintiff is claiming title over the property and is in possession, but there are complex disputed facts involved with regard to the title of the property, the extent and identification of the property and whether the plaintiff is the legal heir of Subedar Paul Sebastian. Therefore, when these serious disputed facts are involved in the case, the suit filed for injunction simplicitor is not maintainable; hence, the plaintiff ought to have filed a suit for declaration and to establish his title, but the plaintiff is hesitating to file a suit for declaration, which itself goes to show that the plaintiff has a fear of filing a suit to establish his title. Hence, on the guise of filing a suit for injunction, he is trying to knock off the property of the defendant. Therefore, considering these aspects, the Trial Court has dismissed the application filed for temporary injunction. Hence, submitted that there is no need to make interference with the order passed by the Trial Court; thus, prays to dismiss the appeal.

45. It is submitted that in O.S.No.9006/2003, it is held that T. Harry Dyas (plaintiff in the said suit) is not a lineal descendent of Subedar Paul Sebastian and this judgment has attained finality and there is no challenge either by T. Harry Dyas or by the plaintiff. Hence, submitted that there is serious question involved as to whether the plaintiff is the legal heir of Subedar Paul Sebastian and flow of title is doubtful. Having knowledge of this fact, the plaintiff is not inclined to file a suit for declaration; therefore, a suit for injunction simplicitor is not maintainable.

46. Further submitted that the defendant has filed a written statement in O.S.No.6654/2022 and contended that the plaintiff has no right, title and interest in respect of the suit schedule property, which they have claimed in the suit by producing several documents and denied all the contentions raised in the plaint. It is submitted that the plaintiff's father T. Harry Dyas had filed a petition under Section 271, 273, 278 and 279 of the Indian Succession

Act, 1925 (for short, 'IS Act, 1925') in respect of suit schedule property, praying for the grant of letters administration relating to the Will dated 08.03.1955 executed by R.S. Dyas against the children of R.S. Dyas namely Mery Josephine Dyas and others before the City Civil Court, Bengaluru, and after a full-fledged trial and contest, the Trial Court dismissed the suit in O.S.No.9006/2003 on 26.07.2006.

47. Further submitted that, in the suit, it is held that T. Harry Dyas is not a family member of R.S. Dyas and in turn, is not related to Subedar Paul Sebastian and the Will is not proved pertaining to the property claimed by the father of T. Harry Dyas in respect of property bearing Sy.No.8, old Sy.No.10/A, Cannaught Road, Vasanthanagara, Bengaluru. Therefore, a serious question regarding the legal heirship of Subedar Paul Sebastiann is involved and when this being the fact, the same cannot be decided in a suit filed for injunction simplicitor. Therefore, the Trial Court has rightly considered this aspect and

correctly dismissed the application. Hence, prays to dismiss the appeal.

48. Further submitted that the children of R.S. Dyas, namely Marry Josephine Dyas and others have filed a writ petition in W.P.No.30294/2001 as against the BBMP and the father of the plaintiff, seeking the relief of quashing the khata certificate granted in favour of the father of the plaintiff, namely T. Harry Dyas pertaining to property No.8, old Sy.No.10/A, Cannaught Road, Vasanthanagara, Bengaluru, but the said writ petition came to be allowed on 27.10.2004 and the BBMP was directed to cancel the khata standing in the name of T. Harry Dyas. Hence, it is proved that the plaintiff's father is not the owner of the property.

49. When this being the fact, the plaintiff is claiming ownership through his father T. Harry Dyas, but in the above said suit and writ petition, the plaintiff's

father suffered adverse orders. Therefore, the suit filed for injunction simplicitor is not maintainable.

50. Further submitted that the defendant has put forward the facts that the plaintiff is claiming property bearing No.8, old No.10/A, Cannaught Road, Old Cubbon Lane, presently Ward No.79, measuring 1,61,172 sq. ft. (03 acres 29 guntas), but the said property originally belonged to Subedar Paul Sebastian, who was allotted the property on 13.06.1908 by the British Government by way of lease for the purpose of construction of a church. He expired in the 1939, leaving behind his only daughter Lusia wife of F.B. Dyas. Lusia expired leaving behind her only son R.S. Dyas. Therefore, the British regiment restored and returned all the cantonment properties including the property leased to Subedar Paul Sebastian in favour of His Highness Maharaja Bahadur of Mysore.

51. Subsequently, His Highness Maharaja Bahadur of Mysore executed a sale deed dated 04.08.1947 in

respect of St. Ant's Chapel area in favour of R.S. Dyas and the said R.S. Dyas died on 09.07.1959 and the property devolved upon his family members. Subsequently, the family members of R.S. Dyas executed a released deed dated 04.02.2008, releasing their right in favour of Mario Alphanso Dyas son of R.S. Dyas. By virtue of the said release deed, Mario Alphanso Dyas become the absolute owner of the property and Khata was transferred in his name in respect of property No.8, old No.10/A, Cannaught Road, Vasanthanagara, Bengaluru. Subsequently, the said Maria Alphanso Dyas had executed a sale deed dated 05.01.2016 in favour of Ms. Sheela Anis. Sheela Anis has put up a residential-cum-commercial building having a super built up area of 13,000 sq. ft. on the said property and she is in possession. Therefore, it is submitted that the plaintiff and the father of plaintiff's are not related to Subedar Paul Sebastian. Hence, it is contended that when this being a serious question is involved pertaining to the title of the property and identification of the property, the

suit filed for injunction simplicitor is not maintainable and these complex disputed facts are to be decided in a suit for declaration, but not in the suit filed for injunction. Hence, when the suit is not maintainable for injunction, the Trial Court is correct in dismissing the application. Therefore, prayed to dismiss the appeal.

