

IN THE COURT OF THE V ADDL.CIVIL JUDGE & JMFC,
AT : BELAGAVI

PRESENT

SMT.CHAITRA V. KULKARNI,
B.A.L.,LL.B., LL.M.
V ADDL.CIVIL JUDGE & JMFC, BELAGAVI

Original Suit No.603/2020

DATED THIS THE 22ND DAY OF SEPTEMBER, 2020

Plaintiff:-

1. Shri.Saradarsaheb S/o Mohamhanif Mulla,
Age: 77 years, Occ: Retired Government Servant,
R/o: C/o Shireen I. Bargir,
CTS No.11209/b/1, Old Gandhi Nagar, Belagavi.

(By Sri.K.V.Muppayyanavarmath, Advocate)

V/s

Defendants:-

1. Shri.Annappa S/o Adappa Patil,
Age: 72 years, Occ: Agricultural,
R/o: Patil Galli, Balekundri B.K.
Tal:Dist: Belagavi and others.

(By Sri.M.C.Modagekar, Advocate)

Order on I.A.Nos.1 & 2

The applicant/plaintiff has filed I.A.No.1 U/O 39 Rule
1 and 2 R/w Section 151 of CPC praying to restrain the

defendants, their agents, servants or anybody acting on their behalf from alienating the suit property as described in plaint para No.1, by way of sale, gift, mortgage, charge, lien etc., till disposal of the suit.

2. The I.A.No.2 is filed by the plaintiff U/O 39 Rule 1 and 2 R/w Section 151 of CPC praying to restrain the defendants, their agents, servants or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit property as the one described in plaint para No.1, till disposal of the suit.

3. In the affidavits filed in support of I.A.Nos.1 and 2, it is stated that the plaintiff has filed the top noted suit against the defendants for the relief of specific performance of contract in respect of the suit property. It is the case of the plaintiff that he has purchased the suit property from defendant No.1 and deceased defendant No.2 in the month of June 2003, for a sale consideration of Rs.34,000/- and paid the entire amount in cash to the defendants and defendants have executed an unregistered sale deed on 25-6-2003 in favour of the plaintiff and the

possession of the suit property was delivered to the plaintiff. It is further contended that in the month of December 2019 the board has been installed by the defendant Nos.4, 5, 8 and 9 and started canvassing that the suit property belongs them by referring civil suit bearing O.S.No.781/2018 which is ended in compromise. So, plaintiff obtained documents of said suit and on perusal of the compromise decree he came to know that there is suppression of existing privity of contract between defendant Nos.1 and 2. The description of the property is also wrongly mentioned in the said suit and the number which is shown in O.S.No.781/2018 is not at all existing and thus the compromise decree is a collusive decree obtained with an intention to dupe the legal right, interest and title of the plaintiff over the suit property. It is further contended that defendants by taking undue advantage of the said decree passed in O.S.No.781/2018 are trying to alienate the suit property with an intention to avoid their part of sale contract and to create complication in the matter and thereby cause heavy loss to the legal rights of

the plaintiff over the suit property. It is further contended that in order to protect his legal rights the plaintiff has filed the I.A.No.1. It is further contended that if the defendants alienate the portion of the suit property during the pendency of the suit then plaintiff would be put to untold hardship and it will lead to multiplicity of proceedings and the very purpose of filing the present suit will be frustrated. It is further contended that plaintiff requested the defendants to confirm his right, title and interest over the suit property but they have refused to do so and started threatening the plaintiff to dispossess him from the suit property by adopting illegal manner. The plaintiff further requested the defendants not to indulge in illegal acts but the defendants are not in a position to heed the said request and during pendency of the suit, they continued to interfere with the peaceful possession and enjoyment of the plaintiff over the suit property and the plaintiff will suffer hardship and irreparable loss if he dispossessed from the suit property. It is further contended that plaintiff has got a prima facie case in his

favour and balance of convenience also lies in his favour and he will be put to untold hardship and loss if the I.A.Nos.1 and 2 are not allowed. On the other hand, no loss or prejudice will be caused to the defendants if exparte TI on I.A.Nos.1 and 2 is granted in favour of the plaintiff. Hence prayed to allow both the applications.

