



**IN THE COURT OF III ADDL. CIVIL JUDGE AND
JMFC AT BELAGAVI.**

**Presided Over by GURUPRASAD C. B.A.L., LLB.,
C/c.III Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 1st day of October, 2024

ORIGINAL SUIT No.666/2024

Between:

Shri. Rakesh S/o. Krishna Kalkhambkar
Age: 33 years, Occ.: Advocate,
R/o. H.No.588/1, "Mathura",
Ganpati Galli, Machhe village,
tal & dist: Belagavi.

... PLAINTIFF

-AND-

Shri. Yallappa Gunjekar,
Age: 33 years, Occ.: Private Service,
R/o. Vittobadev Galli, Kupputgiri village,
Tal. Khanapur, Dist.: Belagavi.

...DEFENDANT

ORDER ON I.A.No.I

Between:

Shri. Rakesh S/o. Krishna Kalkhambkar

... Plaintiff

(By Shri. P. S. Sambrekar, Advocate)

-AND-

Shri. Yallappa Gunjekar,

... Defendants

(By Shri. V. A. Kulkarni, Advocate)

ORDER ON I.A.No.I UNDER ORDER XXXIX RULE 1 AND 2
R/W SECTION 151 OF CPC

The plaintiff has filed this application seeking an order of temporary injunction restraining the defendant from interfering with his peaceful possession over the suit schedule property till the disposal of the suit.

2. In the affidavit annexed to the application, it is the case of the plaintiff that he and other family members are in possession of the suit schedule property to the larger extent of 1 acre, 3 guntas of land. Sy. No. 619, measuring 1 acre, 3 guntas, was the ancestral property of the plaintiff. After the death of ancestors, suit property came to be mutated in the name of the plaintiff and other family members. Therefore, the plaintiff is in possession of R.S.No.619 measuring 1 acre, 3 guntas.

3. It is further averred that there is no partition by metes and bounds in respect of R.S. No. 619. Therefore, a suit for partition in O.S.No.416/2022 has been filed by the legal heirs of Thakappa. The plaintiff is one of the parties in the said suit.

4. It is further averred that the Sy.No.619 is agricultural land. Three public roads have been laid through the agricultural land. One of the portions adjacent to the main road, i.e., shown as ABCD in the plain sketch, is in the

actual possession and enjoyment of the plaintiff and other family members. The defendant, having no authority over the suit schedule property, is trying to disturb the possession of the plaintiff. Therefore, the plaintiff was constrained to file the application for the aforementioned relief.

5. The plaintiff has pleaded that he has a *prima facie* case, the balance of convenience lies in his favour, and irreparable loss will be caused to him if the I.A. is rejected. Accordingly, he prayed to allow the application.

6. After the institution of the suit, an ex parte order of temporary injunction is granted, and a summons was issued to the defendant. In response to the summons, the defendant entered appearance, filed written statement, and contested the suit.

7. The defendant denied that the plaintiffs and other family members are in possession of the suit schedule property and the property in R.S.No.619. The defendant denied that, having no authority, he is interfering with the possession of the plaintiff over the suit schedule property.

8. It is the case of the defendant that he has purchased the suit schedule property by virtue of an unregistered sale deed. The defendant has purchased the suit schedule property plot no.19 from Vikas Thakappa and Vikrant Thakappa for a valuable consideration of Rs.

10,00,000/-. They have handed over the possession of the suit schedule property. Since the partition suit is pending between the family members of the plaintiff, the plaintiff cannot claim to be in possession of the suit schedule property.

9. It is further averred that as of today, plot no. 19 in R.S.No.619 belongs to Yogita Gunjekar and not the plaintiff. The real owner of the property has not made a party. Therefore, the suit itself is not maintainable. Accordingly, the defendant prayed to dismiss the application.

10. Heard the learned counsel for the plaintiff and defendants. Perused all materials available on record.

11. Now the points that arise for consideration are as follows;

1. Whether the plaintiff has made out a *prima facie* case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss will be caused to the plaintiff if the injunction is refused?
4. What order?

12. My answer to the above points are as hereunder:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per the final order
for the following:

REASONS

13. **Point No.1:-** The plaintiff claims that he is the owner of the property bearing R.S. No. 619 measuring 1 acre, 3 guntas. In order to fortify the same, he has produced RTC extract. The RTC is standing in the name of family members of the plaintiff. However, the suit property is not the entire extent of Sy. No. 619. The plaintiff claims that the suit property is measuring 53' x 16' in all, 848 sq ft in 1 acre, 3 guntas of land.

