

KABG210035802022



IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE & JMFC

AT: ATHANI

DATED THIS THE 5th DAY OF JANUARY 2024

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.

O.S. No.708/2022

PLAINTIFF/s : 1) Smt. Imamu W/o Gudusab Kottalagi,
Age: 70 years, Occu: Agriculture,
R/o: Telsang, Tal. Athani.

Vs

DEFENDANT/s : 1) Sri. Paigambar Gudusab Kottalagi,
Age: 45 years, Occu: H.H.work,
R/o: Telsang, Tal. Athani.

2) Sri. Adam Gudusab Kottalagi,
Age: 42 years, Occu: H.H.work,
R/o: Telsang, Tal. Athani.

3) Sri. Ikbāl Gudusab Kottalagi,
Age: 50 years, Occu: H.H.work,
R/o: Telsang, Tal. Athani.

4) Sri. Mahadev Nagappa Pujari,
Age: 62 years, Occu: H.H.work,
R/o: Telsang, Tal. Athani.

I.A.No.I

**APPLICANT/PLAINTIFFS : Smt. Imamu W/o Gudusab
Kottalagi,**

(Rep. by Sri. B.B.B., Advocate)

V/s

**RESPONDENT/DEFENDANTS : Sri. Paigambar Gudusab
Kottalagi and Ors.**

(Def. No.1 Rep. by Sri. P.A.S., Advocate)

(Def. No.2, 3 Rep. by Sri. R.K.A., Advocate)

(Def. No.4 Rep. by Sri. B.S.K., Advocate)

ORDER ON I.A.No.I

The plaintiff has filed the IA No.I under Order 39 Rule 1 and 2 of CPC restraining the defendant No.4 from interfering with her peaceful possession and enjoyment over the suit schedule property bearing Sy.No.587/2A/6 measuring 1 acre 20 gunta of Telsang village of Athani Taluk till disposal of the suit.

2. In the accompanying affidavit to the said IA., it is stated by the plaintiff that, she has filed the present suit against the defendants for the relief of declaration of title and permanent injunction with respect of suit schedule property. The O.S.No.895/2007 was filed before Addl. Civil Judge and JMFC Athani with respect of suit schedule property and another property Sy.No.589/1A. The said suit was ended in compromise. In the said compromise 1 acre 20 gunta of land

towards western side in Sy.No.587/2A totally measuring 6 acre 6 gunta fallen to her share. Now separate RTC has been effected with respect of the said extent i.e. Sy.No.587/2A/6. In the plaint enclosed hand sketch map her property shown as **ABCD**. The property fallen to the share of defendant No.1 in the above said Sy.No.587/2A as per the decree is shown as **EDFG**. Further, the land fallen to the share of defendant No.2 shown in the hand sketch map as **HEIF** and the property fallen to the share of defendant No.3 shown as **BHJI**. The defendant No.1 alienated his share i.e. Sy.No.587/2A/5 on 02.12.2021 in favour of defendant No.4. The property alienated in favour of defendant No.4 as per O.S.No.895/2007 is situated towards eastern side of the plaintiff's property which has shown in the hand sketch map as **CEFG**. Now the defendant No.4 trying to encroach and interfere with the possession of the plaintiff's property which has shown in the hand sketch map as **ABCD**. She has made out prima facie case balance of convenience lies in her favour. If the temporary injunction is granted no injustice will be caused to the defendant No.4. If the temporary injunction is not granted she will be put to loss and injury. Hence, she prays to allow the IA.

3. After registration of the suit, suit summons have been issued to the defendants. Emergent notice on IA No.I has been issued to the defendant No.4. The defendants served with the same. In response to the same, the defendants have appeared before the Court through their respective counsels. The defendant No.2 and 3 have not filed any written statement. The defendant No.1 and 4 have filed their separate written statements. The defendant No.4 filed memo adopting the written statement as objection to IA No.4. In the written statement the defendant No.4 denied the entire contentions of the plaintiff and further contended that, the defendant No.4 has purchased the property Sy.No.587/2A/5 measuring 1 acre 19 gunta from the defendant No.1. The defendant No.4 is the bonafide purchaser of Sy.No.587/2A/5 which has shown in the written statement enclosed hand sketch map as **ABCD**. The plaintiff never is in possession of the suit schedule property as contended by her in the plaint. She is in possession of the above said property which has shown in the written statement enclosed hand sketch map as **EGDC**. The said compromise decree is not acted upon. In the year 2012 as per the M.R.No.H 334 the plaintiff herself filed the varadi and divided the properties. As per the said partition 1 gunta