52. Upon hearing both sides and perusal of the records made available at this stage, the following points arise for my consideration:

i. *Whether, under the facts and circumstances involved in the case, the plaintiff made out a prima facie case for grant of an order of temporary injunction?*
ii. *Whether, under the facts and circumstances involved in the case, the plaintiff made out a case for balance of convenience to grant an order of temporary injunction in his favour?*
iii. *Whether, under the facts and circumstances involved in the case, if an order of temporary injunction is not granted, the plaintiff will suffer loss and injury?*
iv. *Whether, under the facts and circumstances involved in the case, the order passed by*

the Trial Court rejecting the application filed for temporary injunction requires any interference by this Court?

53. The plaintiff has filed voluminous documents in support of the application and has also produced additional evidence before this Court by invoking the provisions under Order XLI Rule 27 of CPC. Likewise, the learned counsel appearing on behalf of the defendant, apart from filing the written arguments and statement of objections, has also filed voluminous documents before the Trial Court and this Court. The Trial Court, in its order, has mentioned in detail all the documents produced before it for considering the application filed for temporary injunction.

54. It is the case of the plaintiff that he is the great-grandson of Subedar Paul Sebastian and the said Subedar Paul Sebastian was granted lease in perpetuity on 13.06.1908 and in this regard, a Gazettee Notification was also published. The plaintiff is claiming that his great-grandfather was allotted the suit property measuring 03

acre 29 guntas and that through lineal descendents the plaintiff's father acquired the same and after his demise, the plaintiff has been in possession of the suit schedule property. Further, the plaintiff is claiming that Khata has been effected in the name of father of the plaintiff and that KPTCL has issued an electricity connection and BESCOM is collecting electricity charges and he has obtained HP Gas bills and bills issued by BWSSB for providing water to the plaintiff; therefore, claimed that he is in possession of the suit property.

55. It is also the case of the plaintiff that the plaintiff is paying property tax regularly to the BBMP. The plaintiff has also filed other documents to show that the defendant is trying to encroach upon the property of the plaintiff; therefore, in this regard, the complaints were filed before the Police against the defendant and a private complaint was also filed against the defendant. Hence, in sum and substance, the plaintiff is claiming that he is the owner and having title over the suit schedule property, but

there is interference by the defendant. Hence, the plaintiff was constrained to file a suit for permanent injunction and thus filed an application for temporary injunction.

56. It is pertinent to mention here that the total extent of schedule land, as stated in the plaint schedule, is as follows:

> *"SCHEDULE*
>
> *All the piece and parcel of the property inland bearing New no.8, Old no.10A, of Connaught Road, Old Cubbon Lines, Bangalore, presently Ward no.78 measuring 1,61,172 Sq. Ft. (3 acres 29 guntas) including a residential house and bounded*
>
> *East by: Cannaught cross road,*
> *West by: Storm water drain,*
> *North by: Jasma Bhavan Road,*
> *South by: Cannaught road & private property."*

57. On the other hand, the defendant has filed a written statement and also filed objections to the application filed for temporary injunction and contended that the property in question, as mentioned in the plaint, is not in existence; therefore, it is the contention of the defendant that the schedule property mentioned in the plaint does not exist, but the plaintiff is claiming right over

non-existent property. Thus, he is making interference with the property on which the defendant's school has been established. Hence, it is submitted that the present suit filed is with a *mala fide* intention to grab the property of the defendant's school on false allegation that the defendant has encroached the plaint schedule property.

58. Further, it is case of the defendant that the then British Government granted the plaint schedule property under a lease perpetuity on 13.06.1908, but later on the said property was resumed in favour of the then His Highness Maharaja Bahadur of Mysore, and has argued with reference to an endorsement made in the Gazettee Notification. Further, it is submitted that His Highness Maharaja Bahadur of Mysore gifted the property bearing Plot Nos.14 to 16 and 21 to 28 and other properties in favour of defendant during the year 1935-37, measuring a total extent of 37,736.07 sq. mtrs. Further, the defendant's school was established over the property which was gifted by the then His Highness Maharaja

Bahadur of Mysore; therefore, the plaintiff is not the owner and does not have title over the suit property, as it is not in existence.

