

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

PRESENT: SMT. SUJATHA A.B.

B.A.L, LL.B.

**III Addl. Civil Judge & JMFC,
Belagavi.**

DATED: THIS 10th DAY OF JULY 2018

ORIGINAL SUIT NO.694/2016

BETWEEN:

1. Shri Nilesh Sadanand Hiremath,
Age: 49 years, Occ: Service,
R/o: 204, Gilginchi Apartment,
Somwar Peth, Tilakwadi, Belagavi,
Now residing at: 2, Kimaya Residency,
Bhau Patil Road, Bopodi, Pune-411020.

... Plaintiffs

(By Sri R.L. Suldhal, Advocate)

AND:

1. Mr Saleem Meerasab Kudachi,
Age: about 47 years, Occ: business
R/o: 3649, Khanjar Galli, Belagavi-590001.

... Defendant

(By Shri L.K. Gurav, Advocate)

I.A. No. 4

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1. Shri Nilesh Sadanand Hiremath,

Applicants/ Plaintiffs

-Versus-

1. Mr Saleem Meerasab Kudachi,

...Opponents/Defendants

ORDER ON I.A.No.4

This application filed by the applicants/plaintiff under Order XXXIX Rules 1 and 2 R/w section 151 of CPC, to grant interim injunction by restraining the opponents/defendants, their agents and servants from making additional construction in the suit plot, till the disposal of the suit.

2. In the affidavit filed in support of the I.A., the plaintiff contended that, he is the member of Asadkhan Co-operative Housing society Ltd, and the said society has laid plots by completing all the procedures. It is stated that the plaintiff purchased the plot no.282 out of land bearing R.S.No.998 (part) situated at Shivaji nagar Belagavi under the registered sale deed dated 18.07.2000 and he was put in physical possession of the same. It is further stated that the R.S.No.998 is shown in the record of rights as R.S.No.998/1, 998/2 and 998/3 and new number of his property is R.S.No.998/3 as the owner of plot no.282. Plaintiff further contended that Mr Riyaz ahmed and Raju by taking undue advantage of two registered documents i.e. registered declaration of deed of cancellation and the sale deed are

trying to dispossess him illegally from the suit plot. As a result the plaintiff has filed suit in OS.No.435/2015 before this court and the temporary injunction was granted. In furtherance the plaintiff came to know about the illegal work of digging foundation in the suit plot is done by the defendant and he is claiming the ownership of the same. but contended that defendant has no right, title or interest in the above said R.S numbers and he is not entitle to make any construction in the suit plot. It is further stated that this court has dismissed his application and thereafter, the defendant has completed his construction work. Moreover he has preferred Misc Appeal No.50/2016 and same is still pending. It is stated that if the said illegal additional construction is not stopped, he will be put to great hardship. As a result without any efficacious remedy, the plaintiff has filed the present suit along with this application and prays to allow the application.

3. The defendant has filed his objections to the present application by denying the entire averments of the application. It is stated that description of the suit property is denied along with there is no hand sketch and approved layout plan by the BUDA is produced by the plaintiff. It is stated that the alleged suit property will not come under the

area of RS.No.998/1. It is stated that the plaintiff is confused and not in a position to give clear picture of the suit property and simply trying to disturb the possession of the defendant. It is further stated that the defendant is not having knowledge about the filing of the said original suit and its order and this defendant is not a party to the said suit. It is stated that the defendant has started construction of the house in RS.No.998/1 and the plaintiff has not at all concerned to the said plot. It is stated that the defendant has started construction in year 2016 and till today the plaintiff has kept quiet but when the house reached to its slab level, the plaintiff has filed this suit. The cause of action is denied. It is stated that there are no documents to show that the plaintiff is the owner in title of the suit plot. Accordingly prays for rejection of the application.

4. Heard arguments from both sides. Perused the materials available on record. The learned counsel for the defendant has relied upon the following decisions:-

1. 2016 (2) Law Herald 1435
2. 2007 (2) Law Herald 911

5. The points that would arise for my consideration are:-

1. ***Whether the plaintiff has made out a prima facie case to grant temporary injunction as sought?***
2. ***Is the balance of convenience lies in favour of plaintiff?***
3. ***Whether the plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?***
4. ***What order?***

6. My findings on the above points are as follows:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

*Point No.4 : As per final orders
For the following:*

REASONS

7. **Point No.1 to 3:-** It is the specific contention of the plaintiff that asadkhan co-operative housing society ltd belgaum had sold non agriculture land in plaintiff favour at plot no.282 measuring 40x60feet=2400 sq feets out of land bearing part of R.S.No.998 under registered sale deed dated 18-07-2000 for the certain consideration. Plaintiff further

contended that his plot was situated in R.S.No.998/3. He further contended that Mr.Riyazahmed and Raju Bassapuri were likely to dispossess him by creating two registered documents in the tune of Declaration of deed of cancellation and sale deed in the year 2013. Plaintiff further contended that defendant illegally digging the foundation in suit plot by falsely claiming that the suit plot falls in R.S.No.998/1 of which ownership is claimed by the defendant. Therefore plaintiff filed the above application to restrain the defendant from further construction in the said plot.