land each towards western side adjacent to the road was allotted in Sy.No.587/2A to her children Saheblal and Kutubuddin which has shown in the hand sketch map as **S1** and **S2**. The said Saheblal and Kutubuddin are also the necessary parties to the present suit. The suit schedule property not situated towards western side in Sy.No.587. The suit schedule property situated towards eastern side in the above said survey number in North-South direction. The defendant No.2 filed the suit for declaration against the defendant No.1 in O.S.No.1087/2016 and as per the decree dated.07.04.2017 he acquired the 1 gunta of land from the purchase property of the defendant No.4 itself. The said extent shown in the hand sketch map as **S3**. Accordingly, the defendant No.2 is in possession of the said 1 gunta of land towards western side which is adjacent to the road. The plaintiff not challenged the decree of O.S.No.1087/2016. The plaintiff is in possession of the land which has shown in the written statement enclosed hand sketch map as **DCEG**. She never obtained the possession of the land as per the decree of O.S.No.895/2007. At the time of phodi the plaintiff and defendant No.1 to 3 have given their consent for preparing the PT sheet. Accordingly PT sheet has been prepared. The

plaintiff with an intention to harass the defendant No.4 filed the false suit. Hence, he prays to dismiss the suit.

4. The following points arise for my consideration:

1. Whether the plaintiff has made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

5. My answers to the above points are as under:

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

6. Point No.1 to 3:- As the facts involved in point Nos.1 to 3 are interlinked together, hence they are taken up together for common consideration.

7. The present suit is filed by the plaintiff against the defendants for the relief of declaration of title and permanent injunction with respect of suit schedule property.

According to the plaintiff, the plaintiff is the mother of defendant No.1 to 3. The suit schedule property Sy.No.587/2A measuring 6 acre 6 gunta and another property Sy.No.589/1A measuring 3 acre originally belongs to husband of the plaintiff and father of the defendant No.1 to 3 Gudusab Muktumsab Kottalagi. He died. After his death, the name of plaintiff and defendant No.1 to 3 was entered in the RTC extract of the above said survey numbers as per varsa. The plaintiff and defendant No.1 to 3 were in possession and enjoyment of the said properties. With respect of suit schedule property and another property Sy.No.589/1A O.S.No.895/2007 was filed before the Addl. Civil Judge and JMFC Athani between the plaintiff and defendant No.1 to 3 and another two children of the plaintiff. The said suit was ended in compromise on 24.11.2007. As per the said compromise decree 1 acre 20 gunta of land towards western side in Sy.No.587/2A totally measuring 6 acre gunta allotted to the plaintiff i.e. present suit schedule property. Now her name is entered in the RTC extract of the said property. The

said property is shown in the hand sketch map as **ABCD**. As per the above said compromise decree, the share allotted to the defendant No.1 i.e. Sy.No.587/2A/5 which is shown in the hand sketch map as **EDFG**. The property allotted to the defendant No.2 in the above said survey number i.e. Sy.No.587/2A/2 which is shown in the hand sketch map as **HEIF**. The property allotted to the defendant No.3 as per the above said decree in the said survey number i.e. Sy.No.587/2A/1 which is shown in the hand sketch map as **BHJI**. The defendant No.1 alienated his property Sy.No.587/2A/5 to defendant No.4 on 02.12.2021 under registered sale deed. The property allotted to defendant No.1 is situated towards eastern side of the plaintiff's property which has shown in the hand sketch map as **EDFG**. The defendant No.4 after purchase of the land he trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property which has shown in the hand sketch map as **ABCD**. As per the above said compromise decree the property allotted to the plaintiff is shown in the map as **ABCD** and property allotted to the defendant No.1 as per the decree which has shown in the hand sketch map as **EDFG**. The said fact is within the

knowledge of the defendant No.4. But he trying to interfere with the plaintiff's possession and enjoyment over the suit schedule property. Hence, she filed the present suit and prays to decree the same.

