

KABG040026572022



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

**Present: SHRI. BASAVARAJA THULASAPPA NAYAKA,
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.**

Dated : This the day of 14th February- 2023

O.S. NO.1375/2022

Plaintiff/s : Smt. Laxmi W/o. Ramu Patil and others.

(By Shri. M.N. Kulkarni, Advocate)

-Vs.-

Defendant/s: Shri. Parashuram S/o. Laxman Hosurkar and others.

(By Shri.S.R. Nerli, Advocate)

I.A. No.I

Applicants/Plaintiffs :Smt. Laxmi W/o. Ramu Patil and others..

-Vs.-

Opponents/Defendants: Shri. Parashuram S/o. Laxman Hosurkar
and others.

ORDERS ON IA. No.I FILED U/O. 39 RULE 1 AND 2 R/W SEC. 151 OF CPC :

I.A. No. I is filed by the plaintiffs with a prayer to grant an ad-
interim temporary injunction to restrain the defendants, their agents,

servants, henchmen or anybody acting on their behalf from alienating the suit property till disposal of the suit.

2. I.A. No.1 is accompanied with an affidavit sworn by the plaintiff No.1, wherein it is stated that the present suit is filed for the relief to direct the defendants to convey the suit property to the plaintiffs as per the predecessors in title and permanent injunction. Further it is stated that one Smt. Yashodabai was tenant under the landlords along with other tenants and with a mutual understanding, the tenants have filed Form No.7 including the suit property that they will get record the name of Yashodabai after confirmation of occupancy rights in respect of the suit property as she was in actual physical possession of the suit property. Said Yashodabai entered into an agreement dated 11.01.1979 with other tenants to the effect that they will get record her name after completion of 6 years period of non-alienation clause put by the land tribunal. Said Yashodabai was in actual physical possession of the suit property. Till her death and after her death, the plaintiffs are in actual physical possession of the suit property. Further it is contended that the said Yashodabai was not having knowledge about worldly affairs, therefore she could not get recorded her name in the records after completion of 6 years period and also she was in actual physical possession of the suit property, she could not much worried about getting recorded her name in the suit property. Further contended that,

on completion of 15 years period from the date of order of the land tribunal , Belagavi the predecessor in interest of the defendants have confirmed the agreement between the predecessor in interest of he plaintiffs and the defendants by executing the document dated 21-11-1994. Further contend that as there was mistake regarding describing the property , the predecessor of the plaintiff executed rectification agreement dated 29-04-1995 in favor of Yashodabai. Recently, they approached the defendants to get complete the agreement and thereby record their names in the record of rights as per the terms and conditions of the agreement, but the defendants are not ready to give heed to their request. The defendants have also given threat of dispossession to the plaintiff from the suit property. Further it is stated that their predecessor Smt. Yashodabai was in actual physical possession and after her death, they have stepped into the shoes of said Yashodabai and thereby in possession of the suit property. Therefore, it is necessary to pass an order of injunction. They have got prima-facie case and balance of convenience also leans in their favour If the application is not allowed, they will be put to 1heavy loss. On the contrary, no loss or hardship will be caused, if the application is allowed. Hence, prayed to allow the I.A. No.I.

3. The defendants have filed objections to the I.A. No.I, wherein they have denied the contents of the application as false and

contended that Form No.7 was filed by their predecessor, the land tribunal passed an order in favour of their predecessors, hence they have acquired legal title and possession over the suit property. Thus, they have acquired legal title and possession over the suit property. The plaintiffs have failed to prove that their mother was the tenant and in possession over the suit property. Further it is contended that plaintiffs mother persuaded to make not one, but three agreements dated 11.01.1979, 21.11.1994 and 25.04.1995 with other tenants to record her name after completion of 6 years period of non-alienation clause put up by the land tribunal. It is a made up story to suit the false claims of the plaintiffs and to dupe the defendants. Further the balance of convenience also does not lean in favour of the plaintiffs. The alleged agreements claimed by the plaintiffs to transfer the ownership rights over the suit property by their predecessor in the name of the plaintiffs' mother are void-ab-initio as they are not enforceable by law. The predecessors of the defendants were neither having any authority to acknowledge the occupancy rights of the plaintiffs' mother nor to register her name as an occupant in the revenue records. It is only the Land Tribunal who could verify the applications with respect to the occupancy rights by sending the notices to all interested persons including the landlord and by publishing the public notice. The Tribunal after satisfying by following the due process of law that the

