

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

**PRESENT : Smt. Rahat Afshan H.N.,
L. L. M.
II Addl. Civil Judge and JMFC.,
Belagavi.**

Dated this 6th day of January, 2016

ORIGINAL SUIT NO: 1218/2015

Between:-

- 1. Shri. Krishna Rama Honagekar,**
Age: 49 years, Occ: Agriculture,
R/o. H.No.442, Navin Galli, Ambewadi,
Tal & Dist: Belagavi.
- ... Plaintiff**
- (By Shri. S.B.Pujar, Advocate for plaintiff)

V/s.

- 1. Shri. Bharmaji Kedari Honagekar,**
Age: 75 years, Occ: Nil,
R/o.: Ganpat Galli, Ambewadi,
Tal & Dist: Belagavi
- 2. Smt. Shantabai W/o. Bharmaji Honagekar,**
Age: about 68 years, Occ: Household work,
R/o.: Ganpat Galli, Ambewadi,
Tal & Dist: Belagavi
- 3. Shri. Narayan S/o. Bharmaji Honagekar,**
Age: about 50 years, Occ: Agriculture,
R/o.: Ganpat Galli, Ambewadi,
Tal & Dist: Belagavi
- 4. Shri. Hiramani Rama Kangralkar,**
Age: 70 years, Occ: Agriculture,
R/o.: H.NO.261, Laxmi Galli, Hindalaga,

- Tal & Dist: Belagavi
 5. **Shri. Ramesh Hiramani Kangralkar,**
 Age: 40 years, Occ: Agriculture,
 R/o.: H.NO.261, Laxmi Galli, Hindalaga,
 Tal & Dist: Belagavi

... Defendants

(By Shri.B.M.Chougule, Advocate for defendants No.1 to 3)
 (By Shri. S.G.Kakatkar, Advocate for defendant No.4 and 5)

:ORDERS ON I.A.No.I:

The instant suit is filed seeking relief of Permanent Injunction. The Learned Advocate for the plaintiff has also filed I.A.No.I under Order.XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C., wherein, temporary injunction order is sought against defendant No.5, his agents, servants or anybody acting on his behalf restraining them not to interfere in peaceful possession and enjoyment of the suit property by the plaintiff by getting enter his name by deleting the name of plaintiff in the record of rights of the suit property till the disposal of the suit.

2. DESCRIPTION OF THE SUIT PROPERTY:-

An agricultural land bearing R.S.No.131/5B (at present numbered as 131/5) measuring 31.5 guntas out of 1 acre 3 guntas situated at Ambewadi Village, Tal & Dist: Belagavi and the same is stated to be bounded as under:

To the East : Land of Yallappa T Chopade.

To the west : Land in possession of the plaintiff out of the same R.S. Number.

To the South : Markandeya River.
To the North : Land of Kachu M.Tarale and
Remaining land out of same survey
Number.

3. In the affidavit annexed with the said application, the plaintiff has stated that as per the compromise decree in O.S.No.86/2010 he became owner of the suit property. That the defendants have nothing to do with the suit property. The defendant No.4 on the basis of so called General Power of Attorney, said to have been executed by defendant No.1, without any right, title and interest over the share allotted to the plaintiff i.e., suit property, without consent, and without any notice either to him or to defendant No.1 has created a bogus sale deed on 25.02.2011, in the name of his son defendant No.5, without paying the consideration amount, convening 1 acre land including the suit property. That the said sale deed has been challenged by him in O.S.No.635/2011 and the same is pending adjudication before the Hon'ble Court. On the basis of the said bogus sale deed the defendant No.5 got mutated his name in the record of rights of R.S.No.131/5 to the extent of 1 acre including the suit property. It is also stated that after compromise decree in O.S.No.86/2010, the

Tahasildar, Belagavi after a full fledged enquiry, was pleased to enter plaintiff's name in the record of rights of the suit property. The defendant No.5 by being dissatisfied on deletion of his name in the record of rights of the suit property preferred RTS/Application No.11/15-16 before Assistant Commissioner, Belagavi, which is pending before the Assistant Commissioner, Belagavi. That the defendant No.4 and 5 have also managed to file Misc.No.23/14 before the Hon'ble 1st Addl. Civil Judge, Belagavi through defendant No.1 to set aside the above said compromise decree. That the said petition is also pending for adjudication. It is also stated that the defendant No.5 also tried to interfere in peaceful possession and cultivation of the suit property by the plaintiff, through Kuppekar brothers of Hindalag Village, Belagavi. The plaintiff also stated that he has also filed a suit for Permanent Injunction against Kuppekar brothers in O.S.No.865/2014, which is pending before the Hon'ble Court. The defendant No.5 has also filed a suit in O.S.No.371/2011 challenging the compromise decree passed in O.S.No.86/2010 by the Hon'ble 1st Addl. Civil Judge, Belagavi, which is also pending for adjudication before the Court.

