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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO. 3281 OF 2025 (CPC)

BETWEEN:

SRI. SRIRAMULU
S/O SURYA PRAKASH
AGED ABOUT 80 YEARS,
R/O OLD NO. 7/C, NEW NO.17,
REST HOUSE, CRESCENT ROAD
NEAR M G ROAD, CHURCH STREET,
BANGALORE - 560001.

...APPELLANT

(BY SRI.P D SURANA, ADVOCATE FOR
SRI. R KRISHNA KISHORE, ADVOCATE)

AND:

1. SRI. U RAVI RAO
S/O LATE NARAYANA RAO
AGED ABOUT 83 YEARS,
R/O PLOT NO.12, KAUSALYA ESTATE,
KARKHANA, TIRUMALAGIRI
MANOVIKASNAGAR, TIRUMALAGIRI
SECUNDARABAD
TELANGANA - 500009.

SRI RANJI RAO
S/O LATE NARAYANA RAO
SINCE DIED BY LRS

2. ROHIT RAO UDAIVAR
S/O LATE U RANJIT RAO
AGED ABOUT 43 YEARS,
R/O NO. 2673, HOMESTEAD
DR. EASTERN, P A 18040
UNITED STATES OF AMERICA





3. SMT. GEETHA BHAT
D/O LATE NARAYANA RAO,
W/O VASANTH K BHAT
AGED ABOUT 78 YEARS
R/O NO.9, BELSAW PLACE
CINCINNATI OHIO - 45220
UNITED STATE OF AMERICA

...RESPONDENTS

(BY SRI. ARUN GOVINDRAJ, ADVOCATE FOR C/R1)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 09.04.2025 PASSED ON I.A.NO, I AND II IN OS.NO. 2473/2024 ON THE FILE OF THE IX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH.5), DISMISSING THE I.A.NO.I AND II FILED UNDER ORDER 39 RULE 1 AND 2 READ WITH SECTION 151 OF CPC AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE C.M. POONACHA

ORAL JUDGMENT

The present appeal is filed under Order XLIII Rule 1(r) of Code of Civil Procedure, 1908¹ by the plaintiff being aggrieved by the order dated 09.04.2025 passed in O.S. No.2473/2024 by the IX Addl. City Civil and Sessions Judge, Bengaluru (CCH – 5)² whereunder I.A Nos.I and II filed by the plaintiff were dismissed by the Trial Court.

¹ Hereinafter referred to as the 'CPC'

² Hereinafter referred to as the 'Trial Court'



2. The relevant facts in a nutshell leading to the present appeal are that one Sri U.Narayana Rao with his wife Smt.U.Manorama Rao were the owners of the suit property having jointly purchased the same. Consequent to the death of U.Narayana Rao in the year 1965 and U. Manorama Rao in March 2020, their children i.e., defendant Nos.1, 2 and 3 succeeded to the suit property. Defendant No.2 having died, his children have been brought on record as defendant Nos.2 (a) and (b).

3. It is the case of the plaintiff that Smt.U.Manorama Rao let out the backside of the suit property in favour of the plaintiff on nominal monthly rent of ₹250/- per month in the year 1970-71 since she was unable to maintain and manage the affairs of the suit property, with a further condition that the plaintiff should take care of the entire suit property while staying in the backside of the suit property. That Smt.U.Manorama Rao during her lifetime went to United States of America to meet with her children and that the plaintiff has been in continuous, uninterrupted and exclusive possession of the suit property. Even after the death of Smt. U. Manorama Rao, the plaintiff



continued in possession of the suit property till the date of the suit. Alleging interference by some unknown persons, the plaintiff filed a police complaint and thereafter the suit was filed for permanent injunction to restrain the defendants from interfering with the peaceful and enjoyment of the suit schedule property of the plaintiff. The defendants entered appearance in the suit and filed their Written Statement and contested the case of the plaintiff, contending *inter alia* that the plaintiff was a caretaker of the suit property and that he was permitted to stay in the back portion of the suit property where a servant quarters is situated. It is the further contention of the defendants that the plaintiff was a servant under Smt. U. Manorama Rao and consequent to her death the defendants were regularly paying a monthly rent of ₹5,000/- which was transferred to the Bank Account of the plaintiff.

4. The plaintiff filed I.A.I for temporary injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit property. The plaintiff filed I.A.II to restrain the defendants from alienating or encumbering the suit property. It is forthcoming from the records that the Trial



Court had granted interim status-quo order dated 04.07.2024. The defendants opposed the said applications. The Trial Court by order dated 09.04.2025, dismissed the applications. Being aggrieved, the present appeal is filed by the plaintiff.

