

**IN THE COURT OF I ADDL.CIVIL JUDGE & JMFC, AT
BELAGAVI.**

**Present: Smt.N. Anupama,
B.A.L.,LL.B.,
I Addl. Civil Judge & J.M.F.C.,
Belagavi.**

ORIGINAL SUIT No.566/2016

DATED ON THIS THE 28th DAY OF FEBRUARY - 2018

PLAINTIFF: Shri. Milind Prabhakar Patnekar,
Age: 53 years, Occ: Business,
CTS No.946, 946/1, Market Belagavi.

[By Shri. Vivek. G. Kulkarni. Advocate]

V/s

Defendants:

1. The Commissioner,
Corporation of City of Belagavi,
Belagavi.
2. Sri. Sayyed Qadir Pasha S/o Sayyed
Dada Pasha Inamdar,
Age: Major, Occupation: Business,
Darbar Galli, Belagavi.
3. Sri. Sayyed Illiyad S/o Sayyed
Abdulrahmin Inamdar,
Age: Major, Occ: Business,
Darbar Galli, Belagavi.
4. Sri. Sayyed Dastageer s/o Sayyed
abdulrahmin Inamdar,
Age: Major, Occ: Business,
Darbar Galli, Belagavi.

5. Sri. Sayyed Konenpasha S/o Nazim
Pasha Inamdar,
Age: Major, Occ: Household work,
Darbar Galli, Belagavi.

[By Sri. R. G. Morab. Advocate for D.1]
[By Sri. G.G. Patil. Advocate for D.2 to 4 & 6]
[D.5 is Dismissal]

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PARTIES TO I.A.No.II

Applicant : Shri. Milind Prabhakar Patnekar,

V/s

Opponents : The Commissioner,
Corporation of City of Belagavi, & others.

(Orig. Defts)

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ORDER ON I.A.NO.II

The plaintiff has filed I.A No.II under Order 39 Rule 1 & 2 r/w Section 151 of CPC seeking to restrain defendant no.2 to 6 from interfering with his peaceful possession and enjoyment of the suit-property.

2. The suit-property bearing CTS No.946 & 946/1, which form a compact unit, is in exclusive use, occupation and actual possession of plaintiff. Originally, the suit-property was in possession of plaintiffs grand-father – Shantaram

Vishnu Patnekar as a tenant under Sadashiv Herwadkar. Finally, the legal-heirs of Sadashiv Herwadkar sold the suit-property to the plaintiff for valuable consideration under the registered sale-deed dated 12.12.2006.

3. After purchasing the suit-property, the plaintiff demolished the old structure and constructed the RCC building by availing loan from Union Bank of India. The plaintiff is running his food-grains, pulses and general merchant business under the name and style "S. V. Patnekar" in the suit-property, and the entire family of plaintiff is depending on the income derived from the said business.

4. These being the facts, defendants no.2 to 6 who are aware of the ownership and possession of plaintiff and his vendors, visited the suit-property in February 2016 and called-upon the plaintiff to vacate the suit-property on basis of the decree obtained in in O.S No.619/2009 and confirmed in R.A No.296/2015. Thus, defendants no.2 to 6 have misled the Hon'ble courts and have obtained the said decree without joining the plaintiff in the said suit, inspite of the knowledge that the plaintiff has right and possession over the suit-property. Hence this suit and application.

5. Defendants no.2 to 6 have filed their written-statement cum objections to I.A No.I denying the plaint

averments. It is stated that, the suit-property was owned by their ancestors, who leased it to defendant no.1 - City Municipality/Corporation, Belagavi, on yearly rent of Rs.50/-. In the year 2009, they had filed a suit for possession in O.S.No.619/2009 against the Corporation which came to be decreed on 30.01.2012 and was confirmed in R.A.No.296/2015 (old R.A No.17/2012). As per the CTS records, one Sadhashiv Herwadkar, claiming title through defendant no.1 - Corporation was a lessee. When defendant no.1 Corporation itself was merely a lessee and not the owner of the suit-property, as also held by the Hon'ble court in O.S No.619/2009 and confirmed in R.A No.296/2015, neither the Corporation nor the vendor of plaintiff had any right, title or interest in the suit-property to pass on the same to plaintiff. Thus, the plaintiff has no independent right in the suit-property.