4. The plaintiff further stated that the defendant No.5 after confirming that he will not succeed in his illegal acts in

grabbing the suit property from the plaintiff, has hatched a plan to get his name entered in the record of rights of the suit property. Therefore, in order to achieve his illegal goals, the defendant No.5 by colluding with defendants No.1 to 4 has created a bogus consent deed said to have executed by the defendant No.1 to 4 in his favour which is registered in Sub-Register Office, Belagavi in Register No.BEL-1-08782/2015-16 dated 30.09.2015. On the basis of the same, the defendant No.5 trying to get his name entered in the record of rights of the suit property illegally and thereby intending to interfere in the peaceful lawful possession and cultivation of the suit property by the plaintiff. It is further contended that the plaintiff has prima-facie case and the balance of convenience leans in his favour and if the temporary injunction order is not granted, the plaintiff would suffer heavy loss and hardship.

5. The defendant No.1 and 2 have appeared and have filed their written statement and objections to the above I.A. The defendants in their written statement and objections have denied all the plaint and application averments and allegations made by the plaintiff and have further submitted that the suit itself is not maintainable. The defendants have contended that the plaintiff

has suppressed the material facts. It is further contended that the plaintiff has not made out any prima-facie case nor the balance of convenience leans in his favour. Therefore, prays for rejection of the above I.A. with costs.

6. The above defendants state that the plaintiff is the son of Rama Honagekar and the said Rama died leaving behind him, the plaintiff, his mother named Gangu and two daughters namely Tulasabai and Sushila. It is further stated that two daughters were given in marriage to one Maruti Chougule, R/o. Gudshed Road, Railway Gate, Belagavi and to Babu Shinde of Halaga. This fact has been suppressed by the plaintiff and got filed false and vexatious suits bearing O.S.No.86/2010 and 635/2011 and the present suit. It is contended that the present plaintiff is no way concerned to these defendants nor he is concerned with the suit property. Further, these defendants state that except defendant No.1 i.e., Bharmaji Kedari Honagekar no one was having any right, title, interest in or over the said 1 acre 3 guntas.

7. The defendants further state that the defendant No.1's foster father late Shri. Kedari Channappa Honagekar was not having any issues from his first wife i.e., Awalabai, therefore, he thought of taking second wife and accordingly, he took

defendant No.1 mother viz., Gangubai as his second wife and from the said wedlock an issue was born but the said issue also died very early and thereafter the first wife Awalabai also died. Therefore, Kedari treated defendant No.1 i.e., Bharmaji as his foster son and gifted on 17.05.1995, R.S.No.131/5 and house property bearing H.No.42 situated at Bhajani Galli, Ambewadi. That after the death of donor i.e., Kedari Channappa Honagekar, defendant No.1 i.e., Bharmaji got his name changed and changed it as i.e., Bharmaji Kedari Hongekar and by taking undue advantage of changed name the plaintiff started claiming he is the bahuband of defendant No.1 i.e., Kedari Bharmanna Honagekar. Further the defendants state that the plaintiff taking undue advantage of change of name i.e., Bharmaji Laxman Ghatage to Bharmaji Kedari Honagekar hatched a plan to gulp the property of defendant No.1 i.e., Bharmaji and got filed false suit at O.S.No.86/2010 and obtained false compromise decree by suppressing true facts that he is no way concerned with the suit property and family of these defendants. Further these defendants state that they learnt that the plaintiff got compromise decree by practicing fraud on defendant No.1. It is further stated that the plaintiff by giving wrong information asked the defendant No.1 to

take NOC from his counsel and accordingly plaintiff took defendant No.1 to his Advocate and during that particular period the defendant No.1 was mentally stressed and by taking undue advantage of defendant No.1's health condition by misrepresenting to the defendant No.1 got the false and vexatious decree in his favour. Further, the defendant No.1 stated that except Marathi he does not understand any other language and the contents of compromise decree were typed in English and not at all explained to defendant No.1 and by practicing fraud upon defendant No.1 and on the Court and by misleading, the plaintiff got compromise decree in his favour.

