

KABG210054432023



IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE & JMFC

AT: ATHANI

DATED THIS THE 22nd DAY OF FEBRUARY 2024

: **PRESENT:**

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

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.

O.S.No.1160/2023

- PLAINTIFF/s** : 1) **Sri. Maibub Allisab Mulla,**
Age: 42 years, Occu: Agriculture,
R/o: Balligeri, Tal. Athani, Dist. Belagavi.
- 2) **Smt. Najaboon Allisab Mulla,**
Age: 60 years, Occu: H.H.work,
R/o: Balligeri, Tal. Athani, Dist. Belagavi.
- 3) **Smt. Raziya W/o Shabbir Shekh,**
Age: 39 years, Occu: H.H.work,
R/o: Sangli, Dist. Sangli, Maharashtra State.

Vs

- DEFENDANT/s** : 1) **Sri. Daval Allisab Mulla,**
Age: 52 years, Occu: Agriculture,
R/o: Balligeri, Tal. Athani, Dist. Belagavi.
- 2) **Smt. Jubeda W/o Sikandar Dange,**
Age: 55 years, Occu: H.H.work,
R/o: Mareguddi, Tal. Jamakhandi,
Dist. Bagalkot.

I.A.No.I

APPLICANT/PLAINTIFFs : **Sri. Maibub Allisab Mulla and Ors.,**

(Rep. by Sri. **H.M.P.**, Advocate)

V/s

**RESPONDENT/DEFENDANTS : Sri. Daval Allisab Mulla and
Anr.**

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

ORDER ON I.A.No.I

The plaintiffs have filed the IA No.I under Order 39 Rule 1 and 2 of CPC restraining the defendant No.1 and 2 from alienating the suit schedule property bearing Sy.No.223/9 measuring 10 acre situated at Balligeri village of Athani Taluk till disposal of the suit.

2. In the accompanying affidavit to the said IA., it is stated by the plaintiff No.1 that, the plaintiff No.2 is his mother. The plaintiff No.3 is his sister. They have filed the present suit against the defendants for the relief of partition and separate possession with respect of suit schedule property. They have sought 3/5th share in the suit schedule property by metes and bounds. The defendant No.1 and 2 are the son and daughter of first wife of his father Allisab Mulla. The said Allisab Mulla died on 22.10.2022. The first wife of his father Allisab Mulla also died long back. His father got married the plaintiff No.2 as his second wife. The plaintiff No.1 and 3 are the son and daughter of second wife of his father Allisab

Mulla and the defendant No.1 and 2 are the son and daughter of first wife of his father Allisab Mulla. The suit schedule property Sy.No.223/9 originally belongs to grand-mother of his father Smt.Tarama Peersab Mulla. The said Tarama gifted the said property to his father. The plaintiffs are in joint possession and enjoyment of the suit schedule property. They have constructed the farm house in the said suit property and residing their. The defendant No.1 is not co-operated with their father as such he has left the house and residing at Sangli. The defendant No.2 is residing at Mareguddi village in Jamakhandi Taluka in her husband's house. The defendants are not in actual possession of the suit schedule property. The defendant No.1 in collusion with their relatives created the revenue records illegally and high handedly behind their back, on that strength they intending to alienate the suit schedule property to others in order to deprive the rights of the plaintiffs in the suit schedule property. If the defendants are succeeded in their act the plaintiffs will be put to hardship. They have made out prima facie case balance of convenience lies in their favour. If the temporary injunction order is granted no injustice will be caused to the defendant No.1 and

2. If the temporary injunction order is not granted they will be put to loss and injury. Hence, they pray to allow the IA.

3. After registration of the suit, suit summons and ex parte TI notice have been issued to the defendants. The defendants served with the same. In response to the same, the defendants have appeared before the Court through their counsel and filed written statement and memo adopting the same as objection to IA No.I. In the written statement the defendants have not denied the description of the suit schedule property and genealogy shown in the plaint. The defendants have denied the other contentions of the plaint and further contended that, the father of the defendants Allisab Imamsab Mulla was the owner of the suit schedule property, originally, the Sy.No.223/1 of Belligeri village measures 15 acre 2 gunta, out of the said extent the late Allisab Mulla gifted the 10 acre of land i.e. suit schedule property in favour of defendants on the day of Ramzan festival dated.07.07.2016 in the presence of elders of the Jamat Sri. Nabisab Bandusab Mulla and Sri. Gudusab Bandusab Mulla. As per the said gift, the defendants are in possession and enjoyment over the suit schedule property. When the father of the defendants Allisab

Mulla started to interfere with the possession and enjoyment of the defendants over the said gifted property the defendant No.1 and 2 filed the O.S.No.164/2016 before the Hon'ble Addl. Sr. Civil Judge and JMFC, Athani. The said suit was decreed on 03.07.2020 and it was declared that, the plaintiffs are the absolute owners of the suit schedule property further it is decreed that, the defendants are hereby restrained from interfering with the possession and enjoyment of the present defendants over the suit schedule property. On the basis of decree, the defendants have filed the application before the revenue authorities to mutate their names in the revenue records of the suit schedule property. The present plaintiff No.1 was filed the objection for the same and the Tahasildar Athani was heard both the parties in RTS/SR/237/2021-22 and allowed the dairy No.T 754/2021-22 dated.28.04.2022 and the names of the present defendants have been mutated to the suit property. The plaintiffs are well known with the facts of the said decree and order passed by the Tahasildar Athani. With an intention to harass the defendants the plaintiffs have filed the false suit. After mutating their names in the RTC extract of the suit schedule property the defendants were filed the application for phodi before the

revenue authorities. The present plaintiff No.1 has filed the objection for the same. On the basis of the objection the Tahasildar Athani conducted the enquiry in RRT/DISP/311/2013 and the said application is pending for adjudication. The defendants are having valid title over the suit schedule property in view of decree of O.S.No.164/2016. The plaintiffs by suppressing the material facts before the Court filed the false suit. If the application is allowed injustice will be caused to the defendants. Hence, they pray to dismiss the IA.