5. Sri P.D. Surana, learned counsel appearing along with Sri.R.Krishna Kishore, learned counsel for the appellant/plaintiff, assailing the order passed by the Trial Court contends that the plaintiff has admittedly been in possession of the suit property from the year 1970-71 onwards i.e., for more than 50 years and that the possession of the plaintiff in the suit property has been admitted by the defendants at para No.19 of the Written Statement. It is further contended that the plaintiff having been in settled possession of the suit property is entitled to an order of injunction as sought for vide the applications filed by him. Hence, learned counsel seeks for allowing of the appeal and granting of the reliefs as sought for.

6. Per contra, Sri Arun Govindraj, learned counsel appearing for the respondents/defendants justifying the order passed by the Trial Court contends that admittedly, the plaintiff was appointed by late Smt.U.Manorama Rao to take care of the



property and that he was permitted to reside in the hind portion of the suit property. That consequent to the death of Smt. U.Manorama Rao, the defendants being the children have continued the services of the plaintiff. That defendant No.1 was residing at Hyderabad and defendant Nos.2 and 3 at United States of America and the defendant No.1 was periodically visiting the Bengaluru and staying in the suit property. That the daughter of the defendant No.1 was also periodically making the monthly payment of ₹5,000/- to the plaintiff. In support of the said contention, the defendants have also produced the Bank statements to indicate the factum of monthly periodic payment of ₹5,000/-. It is further contended that since the defendants have entered into an Agreement dated 23.02.2024 with a 3rd party/developer vis-à-vis the suit property, the present suit has been filed with oblique motives. Hence, learned counsel seeks for dismissal of the above appeal.

7. Both the learned counsels have relied on various judgments and material which shall be referred to, to the extent the same are required for the purpose of adjudication



of the question that arise for consideration in the present appeal.

8. The submissions of both the learned counsels have been considered and the material on record have been perused. The question that arises for consideration is

'Whether the Trial Court was justified in rejecting I.As.I and II filed by the plaintiff?'

9. The essential factual matrix is undisputed inasmuch as Sri.U.Narayana Rao and Smt. U.Manorama Rao were the owners of the suit property and defendant Nos.1 and 3 and deceased defendant No.2 are their children. Admittedly, the plaintiff was permitted to reside in the backside portion of the suit property by Smt. U.Manorama Rao to maintain and manage the suit property.

10. It is the contention of the plaintiff that he was inducted as a tenant on a nominal rent of ₹250/-. However, it is the contention of the defendants that the plaintiff is a caretaker of the suit property and that the defendants have made periodical monthly payments to the plaintiff. In support of the case of the defendants, bank statements have been produced to indicate



the periodical payment by the daughter of the defendant No.1 to the plaintiff of ₹5,000/- per month.

11. The Trial Court while considering the applications, upon an appreciation of the material on record, has recorded a finding that the plaintiff has neither produced the rent Agreement or any rental receipts or any other documents to demonstrate that he was paying rent as a tenant. The Trial Court further noticing that the defendants had produced Bank statements to indicate the payment of amounts to the plaintiff and further noticing that the plaintiff has not produced any licence or documents to show that he was running a small hotel, has held as follows:

Here in this case also the defendant says that, the plaintiff is a care taker and plaintiff also partly admitted that, Manorama told him to take care of the property in the plaint. When such being the case, the defendant has produced documents to show that, plaintiff is a care taker and also produced photo in which plaintiff stood with the defendants. The defendant stated to peruse the style how the plaintiff stood which depicts that he is a servant of defendant and also submitted that, if plaintiff does not know the defendant then how he stood to take a photo with defendant. The plaintiff not produced anything to prove that he is paying rent and he has failed to prove the prima-facie case and balance of convenience in his favour.

(emphasis supplied)



12. Hence, the Trial Court held that the plaintiff has failed to make out a *prima-facie* case and the balance of convenience in his favour.

13. Although the plaintiff has averred at para No.4 of the plaint that Smt. U.Manorama Rao let out backside portion of the suit property in favour of the plaintiff, it is pertinent to note that in the schedule to the plaint, the entire suit property measuring 78 feet to 55 feet of a total extent of 4200 sq.ft is mentioned. It is relevant to note here that the defendants have specifically contended that the plaintiff is only a caretaker of the property and that defendant No.1 was periodically visiting the suit property from Hyderabad and staying in the front side portion of the suit property. The defendants have also produced Bank statements to show that the periodical monthly payments having been made to the plaintiff as contended by them in the Written Statement. On the contrary, as rightly held by the Trial Court, the plaintiff has not produced any documents to demonstrate that he is a tenant or that he has paid rent either to Smt. U.Manorama Rao or to the



defendants. The revenue records of the suit property stand in the name of the defendants.

14. The Hon'ble Supreme Court in the case of **Puran Singh v. State of Punjab**³ with regard to settled possession has held as follows:

"12. In this case there was a concurrent finding of fact that Jamuna was in effective possession of the field on the date of occurrence and the prosecution had alleged that PWs 17 and 19 had taken possession of the property but the finding of the Court was that PWs 17 and 19 had not been put in possession by virtue of the delivery of possession given by the Court. It was against this context that the observations referred to above were made. This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellants' party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to "settled possession". There is no special

³ (1975) 4 SCC 518



charm or magic in the word settled possession nor is it a ritualistic formula which can be confined in a straitjacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession."

