

KABG040028102023



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

Present: **SMT. SAROJA M.**, M.A., L.L.M.,
Prl. Civil Judge & J.M.F.C., Belagavi.

Dated on this the 4th day of December-2023

ORIGINAL SUIT NO.879/2023

PLAINTIFF :

1)	Shri. Prabhugouda Rajshekar Gidageri urf Patil, Age : 45 yrs, Occ: Agriculture, R/o. No. 265, Hudali Village, Tq & Dist : Belagavi.
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Vs.

DEFENDANTS :

1)	Smt. Indu W/o. Rajshekar Gidageri, Age : 73 yrs, Occ : Household, R/o : No. 265, Hudali Village, Tq & Dist : Belagavi.
2)	Smt. Sujata W/o. Manoj Bhushi, Age : 43 yrs, Occ : Household, R/o : No.706, Basavanagalli, Mouje, Nandagad, Tq – Khanapur, Dist : Belagavi – 591120.
3)	Shri. Shivanagouda S/o. Basavant Gidageri, Age : 74 years, Occ : Agriculture, R/o : H.No.1038, Ramateerth Nagar, Belagavi.

4)	Shri. Siddanagouda S/o. Basanagouda Patil, Age : 49 yrs, Occ : Agriculture, R/o : # 03, Patil Galli, Basapur, Aralikatti, Tq & Dist : Belagavi – 591108.
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PARTIES TO I.A.NO.I**Applicant/Plaintiff :**

1)	Mr. Prabhugouda Rajshekar Gidageri urf Patil.
	(By Shri. V. B. Patil, Adv)

Vs.**Opponents/Defendants :**

1)	Smt. Indu W/o. Rajshekar Gidageri and others.
	(Defendants No.1 & 2 Ex-parte, Defendant No.3 by Shri. M. M. Khanagani, Adv. & Defendant No.4 by Shri. M. M. Shaikh, Adv.)

**ORDER ON I.A.NO.I FILED U/O.XXXIX RULES-1 AND 2
R/w. SEC.151 OF C.P.C.**

The plaintiff has filed I.A.No.I U/O XXXIX Rules-1 and 2 R/w Section 151 of Code of Civil Procedure seeking an ad-interim injunction to restrain the defendants, their agents, heirs, servants or any persons claiming through them or their representatives from alienating the suit property till the disposal of the suit.

2. In the affidavit annexed to the application, it is stated that the present suit is filed for the relief of Partition and Separate

Possession against the defendants. It is further stated that the original propositus Basavant Gidageri died long back leaving behind his two sons-Rajashekhar, the father of the plaintiff and the defendant No.3 as his legal heirs. The father of the plaintiff died on 13.04.2023 leaving behind the plaintiff and the defendant Nos.1 and 2 as his legal heirs. The father of the plaintiff and the defendant No.3 were joint owners of the ancestral property and after the death of his father, the plaintiff is having 1/3rd share in the half share of the suit property. The plaintiff and the defendant Nos.1 to 3 are in possession of the suit property and the defendant No.4 is no way concerned to the suit property. After the death of his father, the plaintiff obtained relevant documents to mutate the names of the plaintiff and the defendant Nos.1 and 2 to the suit property and he came to know that the defendants have falsely created sale deed dated 05.12.2022. The alleged sale deed is forged by the defendants and the plaintiff has not received any amount from the defendant No.4 in respect of the suit property. The plaintiff approached the defendants and asked about the alleged sale deed and they have given evasive reply to him. As such, the plaintiff asked for division of his share in the suit property but the defendant Nos.1 to 3 refused to effect the partition in the suit property. The defendant No.4 is trying to enter his name in the revenue records on the basis of the alleged sale deed. If the defendant No.4 succeeds in his illegal activities, then the plaintiff will lose his valuable share in the suit property. It is further stated that he has got prima facie case and the balance of convenience lies in his favour and hardship will be caused to him. Hence, prayed to allow the application.

3. After service of summons, the defendant Nos.1 and 2 remained absent and they were placed ex-parte. The defendant No.3 appeared through his counsel but did not choose to file his written statement or objections to I.A.No.I. Hence, his objections is taken as nil.

4. The defendant No.4 filed his objections to the present application and contended that the present application is misconceived and the same is untenable in the eyes of law and facts of the case. He has stated that the plaintiff has filed this false suit against him by averring falsehood and by suppressing material facts with an intention to deprive the rights accrued in his favour by virtue of registered sale deed dated 05.12.2022 which is duly signed by the plaintiff and other defendants as consenting witnesses. The suit of the plaintiff being frivolous, the plaintiff is not entitled to any relief much less discretionary relief at the hands of this Court. He has denied the contents of the plaint averments and further stated that the non-agricultural land bearing R.S.No.122/13 totally measuring 21 Guntas 12 Annas including 04 Annas Potkharab of Hudli Village was held and possessed by Shivangouda Basawant Gidageri and Rajashekhar Basawant Gidageri. The above said persons along with their family members including the plaintiff offered the said property for sale on account of family necessity. It is further stated that the defendant No.4 has offered the highest market price for purchasing the same. After negotiations, Shivangouda Basawant Gidageri and Rajashekhar Basawant Gidageri along with their family members including the plaintiff agreed to sell the said property in his favour.