4. The defendant Nos.1 and 3 to 9 have filed their objections to I.A.Nos.1 and 2 contending that that the applications filed by the plaintiff are false, frivolous and not maintainable in the eye of law. The defendants have denied all the allegations made in the affidavits in toto. They have also denied that defendant No.1 and deceased defendant No.2 have executed an unregistered sale deed on 25-6-2003 in favour of the plaintiff in respect of suit property. They have also denied that defendant Nos.1 and 2 have delivered the possession of the suit property to the plaintiff and that plaintiff is in possession of the suit property. It is denied that by taking undue advantage of compromise decree passed in O.S.No.781/2018 the defendants are trying to alienate the suit property and are

interfering in the peaceful possession of the plaintiff over the suit property. It is contended that plaintiff is the real estate agent and mischievous person and residing in Gandhinagar area and he hatched plan to grab the property of innocent and illiterate person without paying consideration amount and as the defendant Nos.1 and deceased defendant No.2 are village rustic persons and innocent and illiterate persons having no knowledge of the transaction the plaintiff with undue influence and by coercion has created the bogus and concocted document in his favour. It is contended that defendant No.1 and deceased Goudappa/defendant No.2 are the owners and in actual possession and cultivation of land bearing R.S.No.121/12 measuring 0.09.03.00 out of this pot kharab of 0.01.04.00 totally measuring 0.07.15.00 situated at Balekundri B.K., Belagavi District. The defendant Nos.3 to 9 are the legal heirs of defendant Nos.1 and 2. It is contended that the property bearing R.S.No.121/10 is the ancestral property of joint family and all the members of the family are in joint possession and

cultivation of the property and they are major in the year 2003 and they are smoothly running the family with agriculture and other salary source of the heirs and in the year 2003 the family was not facing any economic problem and hence there was no any need to make any transaction with the plaintiff. It is further contended that the said fact of alleged documents which are made by the plaintiff came to know by the defendants when they received legal notice. The plaintiff has not made all the heirs of deceased defendant No.2 as parties to the suit and therefore the present applications are not maintainable in the eye of law. The plaintiff is stranger to the defendants and they never met at any occasion to plaintiff. It is further contended that the said land is purely agricultural land and not the plot at any time and they are paying revenue to the Government and they are growing crops like maize, jawar and paddy in the said land. The defendant Nos.1 and 2 have never entered any type of agreement with plaintiff. The plaintiff has created sham and bogus document with an intention to gulp the property of

defendants. It is further contended that the plaintiff is not in possession of the suit property. It is contended that these defendants have filed O.S.No.781/2018 for the relief of partition against defendant Nos.1 and 2 in the year 2018 and said suit came to be compromised and decree has been passed on 8-9-2018 and the suit property was allotted to defendant Nos.4, 5 and 9 and accordingly they are the owners and in actual possession and in cultivation of the suit property. It is contended that plaintiff has got no any right and he is the stranger to the suit property and he has got no prima facie case in his favour and there is no balance of convenience lies in his favour and plaintiff is never in possession and enjoyment of the suit property and therefore there cannot be any injury caused to the plaintiff if the applications are rejected. It is further contended that the suit property which is mentioned by the plaintiff is different and the property which is mentioned by the plaintiff now is not in existence and therefore question of possession of the plaintiff over the suit property does not arise at all. On the other hand the

defendants are owners and in possession of the property bearing R.S.No.121/12 and R.S.No.121/10 which is claimed by the plaintiff is now not the property of the defendants and hence the claim of the plaintiff is not maintainable against the defendants. It is further contended that the land in question is an agricultural land and Panchayat authority has no power under Panchayat Act to issue property extract and tax receipt stating that it is an open plot. The plaintiff has created these documents colluding with the Panchayat authority to dupe the defendants. It is contended that the defendants are paying tax to the Revenue Department as owners in possession of R.S.No.121/12 and the names of the defendant Nos.4, 5, 8 and 9 are appearing in the record of rights of R.S.No.121/12. It is contended that defendants have replied the legal notice issued by the plaintiff and in the reply notice in para No.3 due to oversight the land R.S. number is mentioned as R.S.No.121/21 but it is 121/12 which is a clerical mistake. It is further contended that in order to harass the defendants the plaintiff has filed these

applications and hence prayed to reject the I.A.Nos.1 and

2.