8. The contention of the defendant No.4 is that, he purchased the property Sy.No.587/2A/5 from the defendant No.1 which has shown in the written statement hand sketch map as **ABCD** for valuable consideration. He is the bonafide purchaser of the said property. The plaintiff never is in possession and enjoyment of the suit schedule property as stated in the plaint. She is in possession of her property which has shown in the written statement enclosed hand sketch map as **EGDC**. She was and she is in possession of the said property. The said decree of O.S.No.895/2007 is not acted upon. The plaintiff herself filed the varadi before the revenue authorities in the year 2012 and got effected M.R.No.H 334 by dividing the properties. As per the partition effected through varadi she allotted 1 gunta of land each to her children Saheblal and Kutubuddin in Sy.No.587/2A which has shown in the hand sketch map as **S1** and **S2**. She allotted the said lands towards western side adjacent to the road. As such, the revenue documents are also effected. The

said Saheblal and Kutubuddin are also the necessary parties to the present suit. The suit schedule property never situated towards western side in Sy.No.587/2A. The said property existing towards eastern side of the said survey number in North-South direction. As per the hand sketch and revenue records Sy.No.587/2A/1, Sy.No.587/2A/2 and Sy.No.587/2A/5 are existing towards western side of Sy.No.587/2A/6 i.e. suit schedule property in East-West direction. As per the possession and enjoyment the defendant No.2 filed the suit of O.S.No.1087/2016 against the defendant No.1 for declaration before the Prl. Civil Judge and JMFC Athani and obtained 1 gunta of land which is shown in the hand sketch map as **S3**. The defendant No.2 is in possession of the said 1 gunta of land towards western side adjacent to the government road. The said decree of O.S.No.1087/2016 is not challenged. The plaintiff not obtained the possession of the property as per the decree of O.S.No.895/2007. At the time of phodi the plaintiff and defendant No.1 to 3 have obtained the possession, as such PT sheet was prepared. Now the plaintiff with an intention to harass the defendant No.4 filed the false suit. Hence, he prays to dismiss the suit along with IA.

9. I have perused the material available on record. At this stage the plaintiff produced RTC extract of suit schedule property Sy.No.587/2A/6 measuring 1 acre 20 gunta. On going through the said document prima facie it appears that the said property is standing in the name of plaintiff. The plaintiff produced RTC extract of suit schedule property Sy.No.587/2A/5 measuring 1 acre 19 gunta for the year 2021-22. On going through the said document prima facie it appears that during the said period the said property was standing in the name of defendant No.1. The plaintiff produced RTC extract of Sy.No.587/2A/2 measuring 1 acre 24 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.2. The plaintiff produced RTC extract of Sy.No.587/2A/1 measuring 1 acre 20 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.3. The plaintiff produced RTC extract of Sy.No.587/2A/5 measuring 1 acre 19 gunta for the year 2021-22 dated.22.06.2022. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.4. The plaintiff produced xerox copy of registered sale deed

dated.15.12.2021. On going through the said document prima facie it appears that, Sy.No.587/2A/5 measuring 1 acre 19 gunta purchased by defendant No.4 from the defendant No.1 for valuable consideration amount of Rs.1,15,000/-. The plaintiff produced certified copy of decree of O.S.No.895/2007. On going through the said document prima facie it appears that, one Saheblal Gudusab Kottalagi filed the suit for declaration of title and permanent injunction with respect of Sy.No.587/2A and Sy.No.589/1A against the Kutubuddin Gudusab Kottalagi, present defendant No.3, 2, 1 and plaintiff. As per the said compromise decree prima facie it appears that, the said suit was ended in compromise on 24.11.2007.

10. The contention of the plaintiff is that, as per the compromise decree 1 acre 20 gunta of land towards western side in Sy.No.587/2A measuring 6 acre 6 gunta allotted to the plaintiff and she is in possession and enjoyment of the said property i.e. suit schedule property. The defendant No.4 in his written statement Para No.3 he not specifically denied the said fact of O.S.No.895/2007. He denied the fact that, 1 acre 20 gunta of land allotted to the plaintiff towards western side in Sy.No.587/2A. The defendant No.1 also filed his

written statement before the Court, in his written statement Para No.3 he admitted the fact of the decree of O.S.No.895/2007. As per the contention of both the parties at this stage prima facie it appears that filing of the above said O.S.No.895/2007 between the parties with respect of suit schedule survey number and other properties is not in dispute. Further it is not in dispute that, the said suit was ended in the compromise on 24.11.2007.