59. Further, it is the case of the defendant that in the proceedings in the grant of a succession certificate in O.S.No.9006/2003, it is proved that the plaintiff's father is not the legal heir of Subedar Paul Sebastian. Hence, it is submitted that neither the plaintiff nor the father of the plaintiff is a lineal descendent of Subedar Paul Sebastian; therefore, the plaintiff is not owner. This finding has attained finality in O.S.No.9006/2003 by the judgment and decree passed by the VI Additional City Civil Judge, Bengaluru (CCH-11); therefore, the defendant has disputed the plaintiff's title over the property. Hence, it is the principal contention of the defendant, in sum and substance that the property on which the plaintiff is making claim is the same property on which the defendant's school is established, as the same land was gifted by then the His Highness Maharaja Bahadur of

Mysore for the establishment of a school and a school was established thereon.

60. Further, the legal heirship of plaintiff's and his father is not proved to establish that they are the legal heirs descended from Subedar Paul Sebastian; hence, when the property is not identifiable one and the title of the plaintiff is seriously disputed, then the suit for permanent injunction simplicitor is not maintainable. Hence, it is submitted that when the application is filed for temporary injunction, the pleadings made in the plaint and in the written statement are to be considered together and upon considering the same, the defendant has raised a serious dispute regarding the title of the plaintiff over the property and also the identity of the property.

61. It is the case of the plaintiff that the property being claimed by the defendant is different and the plaint schedule property is different. Whereas, it is the case of the defendant that the plaint schedule property and the

property mentioned in the written statement are one and the same having the same number i.e., CTS No.1094. When this being the fact, the documentary evidence on record discloses that the Khatha issued in favour of father of the plaintiff was set aside by this Court in ***WRIT PETITION NO.30294 OF 2001*** between ***MARRY JOSEPHENE DYAS AND OTHERS VS. THE BENGALORE MAHANAGARA PALIKE AND OTHERS,*** which is part of record.

62. Further, the defendant has filed a writ petition challenging the survey conducted by the Joint Director of Land Records (JDLR) in ***W.P.NO.24790 OF 2022*** between ***SMT. KAMALA BAI EDUCATIONAL TRUST VS. STATE OF KARNATAKA AND OTHERS***. This Court, in the said W.P.No.24790/2022 has held that the JDLR has no authority or power to measure the property situated in Bengaluru City coming within the jurisdiction of the BBMP and the authority is only the Civil Court; therefore, it is observed that the plaintiff has instituted the present suit

and may make an application for survey and measurement if the plaintiff desires to take recourse of surveying the land through the City Civil Court.

63. When this being the fact, the plaintiff has challenged the said order before the Hon'ble Division Bench of this Court in ***W.A.NO.1174/2024*** between ***MS. MARIO ALPHONSE DIAS VS. STATE OF KARNATAKA AND OTHERS***. The Hon'ble Division Bench of this Court has disposed of the appeal by setting aside the order passed in W.P.No.24790/2022 and held that the City Survey Authorities, Bengaluru, alone is the competent authority to conduct survey of the property; therefore, liberty was granted to approach the City Survey Authorities in Bengaluru City for the survey and measurement of the property. During the course of the arguments, the learned counsel appearing on behalf of the appellant/plaintiff has produced the said order passed in W.A.No.1174/2024. When this being the fact, the identity

of the property is involved and it cannot be decided in this appeal.

64. While considering the application filed for temporary injunction, the pleadings made in the plaint and written statement are also to be considered. The grant of an order of temporary injunction is depending upon and related to the scope of the suit and the reliefs claimed in the suit. When such serious issues of title and identification of the property have been raised by the defendant, those cannot be considered in a suit simplicitor filed for injunction. Therefore, the Court is of the opinion that survey and measurement of the suit property is to be conducted by the City Survey Authority, as directed by the Hon'ble Division Bench of this Court in W.A.No.1174/2024. Hence, at this stage, there is no question of granting an order of temporary injunction and since the identity of the property is involved, survey is necessary to be conducted by the City Survey Authorities as directed in W.A.No.1174/2024. Till then, both the parties shall

maintain status quo over the possession of the property as on today till disposal of the suit.

65. Therefore, denial of relief of temporary injunction need not be interfered with; hence, at this stage, the plaintiff has not made out a *prima facie* case and balance of convenience so as to grant an order of temporary injunction and the Court is not convinced that if an order of temporary injunction is denied, what loss and injury the plaintiff would suffer. However, the pertinent question involved in the present case is regarding the identity of the property, which is questioned. Hence, as liberty is granted by the Hon'ble Division Bench of this Court in W.A.No.1174/2024 as stated supra, either of the parties may approach City Survey Authorities to get the suit property surveyed and measured to find out whether the suit properties mentioned in the plaint and in the written statement are different or one and the same. Till then, both the parties shall maintain status-quo in regard to possession over the properties till disposal of the suit.

Accordingly, I answer point Nos.(i), (ii), (iii) and (iv) in the ***Negative***.

66. Both the plaintiff and the defendant are given liberty to use results of survey and measurement during the course of trial in the suit and the Trial Court shall consider the same in accordance with law.

67. With the above said directions, the appeal is ***disposed of***.

68. The suit is of the year 2022; therefore, the Trial Court is directed to expedite the trial and dispose of the suit as early as possible.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA
List No.: 1 Sl No.: 98