5. Heard both sides. Perused materials placed on record.

6. The following points arise for my consideration:-

1. Whether the plaintiff has made out a prima facie case for grant of TI on I.A.Nos.1 and 2 in his favour ?

2. Whether the balance of convenience lies in favour of the plaintiff in I.A.Nos.1 and 2 ?

3. Whether the plaintiff proves that he will be put to irreparable loss and injury if TI on I.A.Nos.1 and 2 is not granted in his favour?

4. What order?

7. My answers to the above points are as under:-

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

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

REASONS

8. Point Nos.1 to 3:- As all these points are inter linked with each other, I have taken up these points together for discussion for the sake of convenience.

9. Plaintiff has filed the present suit for relief of specific performance of contract and ancillary relief against the defendants and he has filed present applications to restrain the defendants from alienating the suit property and interfering with the possession of the plaintiff over the suit property. It is the contention of the plaintiff that the defendant No.1 and deceased defendant No.2 had executed an agreement of sale with respect to suit property by handing over the possession to the plaintiff by receiving the total sale consideration amount of Rs.34,000/- and also they had executed a separate agreement to show that possession has handed over to present plaintiff styled as pratignya patra. But the said agreement through which suit property has been sold is not registered and the nomenclature of the said document is styled as sale deed

which was executed on 25-6-2003. Further when the plaintiff approached the defendants for executing the registered sale deed on the agreement dated 25-06-2003, defendants flatly denied his request and also they have started interfere with his possession by getting the compromise decree in O.S.No.781/2018. Further it is the contention of the plaintiff that the suit property in the said O.S.No.781/2018 is different from the present suit property. But the defendants are putting up the board in the present suit property by taking the advantage of the decree in the said suit. Hence he has prayed to allow the applications.

10. During his course of argument counsel for plaintiff argued that the subject matter of the suit is 5 guntas and at the time of execution of the unregistered agreement of sale of the year 2003 the stamp duty has also been paid but because of some reasons it was not registered. Further he argued that the documents which are produced by him including the agreement of sale and pratignya patra and panchayat extracts disclose that the plaintiff is in the

possession of the suit property, till today the plaintiff is paying the tax for which he has produced the tax paid receipts with respect to suit property. Along with these documents he has also produced the map which shows the existence of the suit property.

11. On the other hand counsel for defendant argued that through unregistered document possession cannot be claimed and in the unregistered sale deed there is no mention as to consideration amount paid to the seller and also about receiving the same. Further he argued that nowhere in the pleadings it has mentioned about the problem to register the sale deed at the time of execution of unregistered agreement. Further the documents produced by plaintiff are created and under such created and concocted documents no relief can be claimed and be granted by the Court. Further the suit property being an agricultural land the plaintiff had to produce the RTC extract instead of panchayat extract with respect to suit property and no document produced by the plaintiff reveal the exact extent of the suit property. The defendants are

not the owners of the suit property and it is standing in the name of some other person. Hence the claim of the plaintiff against defendant does not have any merit since the property is not standing in the name of the defendants and the specific performance has to be sought against the owner of the property but here since the defendants are not owners of the property as on today they cannot execute any sale deed and they are not authorized to. Further he argued that to enter the name of the plaintiff in the panchayat records no procedure has been followed and there is no any document to support and show that the resolution has passed to enter the name of the plaintiff. The photographs produced by the plaintiff show that the they are in the possession and there are the crops which have been grown by the defendants. Hence when the plaintiff is not in the possession of the suit property the relief of injunction cannot be granted against him. Hence he prayed to reject the application.

12. On going through the entire materials available on record and on perusal of the documents produced by the

plaintiff, the copy of unregistered sale deed the recital discloses the name of the plaintiff and name of the defendant No.1 and deceased defendant No.2. Wherein the present suit property has been sold to the present plaintiff by receiving Rs.34,000/- consideration amount and both the parties to the said document have acknowledged the same and it also discloses that the possession has been handed over. Further on perusal of the document styled as pratinaya patra which clearly discloses that on the day when the unregistered sale deed was executed the defendant No.2 handed over the possession to the plaintiff but at this stage the said document can not be looked into since the said document is unregistered one. Further the panchayat extracts from 2012-2013 to 2020-2021 prima facie disclose that the plaintiff is the owner of the suit property and he is possession but since the said documents do not prove the ownership they can be considered for collateral purpose. The said extracts in the column No.1 where it has mentioned that property No.736/1 in Sy.No.1/10 and in the column of owner's

name, the name of the plaintiff has been entered. Further the tax paid receipts also bear the name of the plaintiff with respect to suit property from 2013-2014 to till filing of the suit. In this regard it is well settled principle of law that, the revenue records can be looked into only for the proof of possession and they are meant to be referred only for collateral purpose. Thus on looking into the said documents prima facie reveal that the plaintiff is in the possession of the suit property.