8. Further the defendants state that when this fact came to the knowledge of defendant No.3, he went through all records and the said defendant no 3 and defendant No.1 realized the fraud practiced by the plaintiff. It is contended that therefore the defendant No.1 was constrained to file Misc. Petition bearing No.23/2014 pending on the file of Hon'ble I Addl. Civil Judge and JMFC, Belagavi challenging the false compromise decree passed in O.S.No.86/2010 which is pending for adjudication.

9. Further the defendants state that the R.S.No.131/1 to 131/5 were originally Inam lands owned by one Nadgouda

family and all the lands i.e., R.S.No.131/1 to 131/5 were in occupation of different tenants. That after Karnataka Land Reforms Act 1974 came into force, all the tenants filed Form No.7 claiming occupancy rights. That the defendant No.1 was also one of the applicants and that he was granted occupancy rights with respect to 1 acre 23 guntas of land comprised in R.S.No.131/5. It is further submitted by the defendant that with malafide intention to grab the property of the defendants, the plaintiff got filed a false suit bearing O.S.No.86/2010 and got a compromise decree by misrepresenting. It is further stated that the defendant No.1 is in actual physical possession of 1 acre 23 guntas of land and therefore, the sale deed executed in the year 2004 is binding upon the plaintiff. It is also submitted that the defendant after execution of the said sale deed owned 1 acre 3 guntas in R.S.No.131/5B. That as he was in financial need, the defendant No.1 on 02.01.2010 entered into a sale agreement with defendant No.4 agreeing to sell 1 acre of said land for an amount of Rs.6,25,000/-. That the said agreement was reduced into writing on 02.01.2010. Further, it is stated that General Power of Attorney was executed on 18.01.2010 authorizing defendant No.4 to do all acts necessary with respect to that 1 acre of land agreed to be sold to him by

defendant No.1. It is further contended that the said sale deed was a valid one. It is further submitted that the defendants have also executed a consent deed dated 30.09.2015 which is duly registered confirming the sale deed executed by defendant No.4 representing defendant No.1, in favour of defendant No.5. It is further contended that the defendant No.1 has been handed over possession of the property and he is in actual and peaceful possession of the area purchased by him.

10. The defendant No. 4 and 5 have filed the written statement and objections to I.A. No 1,s reiterating the contents of the written statement and objections filed by defendant No.1 and 2. Additionally it is also stated that it was within the knowledge of the plaintiff at the time of compromise decree itself, that the defendant No.1 had sold 1 acre to defendant No.5 through his General Power of Attorney i.e., defendant No.4. It is also stated that the consent deed dated 30.09.2015 is duly registered and the plaintiff does not have any right, title or interest to seek cancellation of the same.

11. Based upon the above contentions of the parties to the suit, the following points arose for determination of the Court.

1. Whether the plaintiff has established the existence of a prima facie case in his favour at this stage of the suit?

2. Whether the plaintiff has established the existence of balance of convenience in his favour?

3. Whether the plaintiff further proves that if the Order of Temporary Injunction is not granted, he will be put to irreparable loss and hardship?

4. If so, what order?

12. I have heard the learned Advocate for the plaintiff and the Learned advocate for the defendants. After hearing and due perusal of the records, the Court's findings to the aforesaid points are as under:

Point No.1 : In the Negative.

Point No.2 : Does not survive for consideration.

Point No.3 : Does not survive for consideration

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

: REASONS:

13. **POINT No.1:-** The instant suit is admittedly filed for the relief of declaration and permanent injunction. Through this I.A., the plaintiff seeks to restrain defendant No.5 from interfering in the peaceful possession and enjoyment of the suit property by

the plaintiff, by getting entered his name, by deleting the name of the plaintiff in the record of rights pertaining to the suit property.

14. In support of his contentions, the plaintiff has produced 6 photographs, photo receipt and compact disk, the copy of affidavit of Shri. Bharmaji Kedari Honagekar in O.S.No.865/2013, two affidavit of adjoining land owners i.e., Jayawant and Ramesh, the copy of written statement along with verifying affidavit filed by the defendant No.2 in O.S.No.371/2013, copy of record of rights pertaining to R.S.No.131/3E, affidavit of the plaintiff, 3 revenue receipts, certified copies of Khata Form No.8 of Ambewadi Village, Haath Nakash of R.S.No.131 of Ambewadi Village, the report of Village accountant, electricity receipts and two motor pump sets certificates.

