

**IN THE COURT OF THE I ADDL CIVIL JUDGE & J.M.F.C.,
BELGAUM AT: BELGAUM**

PRESENT: SHRI. PRAVEEN NAYAK.,
B.A., L.L.B., L.L.M.,
I Addl Civil Judge & JMFC.,
Belgaum.

ORIGINAL SUIT No.725/2013

DATED: THIS 07th DAY OF NOVEMBER, 2014

BETWEEN:

1. Shri Maruti Balu Maraganache,
R/o: Dhamane (S),
Tal & Dist: Belgaum and another.

.....Plaintiffs

(By Smt S.C. Altekar, Advocate)

AND:

1. Shri Bhairu Devappa Patil,
R/o: Bastwad (Halaga)
Tal & Dist: Belgaum and others.

...Defendant

(By Shri A.J. Kulkarni, Advocate for D.1 to 5)

(By Shri S.S. Chinnannavar, Advocate for D.6 to 9)

: ORDERS ON I.A.Nos.I & II:

I.A.Nos.I & 2 are filed by the learned counsel for the Plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC respectively for seeking Temporary Injunction in favour of the Plaintiffs and thereby restraining the Defendant from alienating the suit lands or create any charge or encumbrance or change the nature of the suit lands and also interfering with the peaceful possession and enjoyment of the suit lands, till disposal of the suit.

2. These applications are supported with the affidavit of the Plaintiff No.1. In their affidavits, they have stated that the father of the Defendants was the absolute owner of the suit lands. It is stated that in the year 1981, the father of the Defendants gave the suit lands to the father of the Plaintiffs for cultivation and the father of the Plaintiffs was in possession and enjoyment of the suit lands. It is stated that as the father of the Defendants was in need of money, the father of the Plaintiffs was agreed to purchase the same and the father of the Defendants was agreed to execute the Agreement of sale in respect of the suit properties for a valuable consideration of Rs.12,600/-. It is stated that the father of the Plaintiffs has paid Rs.12,100/- and

remaining amount was agreed to be paid at the time of registration of the sale deed. It is stated that an Agreement of sale was executed in favour of the father of the Plaintiffs on 04.08.1985 and the possession was handed over. It is stated that the father of the Plaintiffs has requested the father of the Defendants to execute the said sale deed by receiving the balance consideration amount, but, same was not complied. It is stated that on 07.03.1988, the father of the Plaintiffs has died and after his death, the Plaintiffs have continued their possession in the suit lands. It is also stated that the Plaintiffs have again requested the father of the Defendants to get execute the sale deed, but he did not execute the same. It is stated that the Defendants by taking advantage got their names entered in the records of rights of the suit properties are trying to dispossess the Plaintiffs from the suit lands. Without any alternative way, the Plaintiffs have filed the present suit along with the present applications. It is stated that these Plaintiffs have got prima facie case and balance of convenience also lies in their favour. Hence, the Plaintiffs have prayed to allow the applications.

3. On the other hand, the Defendants No.1 to 5 have appeared through their counsel and they have filed written statement cum objections to the said applications. The

Defendants No.6 to 9 have adopted the same. The averments of the said objections are summarized here under:-

It is stated that the suit filed by the Plaintiffs is false, frivolous and vexatious. These Defendants have denied the entire contents of the said applications. These Defendants have denied the entire description of the suit properties. It is stated that some contents and averments of the plaint are partly admitted and partly denied. It is stated that the said Agreement of sale executed by the father of these Defendants was not registered one and now the Plaintiffs have got registered the said document by paying the deficit stamp duty. It is stated that these Defendants have filed a suit in O.S.No.756/2012 before the IV Addl Civil Judge & JMFC., Belgaum and obtained an Injunction order and the Plaintiff have lost their interest and hence, the Plaintiffs have come up with the present suit. It is stated that the Plaintiffs are no way related to these Defendants. It is stated that there is no cause of action for filing the present suit. It is stated that the present suit is hit by the principles of res-judicata. It is stated that these Plaintiffs have not approached this Court with clean hands. These Defendants have denied the prima facie case of the Plaintiffs and also the balance of convenience and prayed to reject the applications.