13. Here another important point to be observed that the document which is the certified copy of compromise decree entered between the defendants in O.S.No.781/2018. On going through the contents of the said document nowhere the present suit property has been mentioned and allotted to any of the party in the said suit. But when it is perused along with the photographs produced in the present suit the defendants have installed the name board by virtue of the compromise decree in the present suit property. But the said compromise decree does not relate to the present suit property. Further the P.T. sheet of Sy.No.121/10 there

is no existence of the property of the defendant at any side of the said property and it corroborate with the schedule shown in the plaint with respect to boundaries of the suit property.

14. The defendants have also produced documents with respect to the properties which are mentioned in the compromise decree such as Sy.No.121/12 to 121/15 and also they have produced the P.T. sheet of the said properties. On perusal of the same it appears that defendants are in the possession of the properties compromised in the said suit. But nowhere in the RTC extract the present suit property number is appearing. Further the P.T. sheet of Sy.No.121/12 to 15 disclose that at Eastern side, present suit property is situated. Further the defendants have produced the certificate issued by the panchayat which states there is no resolution available registered in the name of present plaintiff. On the basis of said document defendants have contended that when there is no resolution available in the panchayat as to the entering of the name of the plaintiff in the panchayat

extract then plaintiff cannot be having possession of the present suit property. On the other hand the counsel for plaintiff has stated during his argument with respect to RTC extract of agricultural land and the objection rose by the defendants that since the suit property is agricultural land plaintiff had to furnish the RTC extract, no Gram panchayat issues the property extract with respect to agricultural land, to this objection counsel for plaintiff stated that when the person purchases the property below 10 guntas of the land then no RTC extract will be issued. Here in the present case the plaintiff has purchased only 5 guntas of land, hence panchayat issued the property extract.

15. Further all the documents produced by the plaintiff clearly prima facie show that he is in possession of the suit property and as regards the passing of consideration to the defendant No.2 the recital in the unregistered deed prima facie show that he has received the amount and with respect to these aspects the trial needs to be conducted, at this stage mini trial cannot be hold and

defendants have not produced single document to show that they are in the possession of the Sy.No.121/10 not the plaintiff. Further it is important to note that at one stretch the defendants contend that they are not owner and in possession of the suit property as on today, at another stretch they contend that they are in the possession of the suit property as it has fallen to the share of defendant No.4, 5 and 9 as per compromise decree, but on reading of compromise decree there is no mention as to present suit property which fallen to the share of said defendants. Further at another stretch they say that now defendants are not in possession of suit property and property is not in existence, plaintiff has to claim his relief against real owner since the defendants are not in possession plaintiff can not claim against them. It shows that defendants themselves are in the confusion as to on which property they are having the ownership and possessory rights, even defendants have not placed any documents to show that present suit property is in possession of defendant No. 4, 5 and 9 as per compromise

decree.

16. On careful reading of documents even except agreement of sale and pratignya patra, various other documents, prima facie disclose that plaintiff is in the possession of the property.

17. Further, another objection of the defendants is that the plaintiff is relying on the unregistered document hence he is not entitled to relief sought under present applications. With respect to this it is beneficial to rely on the decision relied by plaintiff reported in AIR 2003 **Madhya Pradesh 145 in the case of M/s chetak Constructions Limited, Indore V/s Om Prakash and others**, wherein it is observed as under:-

“(A) Transfer of Property Act (4 of 1882), S.53-A-Part performance-Protection of-Who can claim-Agreement to sell-Transferee in possession by satisfying all conditions of S.53-A-Can seek protection of his right under S. 53-A-whether he comes to Court as plaintiff or as a defendant is immaterial.”