11. I have perused the certified copy of the above said compromise decree produced by the plaintiff. As already stated, in the said compromise decree the present plaintiff is the defendant No.5. The present defendant No.1 is the defendant No.4. In Page No.8 Para No.7 of the said decree it is clearly mentioned that, 1 acre 20 gunta out of 6 acre 6 gunta in Sy.No.587/2A towards western side allotted to the present plaintiff. Further in Page No.6 of the said decree is is clearly mentioned that, in the above said Sy.No.587/2A southern side 1 acre 20 gunta of land allotted to the present defendant No.1 who is none other than the defendant No.4 of that suit. In Para No.8 of the said decree it is mentioned that, the parties are admitted the possession of their respective shares. The relevant portion of said decree is as under.

6. ಪ್ರತಿವಾದಿ ನಂ.4 ಇತನಿಗೆ ದಾವಾ ಜಮೀನದ ಪೈಕಿ ರಿ.ಸ.ನಂ.587/2 ಅ ಒಟ್ಟು ಕ್ಷೇತ್ರ 6 ಎ-06 ಗುಂಟೆ ಇದರ ಪೈಕಿ ದಕ್ಷಿಣ ಬಾಜುದ 1 ಎ-20 ಗುಂಟೆ ಜಮೀನು ಬಂದಿರುವುದನ್ನು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಒಪ್ಪಿ ಕುೂಲ ಮಾಡುತ್ತಾರೆ.
7. ಪ್ರತಿವಾದಿ ನಂ.5 ಇವಳಿಗೆ ದಾವಾ ಜಮೀನದ ಪೈಕಿ ರಿ.ಸ.ನಂ.587/2 ಅ ಒಟ್ಟು ಕ್ಷೇತ್ರ 6 ಎ-06 ಗುಂಟೆ ಇದರ ಪೈಕಿ ಪಶ್ಚಿಮ ಬಾಜುದ 1 ಎ-20 ಗುಂಟೆ ಜಮೀನು ಬಂದಿರುವುದನ್ನು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಒಪ್ಪಿ ಕುೂಲ ಮಾಡುತ್ತಾರೆ.
8. ಮೇಲಿನಂತೆ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಈಗಾಗಲೇ ತಮ್ಮ - ತಮ್ಮ ಹಿಸ್ಸಾಗಳ ಕಬ್ಬಾ ವಹಿವಾಟಿಯಲ್ಲಿ ಮೌಖಿಕ ಭಕ್ಷಿಸ ಪ್ರಕಾರ ಇರುತ್ತಾರೆ ಮತ್ತು ಪರಸ್ಪರ ಕಬ್ಬಾ ವಹಿವಾಟಿಗೆ ಹರಕತ ಮಾಡುವುದಿಲ್ಲ ಎನ್ನುವುದನ್ನು ಒಪ್ಪಿ ಕುೂಲ ಮಾಡುತ್ತಾರೆ.

The defendant No.1 also filed his written statement before the Court. In his written statement Page No.2 Para No.3 he admitted that, O.S.No.895/2007 filed with respect of suit schedule property and another property Sy.No.589/1A between the parties and the said suit was ended in compromise on 24.11.2007. He denied that, 1 acre 20 gunta of land allotted to the plaintiff towards western side in Sy.No.587/2A. But as per the decree prima facie it appears that, the defendant No.1 is also party to the said decree. He admitted the contents of the decree in part. He denied that towards western of the said survey number 1 acre 20 gunta of land was allotted to the plaintiff. Further the defendant No.1 and 4 contended that, in the year 2012 the plaintiff has filed

the varadi before the revenue authorities and got partitioned the properties as per her wishes. As per the said partition she is in possession and enjoyment over the suit schedule property which is situated towards eastern side in Sy.No.587/2A.

12. Further the defendant No.1 and 4 have taken a contention that, the plaintiff not included all the necessary parties in the present suit. They have taken a contention that, PT sheet has been prepared as per the consent of the plaintiff and defendant No.1 to 3. The contention taken by the defendants will be decided only after full pledge trial. Whether the plaintiff has filed the varadi before the revenue authorities and as per the varadi whether the partition has been effected will be decided only after full pledge trail. As per the compromise decree produced by the plaintiff prima facie it appears that, the plaintiff is in possession of the suit schedule property which is shown in the decree towards western side in the Sy.No.587/2A and the defendant No.1 is also party to the said decree. As per the decree prima facie it appears that, the property allotted to the defendant No.1 is situated in southern side of Sy.No.587/2A. On going through the contentions of the parties prima facie it appears that, the

said decree is remained unchallenged. Because, the defendant No.1 and 4 not stated anything that, whether they have challenged the said decree. Unless and until the decree is set aside same is binding on the parties to the said decree.