4. Heard on both sides. Perused the averments of the application and objections and also the documents produced by both sides.

5. At this stage, the following Points would arise for my consideration:-

1. ***Whether the Plaintiffs prove that they have got prima facie case and balance of convenience lies in their favour to pass an Ad-interim order in I.A.No.1 and 2?***
2. ***Whether the Plaintiffs prove that they will suffer Irreparable loss and hardship, if Temporary Injunction order has not been passed in I.A.No.1 and 2?***
3. ***What order?***

6. My answer to the above Points are as under:-

***Point No.1: In the Negative,
Point No.2: In the Negative,
Point No.3: As per final order,
for the following:-***

REASONS

7. **Point No.1:-** That, in order to prove the prima facie case, the Plaintiff has to prove the prima facie right over the suit property and not the title over the suit property. The Plaintiff has

to establish his prima facie right of the nature as claimed in the main relief over the suit property and has to establish his balance of convenience by proving the comparative mischief which will be sustained by him, if the Temporary Injunction has not been granted.

8. It is contended that the father of the Defendants was the absolute owner of the suit lands and in the year 1981, the father of the Defendants gave the suit lands to the father of the Plaintiffs for cultivation and the father of the Plaintiffs was in possession and enjoyment of the suit lands. It is contended the father of the Defendants had sold the suit property to the father of the Plaintiffs by executing the Agreement of sale in respect of the suit properties for a valuable consideration and on 04.08.1985 the possession was handed over. It is contended that the father of the Plaintiffs has requested the father of the Defendants to execute the said sale deed by receiving the balance consideration amount, but, same was not complied and after the death of the father of the Plaintiffs, the Plaintiffs have continued their possession in the suit lands. It is also contended that the Plaintiffs have again requested the father of the Defendants to get execute the sale deed, but he did not execute

the same. Hence, the Plaintiffs have come up with the present suit and along with these applications.

9. On the other hand, these Defendants have denied the entire description of the suit properties. It is contended that the said Agreement of sale executed by the father of these Defendants was not registered one and now the Plaintiffs have got registered the said document by paying the deficit stamp duty. It is contended that the Defendants have filed a suit in O.S.No.756/2012 and obtained an Injunction order and the Plaintiff have lost their interest and hence, the Plaintiffs have come up with the present suit. It is contended that the Plaintiffs have not approached this Court with clean hands. These Defendants have denied the prima facie case of the Plaintiffs and also the balance of convenience and prayed to reject the application.

10. The learned counsel for the Plaintiffs has produced documents in support of his case which are the original Agreement of sale, Challan copy of SBI for registration and record of rights.

11. On the other hand, the learned counsel for the Defendants has not produced any documents.

12. The Plaintiffs have contended that they are in possession over the suit properties since 1985. The Plaintiffs have produced the original Agreement of sale dated 08.05.1985 alleged to have been executed by the father of the Defendants in their favour. It is to be noted that the said document is in Marathi language and the Plaintiffs have not produced the translation copy of the same. The Plaintiffs have contended that through the said Agreement of sale, the father of the Defendants has agreed to sell the suit properties in favour of the Plaintiffs and also put the Plaintiffs in possession over the suit properties. The Plaintiffs have also produced the record of rights pertaining to the suit properties. The said document reflects the name of the Defendants. It is to be noted that other than these documents, the Plaintiffs have not produced any single document to establish their possession over the suit properties. In view of this, the person said to have been in possession over the suit properties since 1985 is expected to produced few relevant documents to prove his possession.

13. It is to be noted that the father of the Plaintiffs is said to be died on 07.03.1988. It is not explained why the Plaintiffs have kept quiet till 2013. It is also important to note that the

Plaintiffs after keeping quiet since filing of the present suit and appearance of the Defendants has now suddenly pressing on I.A.No.1 and 2. These behavior of the Plaintiffs remained unexplained. Moreover, the cause of action for filing the present applications are also not properly explained.