8. On the other hand defendant denies all the contentions of the plaintiff in toto and further stated that suit plot is actually comes under R.S.No.998/1 but not under R.S.No.998/3. He also contended that his name was seen in the RTC of R.S.no.998/1 measuring 20 guntas hence he is not a stranger to the suit plot. Moreover he already collected 80-100 bags of cement, steel, sand and other materials so he is the one who going to face lot of inconvenience if order is passed in favour of plaintiff. So prayed to dismiss the said application.

9. Let us appreciate the primary material documents produced by the parties. In order to support his contention plaintiff is relied on registered sale deed executed by Kawaja Ibrahim Makandar represented by Asadkhan Co-operative Housing Society Limited in favor of plaintiff dated 18-07-2000. Similarly plaintiff further produced other sale deeds which are belong to other plots owners and same are issued by the above seller in favor of members of Asadkhan Co-operative Housing Society. But it is noted that in the said sale deed suit plot was shown to be located only in R.S.No.998. but presently plaintiff contended that suit plot was located in R.S.No.998/3 on the other hand defendant strongly objecting the said contention of the plaintiff and contended that suit property is comes under his ownership since it is situated in R.S.No.998/1. So under this circumstances burden is on the plaintiff to establish his contentions.

10. It is pertained to note that plaintiff produced series of ROR's related to R.S.No.998/3 on rough perusal of the same reveals that out of 6 acre 30 guntas plaintiff name also seen in column no.9 and 12 as owner and possession holder of his plot respectively along with the other members

who purchased their own plots. At the same time on the other hand even defendant also produced ROR with respect to R.S.No.998/1 measuring 20 guntas in which defendant name was seen in column no.9.

11. In light of the above it is clear that apart from the said ROR's both the parties haven't produced any supportive cogent documents to show whether suit property was situated in R.S.No.998/1 or in R.S.No.998/3. Since plaintiff is the initiator of the suit he having burden to establish his contention. But solely on the basis of such entry in ROR it does not enable this court to consider that plaintiff plot is situated in R.S.No.998/3. So on the other hand defendant contended that he is constructing his building in R.S.No.998/1.

12. It is pertinent to note that plaintiff produced some photographs which shows that defendant is about to construct his building but such photographs are not reveals about whether defendant is constructed his building lawfully or not and on the basis of said photographs court cannot come to the conclusion that defendant is carrying construction over RS.No.998/3. So as per the available

documents it is hard to ascertain whether defendant illegally without any right, title and interest proceeds with the construction. Moreover plaintiff himself stated that the Asadkhan society has cancelled his sale deed through riyaz ahamed and his colleague raju bassapuri in the year 2013. In light of the above, it is clear that the plaintiff is not in possession. Further more this suit is for only bare injunction, so in this type of suit initially plaintiff has to prove his possession over the property. Further, whether the plaintiff has any right over the suit property or not and the construction undertaken by the defendant is in accordance with law or not So it requires full fledged trial to determine the rights of the parties.

13. At this juncture it is useful to refer the suit reported in ILR 1988 Karnataka 3035 (NARAYAN MUKUND SHET V/s NARAYAN NAGESH SHETTY), which reads as under:

“SPECIFIC RELIEF ACT, 1963 (Central act No.47 of 1963) – Section 38 – Injunction cannot be granted in favour of plaintiff not in actual possession of the property”.

Therefore at present plaintiff failed to prove his prima facie case in hand as well as his contentions cannot be expected for the want of necessary documents at this stage.

14. Any how this order will not affects the rights of the parties. Even at the end of the suit if plaintiff succeeds, though building was constructed at that time he still has a remedy to claim in his favour. In the present case defendant clearly admitted the fact that he proceed with the construction so naturally he invests huge money for sand cement and other materials so if the order is passed in favor of plaintiff defendant is the one who would subject to inconvenience. But on the other hand no prejudice will be caused to the plaintiff if the said application is dismissed. Accordingly I answer **point no.1 to 3 in the Negative.**

15. **Point No.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No.4 filed by the
plaintiff under Order XXXIX Rule 1

and 2 of C.P.C., R/W section 151 of
C.P.C., is hereby dismissed.

No orders as to costs.

*(Dictated to the Stenographer, transcribed and typed by her,
revised & corrected by me and then pronounced in the open Court on this
the 10th day of July, 2018)*

Sd/-

(SMT. SUJATHA A.B.)
III Addl. C.J. & JMFC, Belagavi