

**IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,
BELAGAVI**

PRESENT

SHRI.SAMEER G. KOLLI,
B.A.L., LL.B.,
C/c. II ADDL.CIVIL JUDGE & J.M.F.C,
BELAGAVI.

ORIGINAL SUIT No.58/2021

DATED THIS THE 06th DAY OF APRIL 2021

Plaintiff:-

1. Shri Pratapsingh
S/o. Tulajaramsingh Thakur,
Age: 65 years, Occ: Agriculture,
R/o: CTS No. 11959, Om Nagar,
1st Cross, Beside Kadam Generator,
Tal; & Dist: Belagavi.

(By Shri M.S. Meti, Advocate)

V/s

Defendants:-

1. Smt. Sharada W/o. Vittal Mannurkar,
Age: 66 years, Occ: Household work,
R/o: Nazar Camp, Vadagaon,
Belagavi-590 005
Tal; & Dist: Belagavi and others.

(By Shri P.S. Kulkarni, Adv. for Deft.No.2 and 3
and Deft.No.1 and 4 exparte)

Orders on I.A. No. I

I.A. No. I is filed by the plaintiff U/o. XXXIX R. 1 and 2 R/w Sec. 151 of CPC praying to restrain the defendants, their agents, servants or anybody acting on their behalf from interfering with absolute possession of plaintiff over the Suit Schedule properties.

2. In the affidavit annexed to I.A. No. I, it is sworn that defendants No.1 to 3 are in no way concerned to the suit properties. They had filed OS No. 111/2003 and obtained decree in respect of 8 guntas of land. It is further sworn that the plaintiff by virtue of the tax paid for three assessment years from 2018 to 2021 claims to be in settled possession and ownership of the suit properties. It is further sworn that plaintiff has also obtained 11 E sketch. It is further sworn that the defendants taking advantage of their names in the record of rights are trying to interfere with possession of plaintiff over the suit properties. It is further sworn that the plaintiff is fixing poles in the suit properties and the defendants are trying to interfere his possession over suit properties. Thus, plaintiff has filed this suit along with I.A. No. I seeking injunction against the defendants.

3. The defendants No.2 and 3 have filed objections to I.A.No. I denying the contents of affidavit annexed to I.A.No. I. It is the contention of the defendants that the plaintiff has approached this Court with unclean hands claiming his possession on the basis of an unregistered created sale deed. It is further contended that defendants No.1 to 3 had no occasion to execute any unregistered sale deed in favour of the plaintiff and the same is created for his illegal game. It is further contended that defendants No.1 to 3 and other co-owners are in possession of the suit property and as suit for partition and separate possession is still pending, shares are not carved out. Thus on the above grounds, defendants No.2 and 3 have prayed for dismissal of I.A. No. I.

4. Heard learned counsel for the plaintiff and learned counsel for the defendants No.2 and 3.

5. Perused materials placed on record.

6. Following points arise for my consideration.

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the balance of convenience tilts in favour of the plaintiff?

3. Whether the plaintiff would suffer irreparable loss and hardship if injunction is refused?

4. What order?

7. My findings for the above points are as under.

Point No.1 : In the negative,

Point No.2 : In the negative,

Point No.3 : In the negative,

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

REASONS

8. **Points No.1 to 3:-** As all points are inter-related to each other, they are taken up together for discussion to avoid repetition.

9. Shri M.S. Meti, learned counsel for plaintiff submitted in his arguments that the plaintiff is in continuous and settled possession of suit properties and though the defendants are not related to the suit properties in any way, they are disturbing the possession of plaintiff over suit properties. He further submitted that the plaintiff is paying municipal tax since three years and thus by virtue of the same, the possession of plaintiff over suit properties stands proved. He further submitted that if an order of temporary

injunction is not granted, then the plaintiff would suffer irreparable loss and hardship. Thus he prayed to allow I.A. No. I.

10. Per contra, Shri P.S. Kulkarni, learned counsel for defendants No.2 and 3 submitted that the plaintiff has not approached this Court with clean hands and the plaintiff is claiming his possession over the suit properties under an unregistered sale deed. He further submitted that no document would reveal name of the plaintiff and no document would show that plaintiff is in possession of the suit properties. He further submitted that plaintiff has failed in making out prima-facie case and balance of convenience does not tilt in favour of the plaintiff. Thus he prayed to reject I.A.No. I.

11. Having heard the learned counsel for the respective parties, I have given my anxious and thoughtful consideration to the rival contentions and also to the material placed on record.

12. At the outset, it is pertinent to notice that plaintiff claims to be in settled possession of suit properties by way of the tax paid receipts. Even the prayer column in the plaint would also disclose that the plaintiff wants this Court to declare his ownership based

upon the tax paid receipts and the tax being paid to the City Corporation, Belagavi.

13. Needless to say, only based upon the tax paid receipts or the revenue entries the possession or ownership of plaintiff cannot be proved or it cannot be prima-facie made out. It is further significant to notice that entry of name in the revenue records only enables the plaintiff to pay the land revenue but it does not disclose the possession of plaintiff over the suit properties.

14. The plaintiff has produced certain documents which are the tax paid receipts and record of rights of the suit properties. A perusal of the record of rights would nowhere disclose the name of the plaintiff appearing in the column of possessor of the said property. As discussed supra, mere payment of tax of the suit properties will not show that the plaintiff is in possession of the Suit Schedule Properties.

15. It is also to be noted that when plaintiff claims to be in possession of suit properties, he has to approach the Court along with some positive material. Only based upon the payment of tax, his possession prima-facie stands not proved. There is no a scrap of paper on record to show that plaintiff is in possession of suit

properties. Therefore, in my considered view the plaintiff has miserably failed to prima-facie case prove his possession over the suit properties and in that regard balance of convenience does not tilt in favour of the plaintiff and plaintiff would not suffer any loss or hardship if injunction is refused. **Thus for the above discussion, I answer points No.1 to 3 in the negative.**

16. **Point No.4:-** For discussion on points No.1 to 3, following order is passed;

ORDER

I.A. No. 1 filed by the plaintiff U/o.XXXIX R.1 and 2 R/w. Sec. 151 of CPC being devoid of merit, fails and same is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, the transcript thereof is revised, edited and corrected by me and then pronounced in the Open Court on this the 06th day of April, 2021).

sd/-

(Sameer G. Kolli)

C/c. II Addl. Civil Judge & JMFC, Belagavi.