Accordingly, the Registered Sale Deed dated 05.12.2022 came to be executed in his favour. The plaintiff has affixed his signature on each and every page of the said registered sale deed as consenting witness. It is further stated that an amount of Rs.14,00,000/- was transferred to the account of Rajashekhar Basawant Gidageri prior to execution of the registered sale deed. He has acquired the absolute ownership over the suit property by virtue of registered sale deed dated 05.12.2022. The plaintiff has consented for the sale transaction and now he is trying to contend otherwise which is not permissible in the eye of Law.

5. It is further contended that he has also purchased the surrounding properties bearing R.S.Nos.122/27 and 122/11+12 from the respective owners through the registered sale deeds. Pursuant to purchasing the suit property and aforesaid properties, he has got approved lay-out from the competent authority and laid plots in the properties purchased by him. He has laid roads, gutters, installed electricity poles and carried out all the development activities in the properties purchased by him. He has also handed over the areas coming under the civic amenities, garden and roads in favour of the local authority by executing registered deed dated 11.04.2023. He has been in possession of the suit property and exercised absolute ownership rights over the same. The plaintiff is having no subsisting right over the suit property. The plaintiff has seen the suit property and surrounding properties being developed has now started to make efforts to pressurize him to pay more money under the threat of legal proceedings. The plaintiff has filed this frivolous suit with

malafide intention to extort money from him. The plaintiff having obtained ex-parte injunction order from this Court has been misusing the same. He has invested huge amount in purchasing the suit property and adjoining properties and developing the same. The suit filed by the plaintiff is speculative and frivolous. The plaintiff has neither made out any prima facie case nor the balance of convenience lies in his favour. No loss or hardship will be caused to the plaintiff, if the present application is rejected, on the contrary, he will be put to untold hardship and great irreparable loss if the same is allowed. Hence prayed to dismiss the application with costs.

6. Heard on both sides.

7. The following points would arise for my consideration :

POINTS

- 1) *Whether the plaintiff has made out prima facie and triable case for the grant of injunction?*
- 2) *Whether the balance of convenience lies in favour of the plaintiff?*
- 3) *Whether the plaintiff has made out that withholding of the restraining order will cause irreparable loss and injury to him?*
- 4) *Whether the plaintiff is entitled to the relief sought for?*
- 5) *What order?*

8. My answer to above points are as under :

Point No.1: In the Negative,

Point No.2: In the Negative,

Point No.3: In the Negative,

Point No.4: In the Negative,

Point No.5: As per final order for the following :

REASONS

9. Point No.1 : It is the case of the plaintiff that he has got share in the suit property and the defendants have created false and concocted sale deed in order to deprive his share in the suit property. The counsel for the plaintiff argued that the suit property is the ancestral property and the same is not denied by the defendant No.4. There is no partition between the family members and till date the RTC is standing jointly in the names of the plaintiff's father and his uncle. The signatures of the plaintiff on the sale deed are forged and the PCR No.17/2023 is filed by the plaintiff against the defendant No.4 for forging and creating the sale deed. There is no dispute regarding the transfer of amount in favour of his father. If the application is not allowed, it will lead to multiplicity of proceedings. Hence, prayed to allow the application.

10. Counsel for defendant No.4 argued that the suit schedule property is non-agricultural land and in the plaint, it is stated that the suit property is agricultural land which is far from truth. The plaintiff has affixed his signatures to each and every page of the sale deed

dated 05.12.2022 as consenting witness and in his plaint, he has stated that he learnt about the sale deed on 12.06.2023 which is false. On 23.08.2022, the suit property was converted into non-agricultural property and layout plan was approved on 12.12.2022. The photographs produced by the defendant No.4 clearly shows that the suit schedule property is the non-agricultural land. The plaintiff has not disclosed in his plaint what was the fraud played upon him by the defendants. As per Order VI Rule 4 of C.P.C., one has to plead and prove regarding fraud, coercion and undue influence etc., whereas the plaint is silent about the same. The plaintiff has not approached this Court with clean hands and he has suppressed the material facts. Hence, it is prayed to reject the application with costs.

11. In support of his arguments, the counsel for the defendant No.4 has produced two decisions. In **Bellachi (Dead) by LR Vs. Pakeeran AIR 2009 SC 3293**, wherein it has been held that

“Relationship between the parties so as to enable one of them to dominate the will of other is a sine-qua-non for constitution of undue influence. The law does not envisage raising of a presumption in favour of undue influence. A party alleging the same must prove the same subject of course to just exceptions. In a given case, it is possible to hold that when an illiterate, pardanashin woman executes a deed of sale, the burden would be on the vendee to prove that it was the deed of sale was a genuine document. Where it is, however, a registered document, it carries

with it a presumption that it was executed in accordance with law.”