predecessors of the defendants were tenants under the landlords by name Mahadev Parrashram Gurav and Krishna Parashram Gurav granted them the occupancy rights with respect to entire Sy. No.195/2 and 192/2 by its order dated 23.09.1977 which is not challenged by any one till today including the plaintiffs. Further it is contended that if at all the plaintiffs' mother had any occupancy rights over the suit property, her name would have been mentioned in the cultivation column in the 7/12 extract of the suit property and she would have had the right to file Form No.7 and claim her rights before the Land Tribunal, Belagavi. As the plaintiffs' mother was never a tenant and in possession of the suit property, her name was never mutated as a tenant in the 7/12 extract of the suit property. Further the landlords of the suit property were the party to the proceedings before the Land Tribunal, Belagavi. After filing the Form No.7 by the predecessors of the defendants, the landlords never objected to register the names of the predecessors of the defendants as tenants and occupants to the suit property. This itself reveals that their predecessors were the original tenants and possessors of the suit property and the plaintiffs' mother was nowhere concerned to the suit property and therefore the plaintiffs have no right, title and interest to claim for entry of their names as tenants with respect to the suit property as successor to their mother. Further it is contended that the present suit as well as the I.A. N.I filed by the plaintiffs after a

lapse of 21 years of death of the plaintiffs' mother. So also, the alleged agreements produced by the plaintiffs along with the plaint have been executed 28 years back and the said suit is hopelessly barred by the law of limitation. The conduct of the plaintiffs clearly shows that they have concocted a story with an intention to harass and grab the defendants' valuable property. Further contended that they have prima-facie case with balance of convenience. If temporary injunction is granted they will be put to irreparable loss. On the contrary, if temporary injunction is not granted, the plaintiffs will not be at loss. Hence, prayed to reject the application.

4. Heard arguments and perused the records.

5. On perusal of the pleadings, documents and application, the points that arise for my determination are;

1. Whether the plaintiffs have made out prima facie case for 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 ?

6. My answer on above points is as follows;

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

7. **Point No.1 to 3** :-These points are taken up together for discussion to avoid the repetition as they require same set of pleadings and documents.

8. The plaintiffs have filed the present suit seeking direction to defendants to convey the title of the suit schedule property. The plaintiffs have filed the present application Under Order 39 Rule 1 and 2 of CPC restraining the defendants from alienating the suit property till disposal of the suit. The plaintiff contend that the property bearing R.S. No.195/2 measuring 10 acres 7 gunthas and R.S. No.192/2 measuring 8 gunthas was originally owned by one Mahadev Parashram Gurav and the predecessor of defendant i.e Rama, Laxman and Govind Hosurkar and their mother Yashodabai Toralkar were cultivating the said property as tenant. Further contend that plaintiffs predecessor Yashodabai was cultivated 1 acre 20 guntas in R.S. No.195/2 After coming into force of Karnataka Land Reform Act, there was mutual understanding between the plaintiffs mother Yashodabai and Somanna , the predecessor of defendants filed Form No.7 as their name is appearing in the RTC though the plaintiffs' mother was

cultivating in land measuring 1 acre 20 guntas in R.S. No.195/2. Further it was agreed that after the grant of the occupancy rights, the name of Yashodabai i.e mother of the plaintiffs would be got recorded in respect of the suit property. In pursuance of the mutual understanding the predecessor of the defendants executed agreement of sale dated 11.01.1979 in favour of plaintiffs mother Yashodabai and confirmed the possession of the plaintiffs in the suit property. Further the predecessor of defendants executed an agreement dated 21.11.1994 in favour of the plaintiff' s mother Yashodabai confirming the possession and payment of occupancy price towards the suit property. Thereafter as there is a mistake pertaining to the property number, predecessor of defendants executed rectification agreement on 29.04.1995 c before the Notary Sumati Patil confirming the possession of Yashodabai and agreeing to transfer the ownership. The plaintiffs contend that their mother died in the year 2011 leaving them as legal heirs. The plaintiff approached the defendants requesting them to complete the performance of the agreement initially the defendants are ready to get the record by execution sale agreement in respect of the suit property. But, now postponing on one or the other reasons. On the other hand, the defendants admitted that the R.S. No. 195/2 and 192 was granted to their predecessor I.e Laxman and Ramachandra, but denied that plaintiffs' mother was cultivating the suit property as tenant. Further

denied that there was a mutual agreement between their predecessor and plaintiffs' mother for apply of occupancy rights by their predecessor only and thereafter conveying the suit property to plaintiffs' mother. Further contend that the plaintiffs mother was never in possession of the suit property. The suit is barred by limitation. Further contended that the alleged agreements are void agreements.