13. The defendant No.4 has also produced the documents before the Court. The defendants produced xerox copy of sale deed dated.15.12.2021. As per the said document prima facie it appears that, the defendant No.4 purchased the said property from the defendant No.1 for valuable consideration amount of Rs.1,50,000/-. The defendant No.4 produced RTC extract of Sy.No.587/2A/1 measuring 1 acre 20 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.3. The defendant No.4 produced RTC extract of Sy.No.587/2A/2 measuring 1 acre 24 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.2. The defendant No.4 produced RTC extract of Sy.No.587/2A/3 measuring 1 gunta. On going through the said document prima facie it appears that the said property is standing in the name of Saheblal Kottalagi. The defendant No.4 produced RTC extract of Sy.No.587/2A/4 measuring 1 gunta. On going

through the said document prima facie it appears that the said property is standing in the name of Kutubuddin Kottalagi. The defendants No.4 produced RTC extract of Sy.No.587/2A/5 measuring 1 acre 19 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.4. The defendant No.4 produced RTC extract of Sy.No.587/7 measuring 1 gunta. On going through the said document prima facie it appears that the said property is standing in the name of defendant No.2. The defendant produced M.R.No.H134/2012-13. On going through the said document prima facie it appears that, the said MR is with related to the partition. The defendants produced certified copy of varadi of M.R.No.134/2012-13, Sketch, Notice of said M.R.No.134/2012-13, certified copy of compromise petition of O.S.No.1087/2016 and decree of O.S.No.1087/2016, certified copy of statement, Form No.10, Sketch, Hissa No.11 and A-Sketch. The defendant No.4 produced five photographs. On going through the said A-Sketch map prima facie it appears that, in the said sketch Sy.No.587/2A/6 shown towards eastern side of Sy.No.587/2A/1, Sy.No.587/2A/2 and Sy.No.587/2A/5. The contention of the plaintiff is that, as

per the decree of O.S.No.895/2007 1 acre 20 gunta i.e. suit schedule property allotted to the plaintiff in Sy.No.587/2A towards the western side. The said sketch and mutation entries are appeared to be contrary to the said compromise decree. As per the records prima facie it appears that, the said compromise decree is remained unchallenged. The said compromise decree prima facie binds the parties to the said decree. Admittedly, the defendant No.1 is the party to the said compromise decree and defendant No.4 claiming his right of purchasing the property from defendant No.1. The genuineness of the said sketch and mutation entries will be decided only after full pledge trail. At this stage as per the records prima facie it appears that, the plaintiff is in possession and enjoyment of the suit schedule property as per the decree of O.S.No.895/2007. The defendant No.4 claiming the right under the defendant No.1. As per the above said decree 1 acre 20 gunta of land allotted to the present defendant No.1 towards southern side in Sy.No.587/2A. As per the above said document prima facie it appears that, the plaintiff is in possession and enjoyment of the suit schedule property. The claim of the defendant No.4 is contrary to the compromise decree. If during the pendency of the suit the

defendant No.4 interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property it cause injustice to the plaintiff. Furthermore, very purpose of the decree will be defeated.

14. During the course of arguments it is argued by the defendant No.4 that, the plaintiff in his IA not specifically mentioned that, in whose against she is claiming injunction. I have perused the IA No.I. It is true that in the IA the plaintiff not mentioned against whom she is claiming injunction. But in the accompanying affidavit to the IA in Para No.4 she contended that, the defendant No.4 trying to interfere with her possession and enjoyment over the suit schedule property. On going through the entire material available on record I am of the opinion that, the plaintiff has made out prima facie case balance of convenience lies in her favour. If the Temporary Injunction is not granted injustice will be caused to the plaintiff. If the Temporary Injunction is granted no injustice will be caused to the defendant No.4. The advocate for plaintiff relied the reported decision 2021(3) KCCR 2699 (Shivraj and Anr. vs. Rangswamy and Ors.). On the basis of above reasons and discussions, I hold **Point No.1 to 3** in the **AFFIRMATIVE**.

15. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendant No.4 is hereby restrained from interfering with the plaintiff's possession and enjoyment over the suit schedule property till disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 5th day of January 2024.)

Sd/-
(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.