

KABG040021562023



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

Dated this 24th day of February, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
IV Addl. Civil Judge and JMFC, Belagavi.

ORIGINAL SUIT NO: 770/2023

BETWEEN:

1. Smt. Kasturi W/o Jamburao Lengade,
Age: 85 Years, Occ: House Wife,
R/o: RS No-28/1, CTS No-2724, H. No-832,
Opp: Herwadkar School, II Railway Gate,
Tilakwadi, Belagavi.

And 5 others

.....Plaintiffs

(By Shri. A. A. Sunalkar, Advocate for Plaintiffs)

AND:

1. Shri. Chandrakant S/o Annappa Bogar,
Age: 54 Years, Occ: Business,
R/o: Mahaveer Garden, Hindwadi,
Belagavi. **And 3 others**

.....Defendants

(By Shri. A. C. Hubli, Advocate for defendant No.2)

(By Sri. M. L. Inamdar, Advocate for defendant No. 4)

(D-1 : Retired, D-3 : Exparte)

I.A.No.I

**Applicant/Plaintiffs : Smt. Kasturi W/o Jamburao
Lengade and others**

-Vs.-

**Opponent/Defendants : Shri. Chandrakant
S/o Annappa Boagar and others**

ORDERS ON I.A.No.I

The I.A.No.I is filed by the plaintiffs U/o. XXXIX Rule 1 and 2 of C.P.C praying to grant temporary injunction restraining defendants, servants, agents, henchmen or anybody acting on their behalf from disturbing the lawful possession of the plaintiffs over the suit property till disposal of the suit.

2. In the affidavit plaintiff No. 2 stated that originally, suit property was owned by Sri. Shrimanth Chintaman Rao Balchandra Rao Phatwardhan, the entire extent of R.S. No. 28 was 7 acres 34 guntas, out of which he sold 1 acre 28 guntas to Shri Manaji S/o Mothichand Lengade, after purchase of 1 acre 28 guntas by Shri Manaji his son's name i.e., the name of Shri Mothichand S/o Manaji Lengade was mutated in the revenue records as per ME No. 1005. The

names of legal heirs of Shri Vimalchand S/o Annaji Lengade was mutated to the said property as per ME no. 6438. There were suits between them for the relief of partition and separate possession with respect to RS No. 28 /1 measuring 1 acre 28 guntas and said suits reached up to the Hon'ble Supreme Court and the ownership of the ancestors of plaintiffs was confirmed by the Hon'ble Supreme Court. Such being the case, after death of their ancestors plaintiffs are in possession and enjoyment of suit property. It is stated that by taking undue advantage of non-appearance of the name of deceased Jambu Rao and his brother Sri Jawaharlal in the city survey records, one Shri Balachandra Chintamanrao Pathawardhan has created false mutation entry in his name and created bogus and illegal sale deed in favour of defendant No. 1 on 28/6/2013 in respect of suit property but, after introduction of city survey in the year 2008, an area measuring 6125 square meters in respect of CTS No. 2724 of Angol, Belagavi and after service of notice to the holders dated 21-10-2008, the name of holders i.e., Jawaharlal and Bahubali came to be recorded in enquiry register of the city survey and survey conducted by the city survey officers under its order dated 07-11-2008 and confirmed that plaintiffs and their

ancestors are having right, title, interest over the suit property and also held that Shri. Balachandra Chintamandao Patwardhan had got falsely recorded his name in the city survey records. The defendant No.1, on the basis of sale deed created in his favour on 28-03-2013, has executed sale deed with respect to suit property in favor of defendant No.2 on 18-03-2014 without having any right, title, interest in the said property. On the basis of sale deed in his favor the defendant No. 2 filed a suit bearing vacation O.S. No.18/2014 in respect of suit property in which he obtained status quo order in his favor. Later, said suit was numbered as O.S. No. 711/2014, said suit was filed for the relief of permanent injunction restraining Sri Jamburao and Jawaharlal Lengade and it was dismissed on 30-11-2022. Now, on perusal of city survey records, it reveals that defendant No. 2 has executed sale deed in favor of defendant No.3 with respect to portion of property measuring $30.5 \times 108 = 3294$ sq.feet through a registered sale deed dated 14-10-2014. Later, the defendant No.4 is alleged to be claiming right title ownership over R.S. No.28/1 measuring 1 acre 20 guntas on the basis of Mutation Entry Diary No.1000 and he filed revision petition before Deputy Tashildar, Belagavi, being aggrieved by the