9. The plaintiffs in support of their contention relied on the sale agreement dated 11.01.1979 and agreement dated 14.11.1994, rectification deed dated 25.04.1995, Form No.7, Order of Land Tribunal and RTC. The plaintiffs counsel relying on the agreement contend that the defendants predecessors have admitted that the plaintiffs mother Yashodabai was cultivation the suit property and there was an agreement between the plaintiffs' mother and defendants predecessor. The defendants predecessor had agreed to convey the suit property in favour of the plaintiffs in pursuance of the agreement. Further argued that the agreement and rectification deed dated dated 14.11.1994 was executed after the completion of non-alienation period. Therefore, the contention of the defendant that the alleged agreement is within the non-alienation period. Therefore, it violates condition of occupancy grant cannot be accepted. Further relied on the decision of the Hon'ble High Court of Karnataka reported in 1996 KAR LJ 421 and argued that in the said decision it is held that prima facie case is different from the

prima-facie title. Prima-facie case means there is a case which requires trial and the case is not based on erroneous and vexatious ground.

10. On the other hand, the defendants' counsel argued that the defendants predecessor were cultivated the suit property as tenants. Further it is clearly evident from the document produced by the defendants that R.S. N.195/2 was granted to the defendants predecessors. Further contend that the plaintiffs' mother Yashodabai was never in possession and enjoyment of the suit property as tenant. Further denied the execution of the agreements as contended by the plaintiffs. Further argued that in the agreement relied by the plaintiffs, the R.S number is wrongly mentioned. Further relied on the decision of the Hon'ble High court of Karnataka reported in a case bearing Civil Appeal No.7630 and 7631/2019 and contended that any transaction with respect to property when there is non-alienation clause for a period of 15 years. Any transaction within the said period is not permitted. In the instant case, the alleged agreement relied by the plaintiffs is within the non-alienation period. Therefore, the said document is not executable. The present suit is filed for more than 21 years from the date of death of plaintiffs' mother. The suit is barred by limitation.

11. It is pertinent to note that it is not in dispute that R.S. No.195/2 and R.S. No.192 was granted to the defendants '

predecessors. This is clearly evident from the Form No.7 and order of the Land Tribunal and RTC. The plaintiffs contend that their mother was cultivating the suit property as tenant as her name was not appearing in the documents, the predecessor of the defendants applied for occupancy rights in their name and it was agreed that the suit property will be conveyed to the plaintiffs mother after confirmation of the occupancy rights. The plaintiffs in this regard relied on the agreement of the year 1979, 1994 and 1995. Admittedly, the earlier agreement i.e agreement of the year 1979 and 1994 the survey numbers are wrongly mentioned. The plaintiffs' counsel relied on the subsequent agreement i.e agreement of the year 1995 to show that in the said agreement the survey numbers are correctly written. The defendants denied the execution of the said agreements by their predecessors. Further contend that the suit is barred by limitation after lapse of 21 years from the date of death of plaintiffs' mother. It is pertinent to note that whether the said agreement is created, there was no agreement to convey the suit property in favour of plaintiffs' mother is a matter of trial. The defendant counsel contend that the agreement relied by the plaintiff are void ab- initio as there is a clear bar to alienate the suit property within period of 15 years. In this regard relied on the decision of the Hon'ble supreme court and contended that as per section 61 of the land reforms act there is a complete prohibition for

transfer , mortgage. It is pertinent to note that though the alleged agreement dated 1979 is within the non-alienation period but the subsequent agreement i.e the agreement of the year 1994 and 1995 are after the completion of the non-alienation period . Whether the said alleged agreement are also hit by the provision of the section 61 of Karnataka land reforms act is a matter of trial. The plaintiff counsel relied on the decision of the Hon'ble High court reported in 1996(5) Kar.L.J 421 and contended that in order to decide the question of prima facie case it is generally not desirable and open for the court to record a decision on the merits of the plea in the suit. Further contend that at this stage it is not necessary to go into the validity of the agreement. It is a question to be tried in the suit. In the instant suit also whether the agreement is void and the suit is barred by limitation its matter of trial. If the defendant alienates the suit schedule property it would cause multiplicity of proceedings. Hence, I am of the opinion that the plaintiff has made out prima facie case, balance of convenience is in favor of the plaintiffs. If an order of temporary injunction is not granted the plaintiff would be put to irreparable hardship. Hence, I answer the point no.1 to 3 in the ***Affirmative.***

12. **Point No.4:-** In view of above discussion, I proceed to pass the following;

ORDER

IA No. 1 filed by the plaintiffs U/O. 39 Rule 1 and 2 R/w sec. 151 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit property in any manner till disposal of the suit.

No order as to costs.

(Dictated to the Judgment Writer directly on computer, corrected and then pronounced by me in the open Court on 14th day of February, 2023)

**(BASAVARAJA THULASAPPA NAYAKA)
IV Addl. Civil Judge & JMFC,
BELAGAVI.**