12. Further, in **Jamila Begum (D) Thr. Lrs Vs. Shami Mohd. (D) Thr. Lrs and another AIR 2019 SC 72**, wherein it has been held that

“A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.”

13. The plaintiff has produced the RTC pertaining to the suit schedule property wherein the names of the father of the plaintiff and his uncle are shown in column Nos.9 and 12. The plaintiff has produced the certified copy of the sale deed dated 05.12.2022 wherein the father of the plaintiff and the uncle of the plaintiff represented by his GPA holder have executed the sale deed in respect of the suit property in favour of the defendant No.4 and the plaintiff and the defendant Nos.1 and 2 have affixed their signatures to the sale deed as consenting witnesses. On perusal of the sale deed, it is clear that the suit property is the undeveloped non-agricultural residential land and not the agricultural land as averred by the plaintiff in his plaint. The defendant No.4 has produced the copy of the sale deed and the copy of the bank statement of defendant No.4. On perusal of the bank statement, on 01.12.2022 Rs.14,00,000/- has been transferred to the plaintiff's father through RTGS. Further, he has produced the official memorandum dated

23.08.2022 wherein the office of the Deputy Commissioner has passed the order converting the suit property for non-agricultural/residential purpose. The said conversion was ordered on the basis of the application given by the plaintiff's father and his uncle. Further the defendant No.4 has produced the approval of layout plan and he has also produced the release deed in respect of releasing C.A. sites in favour of the Government in respect of layout which is formed out of survey numbers 122/11+12, 122/13 and 122/27. Further he has produced the photographs to show that he has formed layout in the suit property along with the other properties in R.S.Nos.122/11+12 and 122/17 which was purchased by him.

14. The plaintiff has stated that he is having share in the suit property and he was unaware of the execution of the sale deed. Further he has stated that the defendants have forged his signatures and have created the sale deed. Whether the sale deed has been created or not and whether the signatures of the plaintiff has been forged or not requires full fledged trial. On perusal of the documents produced by the plaintiff and the defendant No.4, it is clear that the suit property is no longer an agricultural land and layout has been formed. The plaintiff has not disputed the receipt of Rs.14,00,000/- by his father from defendant No.4. Whether the plaintiff has got any share in the suit property after selling the same can only be decided after completion of trial. As such, this Court is of the opinion that the plaintiff has not made out any prima facie case in his favour to grant the injunction. Hence, I answered Point No.1 in the Negative.

15. Point No.2 : The plaintiff has sought to restrain the defendants from alienating the suit property as he has got share in the same. Further he has stated that if the defendants are not restrained it will lead to multiplicity of proceedings and the suit property is the ancestral property and he has got share in the same and the defendants have created the alleged sale deed by forging his signatures and as such granting temporary injunction is very much necessary as the balance of convenience lies in his favour. On perusal of the materials available on record, it is clear that the defendant No.4 has purchased the suit property for valuable consideration and he has developed the same and has formed the layout by obtaining necessary permissions from the concerned authority. It is clear that the defendant No.4 has invested huge amount of money in developing the suit property along with adjacent properties which he has purchased from other owners. If the temporary injunction is granted, much inconvenience will be caused to the defendant No.4 rather than the plaintiff. As such, the balance of convenience lies in favour of the defendant No.4. Hence, I answered Point No.2 in the Negative.

16. Point No.3 : The plaintiff has sought to restrain the defendants from alienating the suit property as the same will cause irreparable loss and injury to him which cannot be compensated in terms of money. It is clear that the suit property is an undeveloped non-agricultural land as on the date of sale deed and there was no cultivation in the same. Further the defendant No.4 has formed layout in the suit property after purchasing the same vide sale deed

dated 05.12.2022 and he has invested huge amount of money for forming layout. If the defendant No.4 is restrained by way of temporary injunction, he will be put to more loss and injury. As such, this Court feels that there is no material to say that if at all the injunction is denied to the plaintiff, he will be put to irreparable loss or injury. Hence, I answered Point No.3 in the Negative.

17. Point No.4 : In the present case, the plaintiff has not made out prima facie case to grant temporary injunction and no balance of convenience lies in his favour. Further, irreparable loss and injury will be caused more to the defendant No.4 if injunction is granted than to the plaintiff if the injunction is denied. Therefore, the plaintiff is not entitled to the reliefs sought for. Hence, I answered Point No.4 in the Negative.

18. Point No. 5 : For the above discussed reasons, I proceed to pass the following :

ORDER

***The interim application No.1 filed by
the plaintiff against the defendants U/O.
XXXIX Rules-1 and 2 R/w.Sec.151 of C.P.C.
is hereby dismissed.***

(Dictated to the Stenographer directly on computer, typed by her, edited and corrected by me and then pronounced in the Open Court on this the 4th day of December-2023.)

**(Smt. Saroja. M)
Prl. Civil Judge & JMFC, Belagavi.**