6. Moreover, the names of vendors of plaintiff has been mutated in the PR card of the suit-property as lessees under tenancy created by the Corporation. As such the plaintiff who is a sub-lessee was not a necessary party to the suit for possession in O.S No.619/2009.

7. Further, in view of the denial of ownership of plaintiff over the suit-property by these defendants, the present suit is not maintainable without seeking the relief of

declaration of titl. On these grounds, these defendants have prayed to dismiss I.A No.I with heavy cost.

8. Heard the arguments of both-sides. perused the affidavit, objections and documents.

9. The following points arise for determination of this court:

1. *Whether the plaintiff has made out a prima facie case in their favour ?*
2. *Whether the balance of convenience lies in favour of the plaintiff ?*
3. *Whether the plaintiff will be put to irreparable loss and injury if an order of Temporary Injunction is not granted?*
4. *What order?*

10. The above points are answered as under:

Point No.1to 3 : In the Negative.

Point No.2 : As per final order for the following :

REASONS

11. **Point No.1 to 3 :** Since these points are interlinked, they are taken-up together for discussion.

It is the specific contention of plaintiff that, he is in exclusive possession of suit-property by virtue of the sale-deed dated 10.02.2006 executed by its erstwhile owners.

12. Per contra, defendant no.2 to 6 dispute the ownership of plaintiff and claim that the vendors of plaintiff and their predecessors themselves had no title to the suit-property to pass on the same to the plaintiff. Further, they are entitled for possession of the suit-property in view of the decree passed in O.S.No.619/2009 and confirmed in R.A.No.296/2015.

13. Now, by way of this suit, the plaintiff is claiming that the said judgment and decree is not binding on him, and has sought for permanent injunction against defendants no.2 to 6 from disturbing his peaceful possession and enjoyment over the suit-property, ***without following due process of law***. But, the instant application is to restrain defendants no.2 to 6 ***unconditionally*** from interfering with the plaintiff's peaceful possession and enjoyment of the suit-property, pending disposal of the suit. However, in order to substantiate their possession over the suit-property, the plaintiffs have produced their sale-deed, CTS extract and photographs.

14. Here, it is pertinent to note that, the plaintiff has desisted from pleading that he is the absolute owner of the

suit-property, eventhough, he claims to have purchased the same from its vendors, whom the defendants allege to be the sub-lessees of defendant no.1 – Corporation.

15. Admittedly, in the decree passed in O.S.No.619/2009 and confirmed in R.A.No.296/2015, the Hon'ble court has held that, the Corporation – defendant no.1 herein, has been a lessee in the suit-property, and have directed it to hand-over the possession of the same to defendants no.2 to 6 herein. As such, the alleged vendors of plaintiff and their predecessors become the sub-lessees.

16. Admittedly, the said judgment and decree has attained finality, since it has remained un-challenged. In the light of the said decree, ***this suit*** filed by the plaintiff ***without seeking the declaration of his title to the suit-property***, is nothing but the abuse of the process of the court, and ***is not maintainable***.

17. Thus, when the suit itself is not maintainable, no relief could be granted on this application. Under the circumstances, ***if an unconditional order of temporary injunction as prayed is passed, pending disposal of the suit***, the decree obtained by defendant no.2 to 6 would merely be a paper decree.

18. Moreover, being shielded with the decree, it is not necessary for defendants no.2 to 6 to take any recourse except in accordance with law. On the contrary, the plaintiff by obtaining an order of injunction, would delay/evade the execution of decree, depriving these defendants from enjoying the fruits of decree.

19. As such, the prima-facie and balance of convenience lies in favour of defendant no.2 to 6 and it is they who will be put to irreparable-injury. Hence, Points No.1 to 3 are answered in the “Negative”.

20. **Point No. 4:** In view of the answer to above point, I proceed to pass the following:

ORDER

***I.A.No.2 filed by plaintiff under Order
XXXIX Rule 1 & 2 r/w Sec.151 of CPC is
dismissed.***

**Sd/-
I Addl. Civil Judge & JMFC.,
Belagavi.**