15. The defendants No.4 and 5 in support of their contentions, have produced copy of sale agreement, translation copy, copy of sale deed, Kannada translation copy, copy of agreement, English translation, copy of sale agreement, Kannada translation, copy of receipt, English translation, copy of General Power of Attorney, copy of gift deed, translation copy, copy of agreement, English translation copy, copies of khada khuda extract of R.S.No.131/5, translation copies, copy of plaint of

O.S.No.86/2010, copy of written statement in O.S.No.86/2010, copy of written statement of defendant No.2 in O.S.No.86/2010, copy of compromise decree in O.S.No.86/2010, copy of compromise petition in O.S.No.86/210, copy of plaint in O.S.No.371/2013, copy of plaint in O.S.No.635/2011, copy of written statement and objections to I.A.No.I in O.S.No.635/2011, copies of photos, copy of bill and copy of CD cover, copy of plaint in O.S.No.565/2013, copy of written statement in O.S.No.865/2013, copy of order on I.A. passed in O.S.No.865/2013, copy of Misc. Appeal No.87/2013, certified copy of order sheet in O.S.No.865/2013, certified copy of memo filed by the plaintiff in O.S.No.865/2013, copy of Land Tribunal order dated 20.09.1977, certified copy of affidavits filed by Balu and Kachu in O.S.No.865/2013 and copy of Misc. petition No.23/2014.

16. The plaintiff has also submitted the rulings reported in **2013(3) KCCR 2614 (Shri. Byrahanumaiah and others Vs. Shri. Govinde Gowda), 2013 SCCR 309 (Lakshmi @ Bhagyalakshmi and another Vs. E. Jayaram (D) by LR), HCR 2015 Kant. 882 (B.M.Jayalaxmi Rao (Smt) and others Vs. B.M.Nagaraja Rao and another), 2004 SAR (Civil) 107 (Rame Gowda (D) by LRs Vs. M.Varadappa Naidu (D) by**

LRs and another), AIR 2008 Supreme Court 2291 (Mandali Ranganna and others Vs. T Ramachandra and others), AIR 2006 Supreme Court 2628 (Pushpa Devi Bhagat (D) by LR Vs. Rajinder Singh and others), 2014(4) KCCR 3162 (Shri. N.A.Haris Vs. Shri. Rajiv Hegde and others), AIR 2007 Karnataka 40 (Smt. Nirmala Vs. Naveen Chhaggar and another), 2015(4) KCCR 3761 (Pampanagouda Vs. Smt. Deepa).

17. The defendant No.4 and 5 also submitted rulings reported in AIR 1965 MYSORE 310 (Laxminarasimhiah and others Vs. Yalakki Gowda), 2007(C) KCCR 2607 (Abbaiah Vs. Byrappa and others), AIR 2001 KARNATAKA 297 (T.Siddeshi Vs. Deputy Commissioner and others).

18. The decisions relied upon by the defendant as stated above lays down the principle that the party who does not approach the Court with clean hands is not entitled for any equitable relief. Though the said principle is a salutary principle of law, the same is not applicable to the case on hand as the plaintiff himself has disclosed previous litigations between the parties. Such being the case, it cannot be said at this stage that he has suppressed material facts.

19. The plaintiff in the above case has taken up a contention that the defendants do not have any right over suit property and that he is in possession of the same. However, as the defendants have falsely entered into a consent deed, the defendant no 5 in whose favour a sale deed has been created may get his name entered in the record of rights pertaining to suit property on the basis of the consent deed and therefore it is prayed that the consent deed be declared as null and void and not binding upon plaintiff and further to restrain defendants from interfering with the plaintiff's peaceful possession and enjoyment of suit property. However, the prayer in the above I.A. is to restrain only defendant no 5.