14. It is to be noted that the suit properties are the agricultural properties. As discussed supra, I am of the opinion that the Plaintiffs have failed to prove their prima facie case and their possession over the suit properties. The documents produced by the Plaintiffs shows that the Defendants are in possession over the suit properties. When such being the case, the balance of convenience is also not proved by the Plaintiffs. In view of this, I am of the opinion that it is the duty of the Plaintiffs to bring to the notice of this Court about the existence of the suit property and in that regard, the Plaintiff ought to have produced the relevant documents. At this stage, only the said Agreement of sale and the copy of the record of rights pertaining to the year 2009-10 are produced. The said documents produced by the Plaintiff are not pertaining to the current year as on the date of filing of the suit. Under these circumstances, this Court cannot come to the conclusion regarding the possession over the suit properties and as such, the contention of the Defendant in this

regard is found sustainable at this stage. Keeping in view of these things, I find no such prima facie materials to consider the request of the Plaintiffs. Further, in the absence of the relevant documents, this Court cannot put forth its opinion regarding the balance of convenience which is said to be lies in favour of the Plaintiffs. In view of the absence of the prima facie materials, I am of the opinion that the contention of the Plaintiffs is not sustainable and I find no prima facie case and balance of convenience does not lies in their favour. **Hence, I answer Point No.1 in the Negative.**

15. **Point No.2:-** While considering the irreparable injury that would be suffered by the parties, the Court has to see that the quantum of injury that would be suffered by the parties, if an order of Temporary Injunction has been passed and not passed. The Court has to weigh the quantum of injury to be suffered by the parties in this regard.

16. In the case on hand, it is the specific contention taken by the Plaintiffs that their father has entered into an agreement with the Defendants' father and he has been put in possession of the suit properties by way of part performance of contract. However, the Plaintiffs have not produced the relevant

documents to establish their possession over the suit properties. Under these circumstances, this Court cannot consider the request of the Plaintiffs regarding the irreparable loss and hardship that would be suffered by them, if they are not granted with the order of Temporary injunction. In view of this, without having a trial, this Court cannot consider the request of the Plaintiffs regarding the essential requirements of granting Temporary injunction. At this stage, since, there is no prima facie case, I am of the opinion that the contention of the Plaintiffs that they will be put to irreparable loss and hardship if the Temporary injunction is not granted, is found not sustainable. **Hence, I answer Point No.2 in the Negative.**

17. **Point No.3:-** It is true that while considering the application under Order 39 Rule 1 and 3, the Court has to look into the essential requirements of the said provision of law and has to look into the aspect of prima facie case and balance of convenience and the aspect of irreparable loss and hardship that would be caused to the parties, if no Temporary injunction is granted. As discussed supra, the Plaintiffs have failed to prove the essential requirements of the said provision of law.

18. It is true that the granting of Ad-Interim Temporary injunction is a discretionary relief has to be exercised in discretionary manner. As it is discussed supra, since, the Plaintiffs have failed to prove the essential requirements of granting Temporary injunction, I find no ground to consider the request of the Plaintiffs regarding the granting of Ad-Interim Temporary injunction. Hence, the applications filed by the learned counsel for the Plaintiffs is not sustainable and same is liable to be dismissed with costs. **Hence, I proceed to pass the following:**

: O R D E R :

I.A.No.I & II filed by the learned
counsel for the Plaintiffs under Order XXXIX
Rule 1 and 2 R/w Sec 151 of CPC are
hereby dismissed with costs.

(Dictated to the stenographer, transcribed and typed by her,
corrected by me and then pronounced in the open Court, this 07th day of
November, 2014)

Sd/-

(PRAVEEN NAYAK)
I Addl Civil Judge & JMFC.,
BELGAUM.