Order of Assistant Commissioner dated 20-06-2022. The defendant No.4 without having right title interest over the suit property as the predeceaser in title i.e., Shrimant Balchandra Chintamanrao Pathawardhan had no title over R.S. No. 28/1 measuring 1 acre 28 guntas. Now the plaintiffs are in actual physical possession and enjoyment of suit property on the basis of acquisition of right over R.S. No. 28/1 measuring 1 acre 28 guntas and also they obtained electricity connection to the suit property and enjoying the same. The defendants by taking undue advantage that city survey records are standing in their names and also the non-appearance of names of deceased Shri Jambu Rao and his brother Jawaharlal Lengade in the city survey records have created false mutation entry in their names and got created sale deeds in their favour. Now the names of defendant No. 1 to 3 is appearing in the city survey records, as per sale deed dated 28-06-2013, 18-03-2014 and 14-10-2014, and they are trying to disturb the lawful possession and enjoyment of plaintiffs over the suit property as such, the plaintiffs are having prima facie case against defendants and balance of convenience is lies in favor of plaintiffs if injunction order is not granted the

purpose of filing this suit will be frustrated. With these contentions the plaintiffs prayed to allow the application.

3. After service of summons the defendants appeared though their counsels but not filed written statement and objections to I.A. No. 1

4. Heard counsel for plaintiff and perused the records.

5. Now the points that arise for consideration are as under;

1. Whether the plaintiffs have made out prima facie case to grant of temporary injunction?

2. Whether the plaintiffs prove balance of convenience lies more in their favor?

3. Whether the plaintiffs prove irreparable loss will be caused more to them, if temporary injunction is not granted?

4. What order?

7. Answer on above points is 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 order
for the following;**

REASONS

8. Point No.1 to 3: In order to avoid the repetition of facts and for the sake of convenience these points are taken together for discussion.

It is the case of the plaintiffs that their ancestors have purchased suit property, after their death plaintiffs succeeded the same and in possession and enjoyment of the same. The defendant No. 1 to 4 by taking undue advantage of the name of Shrimant Balachandrao Chintamanrao Pathawardhan appearing in city survey records have got created sale deed dated 28-06-2013, 18-03-2014 and 14-10-2024 in their favor and trying to disturb the lawful position and enjoyment of plaintiffs over suit property.

9. In support of their contentions plaintiffs have produced certified copy of diary extract No.1000, 1005, 6438, certified Copy of Record of Rights from the year 1951 to 59, 1964 to 2002 and CTS Extracts with respect to

property No. 2724, Electricity Bill, Death Certificates of Vimal Chand Lengade, Jamburao Lengade, Tax paid receipt, Aadhar Card, Passbooks, photo, CD, extract of enquiry register, plaint in O.S. No. 58/1953, Judgment in O.S. No. 58/1953 Final order in FDP No.17/1978, Court commissioner report in FDP No. 17/1978, Judgment and decree in RA No. 31/2000, Appeal memo, SLP No.17711/17712/2008, plaint and written statement in O.S. No. 711/2014, Order on I.A. No. 2 in O.S. No.711/2014, Judgment and Decree in O.S. No. 711/2014, sale deed dated 28-06-2013, certified copy of sale deeds dated 14-3-2014 and 14-10-2014.

10. On perusal of plaint averments and records produced by plaintiffs, it is clear that the defendant No.1 to 4 have got created sale deed with respect to suit property in their favor and now all city survey records with respect to suit property are standing in the name of defendants. It shows that, title of plaintiffs is under cloud, in spite of the same, plaintiffs have not sought the relief of declaration of their ownership over the suit property. The documents produced by the plaintiffs and the averments in the plaint clearly shows that the title of plaintiffs is under dispute in

such event, it is mandatory for the plaintiffs to seek for the relief of declaration of their ownership over the suit property. In the case on hand, plaintiffs have not relief of declaration of their ownership over suit property, they sought only for the relief of permanent injunction against the defendants. It shows that suit of the plaintiffs without seeking relief of declaration is not maintainable. When the suit itself is not maintainable, the relief under Interim application cannot be granted to the plaintiffs. Therefore, at this stage, plaintiffs have not made out prima facie case to go for trial. The balance of convenience also not lies in favor of the plaintiffs. In these circumstances, if temporary injunction is not granted, plaintiffs will not be put to hardship. Therefore, at this stage, plaintiffs have not made out prime grounds to allow the application. ***Hence, I answer the Point Nos. 1 to 3 in the Negative.***

11. Point No.4:- In view of the discussion on point no.1 to 3, for the reasons stated therein, I proceed to pass the following;

ORDER

**I.A.No.I filed U/Order 39
Rule 1 and 2 of CPC is hereby
rejected.**

No order as to costs.

*(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open Court on **24th day of February, 2025**).*

**(GEETA)
IV Addl. Civil Judge & JMFC,
BELAGAVI.**