14. It is astonishing to know that the plaintiff could identify 848 sq ft of land in a huge 1 acre, 3 guntas of land. There are no authenticated documents to identify such a small piece of land in Sy. No. 619. The boundaries mentioned to the schedule property would show the East—remaining land of R.S.No.619 and West—R.S.No.620. Thus, it is hard to find out the location of the suit schedule property. There are no other documents, other than the plaint sketch to identify the property. Thus, the location of the suit property is not identified. If the plaintiff fails to prove prima facie on identification the suit property, the possession of the plaintiff to an unidentified property cannot be said to be proved.

15. The plaintiff claims that the suit property is agricultural property. A property at 848 square feet cannot be said to be an agricultural property. Though it may not have been converted by the competent authorities, as the plaintiff admits that three roads are existing in sy No 619, the said land appears to have lost its character as agricultural land. Furthermore, the photographs produced by the plaintiff would depict constructions. Therefore, *prima facie*, the case of the plaintiff is not believable.

16. It is the urge of the plaintiff that the defendant is harping upon an unregistered sale deed. No right, title, interest, or possession can be delivered under an unregistered sale deed. Thus, the plaintiff has a *prima facie* case. It may be true that no interest or right can be conferred under an unregistered sale deed. However, the said unregistered sale deed has been made by the bahubands of the plaintiff. Whether they have delivered the possession of the suit property is a matter of concern to the court.

17. It is also admitted that there is a dispute between the family members of the plaintiff, and a suit for partition is pending consultation. The defendant appears to have had a transaction with the bahubands of the plaintiff. Taking advantage of the lis between the family members of the plaintiff, the defendant cannot be made a scapegoat.

18. As the partition suit is pending consideration, the plaintiff has not been parted with possession of the property. It cannot be said that alleged suit property would fall into the share of the plaintiff. The person who had parted with the possession of the suit property to the defendant may not have any objections with the defendant. The plaintiff can only claim his right if he is allotted the suit property in final decree proceedings. Therefore, *prima facie*, the suit itself appears to be immature.

19. Furthermore, the defendant claims that the defendant is not the owner in possession of the plot no. 19 of Sy. No. 619. He produced the copy of the registered gift deed in favour of Yogita Yallappa Gunjekar, wherein the defendant has donated the plot no. 19 in favour of Yogita Yallappa Gunjekar. The said gift deed appears to have been acted upon.

20. The Pattan Panchayat, Machhe, has recognised plot no. 19, given a specific number to the plot, and khatha has been changed in name of Yogita Gunjekar. Thus, the said person appears to have some semblance rights over the suit property. Therefore, it appears that the plaintiff is suing the wrong person. As a result, the plaintiff has not made out a *prima-facie* case. Accordingly, **Point No.1 answered in the Negative.**

21. **Point No.2 and 3:** Since these points are interlinked with each other and they form part of the same transaction, they are taken up together for common discussion to avoid the repetition of facts.

22. The conduct of the plaintiff claims importance in exercising the discretion in granting an order of temporary injunction. There is no way the plaintiff could identify the small piece of land in Sy. No. 619. The plaintiff appears to have had knowledge of the purchase of the property by the defendant. So that he can identify the said property. The description mentioned in the schedule to the plaint would appear similar to the description mentioned in the copy of the sale deed of the defendant. Thus, the plaintiff has suppressed the material facts before the court about the execution of the unregistered sale deed and the registered gift deed by the defendant. Suppression of the material facts would disentitle the plaintiff to claim a discretionary relief of temporary injunction.

23. The defendant has already gifted the property in favour of Yogita Gunjekar. She has not been made a party; if an order of temporary injunction is granted, a person who had been gifted the property can be troubled. No injunction can be issued against a person who has not been made a party.

24. On the other hand, as the suit for partition is pending consideration, if the plaintiff gets a share in the suit property, he can take possession of the suit property in execution proceedings. Therefore, no hardship or inconvenience will be caused to the plaintiff if the injunction is refused. Accordingly, **Point no.2 and 3 are answered in the Negative.**

25. **Point No.4:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under
Order XXXIX Rule 1 and 2 R/w section
151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, typed by her and the transcript revised and corrected by me and pronounced in the open Court, on this 1st day of October, 2024).

(GURUPRASAD C.)
C/c. III Addl. Civil Judge & JMFC,
Belagavi.