(D) Civil P.C. (5 of 1908), O.39, r.1(c) – Temporary

injunction – To restrain dispossession of plaintiffs – plaintiffs in possession of suit property under agreement to sell – Plaintiffs paying substantial amount to owner of property – Sale deed could not be registered due to failure of owner of property to obtain Income tax Clearance Certificate – Plaintiffs could not be blamed for non-payment of remaining amount – Prima facie they were ready and willing – Plaintiffs being in possession on date of suit, balance of convenience was in their favour – They were likely to suffer substantial injury if temporary injunction was not granted – they would be entitled to temporary injunction.”

18. On the careful reading of above decision it is clear that the person claiming relief under section-53A as a part performance, if he is in the possession then his possession needs to be protected and he will face irreparable injury if injunction will be refused. Other decisions which are relied by the present plaintiff are not applicable to present suit as the facts and circumstances of the present case and those decisions are different.

19. The decision relied on by the defendants are as under:-

1. 2018 (6) SCC 733 in the case of A.N.Nagarajaiah V/s B. Aravind, wherein it is observed as under:-

“Code of Civil Procedure, 1908 – Order 39, Rule 1 [N. Kumar, J] concurrent finding of courts below that plaintiff is in lawful possession of suit property and granting temporary injunction – Defendant 1, an agreement holder – possession said to have been given – Agreement not registered – Vendor died and her L.Rs. Sold a portion to plaintiff – Plaintiff’s suit for declaration and injunction – concurrent finding of Courts below, confirmed.....”

2. 2015(5) AWC 5208 in the case of Vinod Kumar and others V/s Sudha Land Ventures and Homes Pvt. Ltd., wherein it is observed as under:-

“Registration Act, 1908 – Section 17 – Code of Civil Procedure, 1908 – Order 39 Rule 2(2) – temporary injunction-Sale deed – Unregistered sale deed in respect of agricultural plot-Appellant not admitted the

delivery of possession of plot- If a document is unregistered, it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property – Held, suit for permanent as well as specific performance could not be decreed as no title in favour of vendee in absence of registration of sale deed of agreement to sale – Impugned order liable to set aside.”

20. On going through the first decision it clears that facts in the said decisions relating to unregistered agreement of sale of defendant No.1 with possession and registered sale deed of plaintiff, wherein Hon'ble High court held that, the unregistered deed has no effect where there is a registered deed of sale in the name of plaintiff in the said decision, but here in case on hand with respect to suit property only unregistered sale deed (agreement of sale) has been produced, on the contrary there is no any registered deed with respect to suit property and even the defendants have not produced any contrary document as produced in the said decision hence it does not applicable to present suit. Second decision deals with the aspect of

title in favour of vendee, even though it is dealt with grant of injunction but it is confined with respect to state amendment hence it does not applicable to present case, remaining decisions are outcome of full fledged trial hence they do not come to aid of defendants.

21. Thus on the above discussion it is clear that prima facie the plaintiff has made out his case and if at all the injunction will not be granted if the defendants continued to interfere in his possession he will face hardship and balance of convenience also liens in his favour and if the defendants alienate the property it may lead to multiplicity of proceedings and again hardship will be caused to both sides. Hence plaintiff has made out the ground to allow the applications. Hence I answer to point Nos.1 to 3 in the affirmative.

22. **Point No.4:-** For the reasons said above, I proceed to pass the following....

ORDER

The I.A.No.1 filed by the plaintiff

U/O 39 Rule 1 and 2 R/w Section

151 of CPC is hereby allowed.

The defendants, their agents, servants or anybody acting on their behalf are hereby restrained by way of temporary injunction from alienating the suit property in any manner like sale, gift, mortgage, charge, lien etc. till disposal of the suit.

The I.A.No.2 filed by the plaintiff U/O 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

The defendants, their agents, servants or anybody acting on their behalf are hereby restrained by way of temporary injunction from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property till disposal of the suit.

No order as to costs.

(Partly dictated and partly directly dictated to the stenographer on Computer, the same is edited, revised and corrected by me and then pronounced in the Open Court on this the 22nd day of September, 2020).

sd/-
(Smt.Chaitra V. Kulkarni)
V Addl.Civil Judge & JMFC,
Belagavi.