(emphasis supplied)

15. In the case of ***Maria Margarida Sequeira Fernandes and others V/s Erasmo Jack De Sequeria (Dead through LRs.***⁴ relied upon by the learned counsel for the respondent No.1, the Hon'ble Supreme Court was considering a fact situation wherein the owner of the property had permitted her brother to occupy the property since she was not residing in the same. The brother filed a suit for permanent and mandatory injunction which was decreed by the Trial Court. The Hon'ble Supreme Court considering the said fact situation held as follows:

97. Principles of law which emerge in this case are crystallized as under:

(i) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

⁴ 2012(5) SCC 370



(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who was valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

(emphasis supplied)

16. In the case of **A.Shanmugam Vs. Ariya Kshatriya Rejakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others**⁵ relied upon by the learned counsel for the Respondent No.1, the Hon'ble Supreme Court reiterating the ratio held in the case of **Maria Margarida Sequeira Fernandes and others**³ held as follows:

" 43. On the facts of the present case, the following principles emerge:

xxxxx

⁵ (2012) 6 SCC 430



43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8. The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour.

(emphasis supplied)

17. Learned counsel for the appellant submits that the case of **Puran Singh and Others Vs. The State of Punjab**⁶ is a criminal case and seeks to distinguish the cases of **Maria Margarida Sequeira Fernandes and others**³ and **A.Shanmugam**⁴ as being inapplicable to the facts of the present case.

18. Learned counsel for the appellant places reliance on a Coordinate Bench of this Court in the case of **M.S. Baliga (since deceased Toy LRs) and Others Vs. Mangalore City**

⁶ (1975) 4 SCC 518



Corporation and Others⁷ wherein, this Court has held that a licensee is required to be evicted under due process of law. However, the case of **M.S. Baliga**⁷ pertains to a property belonging to the Mangalore City Corporation, wherein the plaintiff was permitted to run a canteen on licence basis. The facts of the said case are entirely different from the facts of the present case.

19. Learned counsel for the appellant also places reliance on a Coordinate Bench judgment in the case of **Mr.T. Manoharan and Mr. Babanna**⁸ wherein a suit for injunction filed by the employee to protect possession of property that he was put into by the owner was decreed by this Court. However, in the said case, the plaintiff was appointed as a Supervisor and Administrator to look after the administration and management of the defendant, which was a construction firm and that the plaintiff was provided a house since he was an employee of the defendant – firm. In the facts of the said case, this Court held that the plaintiff therein was a licensee in settled possession of

⁷ (1997) 09 KAR CK 0016

⁸ RFA No.392/2023 (High Court of Karnataka, Bengaluru Bench) disposed of on 30.09.2024



the property. The facts of the said case are entirely different from the facts of the present case.

20. Learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court in the case of ***The Corporation of Calicut Vs. K. Sreenivasan***⁹, wherein it was held that a licensee was required to be evicted with due process of law.

21. It is pertinent to note here that the Hon'ble Supreme Court in the case of ***Maria Margarida Sequeira Fernandes and others***³ has specifically affirmed the judgment of Delhi High Court in the case of ***Thomas Cook (India) Ltd., V. Hotel Imperial***¹⁰, wherein it has been held as follows:

80. (28.) xxxxx What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his right i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law'

⁹ AIR 2002 SC 2051

¹⁰ (2006) 88 DRJ 545



stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law.

(emphasis supplied)

22. It is clear from the aforementioned that the Hon'ble Supreme Court has specifically recorded a finding that due process of law would also mean a suit for injunction filed by a person in possession of the property.

23. In view of the settled proposition of law as held in the case of ***Maria Margarida Sequeira Fernandes and others***³ as well as in the case of ***A.Shanmugam***⁴, the plaintiff who was admittedly permitted by deceased Smt. U.Manorama Rao to stay in a portion of the suit property for the purpose of taking care of the said property continues in possession of the property only on behalf of the defendants. The plaintiff cannot be held to have acquired any interest in the property and is under an obligation to handover possession to the defendants on demand. Hence it is clear that the plaintiff cannot seek for an injunction against the defendants.



24. The Trial Court having appreciated the relevant factual matrix and having rejected the application filed for injunction by the plaintiff, the appellant has failed in demonstrating that the said order is in any manner erroneous and liable to be interfered with by this Court in the present appeal. The question framed for consideration is answered in the Negative.

25. In view of the aforementioned, the appeal is dismissed as being devoid of merit.

26. In view of dismissal of appeal, I.A.1/2025 does not survive for consideration.

Sd/-
(C.M. POONACHA)
JUDGE

BS
List No.: 2 Sl No.: 11