20. The defendants in the above case have taken up a contention that the plaintiff has falsely obtained a compromise decree in O.S.No.86/2010 by misrepresenting and that he has absolutely no right and interest over the suit property. It is also vehemently contended by the defendants that there is no relation between the plaintiff and the defendants and that the plaintiff by taking advantage of the name has obtained a false compromise decree with malafide intention of gulping the suit property. The defendants have also taken up a contention that the sale deed

executed by the defendant No.4, acting as General Power of Attorney holder of defendant No.1, in favour defendant No.5 is a legally valid sale deed and that the consent deed duly registered on 30.09.2015 by the defendants is also a valid one. It is an admitted fact that there is a history of litigation between the parties in the above suit. It is also an admitted fact that the compromise decree passed in O.S.No.86/2010 has been challenged by the defendants by way of filing a miscellaneous application as well as filing a original suit for declaration that the said compromise decree is not proper. It is also an admitted fact that the plaintiff and the defendants have filed suits at O.S.No.371/2011, O.S.No.635/2011, O.S.No.865/2013 and Misc. No.23/2014. It is also an admitted fact that the plaintiff has challenged the sale deed executed by the defendant No.4 in favour of defendant No.5 in a separate suit. Further, it is also an admitted fact that the prayer in the above suit is to declare that the consent deed dated 30.09.2015 is null and void and not binding over the suit property. The plaintiff has also sought the relief of Permanent Injunction. The plaintiff and the defendants herein are claiming that they have a right over the suit property. However, as per settled principles of law, the Court cannot hold a

mini trial at this stage for determining the respective rights of the parties in the above suit. It is also well established principle of law that no opinion can be expressed on the documents produced by the parties. The documents produced by the parties can be looked into for a limited purpose of determining whether the plaintiff has at this stage made out a prima-facie case or not. Whether the plaintiff or the defendants have a right over the suit property is to be determined at an appropriate stage after conclusion of trial. However, it is pertinent to look into the specific prayer made by the plaintiff in the above I.A. It reads as "For the reasons stated in the accompanying affidavit, it is respectfully submitted that, ad-interim Temporary Injunction may please be granted in favour of the plaintiff against the defendant No.5, his agents, servants and anybody on his behalf, restraining them not to interfere in peaceful possession and enjoyment of the suit property by the plaintiff by getting enter his name by deleting the name of plaintiff in the record of rights of the suit property, in the interest of justice and equity". From the reading of the same, it gives an impression that the plaintiff is apprehending that the defendant no 5 may attempt to get his name entered in the records of rights pertaining to suit property by getting the name of the plaintiff deleted and

cause interference to the plaintiff in his peaceful possession and enjoyment over suit property. Interim order based on the apprehension of the plaintiff that the defendant no 5 may attempt in future and may cause interference in plaintiff's peaceful possession is a far fetched proposition for grant of interim order at this stage, in the facts and circumstances of the case and in view of the materials available placed on record. Further, the said decisions relied upon by the plaintiff do not come to the aid of the plaintiff as the prayer itself is based upon apprehended interference. Hence, by looking into the documents and the pleadings and the materials placed on record by both plaintiff and defendants and the facts and circumstances of the case and the specific prayer as stated by the plaintiff in I.A.No.1, the Court opines that at this stage of the suit, the plaintiff has failed to make out a prima-facie case for grant of Temporary Injunction. Hence, **the Court's finding on Point No.1 is in the Negative.**

21. **POINT No.2 AND 3:-** It is well settled principle of law that when a party fails to prove prima-facie case at this stage of the suit, the question of considering the balance of convenience or irreparable loss is not material to be considered which means that if the party fails to prove prima-facie case, it is not proper to

grant temporary injunction in his favour even if balance of convenience leans in his favour and non granting of temporary injunction would result in irreparable loss. In the case on hand, the plaintiff has failed to prove prima-facie case at this stage of the suit, therefore, the question of balance of convenience and irreparable loss does not survive for consideration. Even in case, the plaintiff had made out a case of balance of convenience in his favour and the case of irreparable loss by non granting of temporary injunction, the plaintiff would not have been entitled for temporary injunction order unless it was proved that there is a prima-facie case in plaintiff's favour. In view of the above discussion, the Court opines that **Point No.2 and 3 do not survive for consideration.**

22. **POINT No.4:-** In view of the aforesaid findings on Point No.1 to 3, the Court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C., is hereby rejected.

Under the circumstances, there shall be no order as to costs.

(Dictated to the Stenographer directly on the computer typed by her, and then corrected by me and then pronounced in the open Court on this 6th January, 2016).

(Rahat Afshan. H.N.)
II Addl.Civil Judge and JMFC, Belagavi.