4. The following points arise for my consideration:

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

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

3. Whether the plaintiffs 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 plaintiffs against the defendants for the relief of partition and separate possession with respect of suit schedule property.

According to the plaintiffs, the original propositus of the family of the plaintiffs and defendants Allisab Mulla had two wives, first wife Rameeja she died, after her death Allisab Mulla got second wife Najaboon. The defendant No.1 and 2 are the son and daughter of Allisab Mulla by his first wife. The plaintiff No.1 and 3 are the son and daughter of Allisab Mulla by his second wife. The said Allisab Mulla died on 22.10.2022. The suit schedule property belongs to the father of the plaintiff No.1 and 3 and husband of plaintiff No.2. The said property acquired by Allisab Mulla through his father. His father acquired the same by way of gift through his mother. The father of the plaintiff No.1 and 3 Allisab Mulla

had not given the suit property to defendant No.1 and 2 either by gift or by the Court decree. The defendants in order to defraud the rights of the plaintiffs created the revenue records with respect of suit schedule property in collusion with the revenue authorities. The suit property is the self acquired property of said Allisab Mulla which was in his possession and same was maintain by plaintiff No.1. Even today the suit property is in possession of plaintiff No.1 to 3. The plaintiff No.1 constructed a farm house in the suit property and residing in the suit property along with his wife and children. The defendant No.1 is residing in Maharashtra and defendant No.2 is residing in her husband's house. The defendants are not in possession and enjoyment of the suit schedule property. The plaintiffs are having 3/5th share in the suit schedule property. The defendants by taking advantage of their names entered in the RTC extract of the suit schedule property they are trying to alienate the suit schedule property to the third parties. As such, they have filed the present suit and decree the same.

8. The contention of the defendants is that, the suit schedule property originally Sy.No.223/1 measures 15 acre 2

gunta belongs to father of the plaintiff No.1 and 3 Allisab Mulla. Due to love and affection the said Allisab Mulla on 07.07.2016 on the day of Ramzan festival in the presence of elders of Jamat gifted the 10 acre of land i.e. suit schedule property out of 15 acre in favour of defendants. As on the date of gift, the defendants have took the possession of suit schedule property. The defendants are in possession and enjoyment of the suit schedule property. When the said Allisab Mulla tried to obstruct the possession of the defendants over the suit schedule property, they had filed the suit of O.S.No.164/2016 before the Hon'ble Addl. Sr. Civil Judge and JMFC, Athani. The said suit was decreed on 03.07.2020 and it was declared that, the plaintiffs are the owners of the suit schedule property. The plaintiffs are having the knowledge of the same, but with an intention to harass the defendants the plaintiffs have filed the false suit. The other contentions taken by the defendants are already explained above in detail. Hence, they prays to dismiss the IA.

9. I have perused the material available on record. At this stage, the plaintiffs produced RTC extract of the suit schedule property bearing Sy.No.223/9 measuring 10 acre.

On going through the said document prima facie it appears that, the said property is jointly standing in the name of defendant No.1 and 2. The plaintiffs produced genealogy certificate issued by the village accountant, which shows the genealogy of plaintiffs and defendants. The plaintiffs produced death certificate of Allisab Mulla. On going through the said document prima facie it discloses that, the said Allisab Mulla died on 22.10.2022. The plaintiffs produced letters issued by HESCOM. The plaintiffs produced received copy of objection letters dated.05.02.2022 given by the said Allisab Mulla to Tahasildar Athani and Revenue Inspector Anantpur. On going through the said documents prima facie it appears that, the said Allisab Mulla was filed the said objections to the revenue authorities requesting them not to change the records of the suit schedule property and not to entered the name of any person in the suit schedule property. The plaintiffs produced certified copy of RTS/SR-237/21-22. On going through the same prima facie it appears that, the present defendant No.1 was the applicants in the said proceedings and late Allisab Mulla was the respondent and M.R.No.H 122/2021-22 was allowed on 28.04.2022. The plaintiffs produced certified copy of RTS/SR-311/22-23. On going through the said document

prima facie it appears that, the said RTS proceeding was with respect of suit schedule Sy.No.223/9 measuring 10 acre, the defendant No.1 and 2 were the applicants and plaintiff No.1 was the respondent in the said RTS proceedings. Further reveals that, the Tahasildar Athani has set aside the M.R.No.H104/2022-23 with respect of suit schedule property. The plaintiffs produced certified copies of plaint, entire order sheet of O.S.No.232/2017, certified copies of petition, compromise petition and entire order sheet of FDP No.4/2019. On going through the said documents prima facie it appears that, the said documents are not with respect of suit schedule property.

10. It is the suit filed by the plaintiffs against the defendants for the relief of partition and separate possession with respect of suit schedule property by contending that, they are having 3/5th share in the suit schedule property. The contention of the defendants is that, the father of defendants Allisab Mulla had gifted the said suit schedule property to defendant No.1 and 2 and they are the owners in possession of the suit schedule property, their rights also declared by the Hon'ble Court in O.S.No.164/2016, as such

the plaintiffs have no any right in the suit schedule property. In support of their contentions at this stage the defendants produced RTC extract of Sy.No.223/9 measuring 10 acre. On going through the said document prima facie it appears that, the said property is jointly standing in the name of defendant No.1 and 2. The defendants produced certified copies of judgment and decree of O.S.No.164/2016 dated.03.07.2020. On going through the said documents prima facie it appears that, the defendant No.1 and 2 have filed the suit against the late Allisab Mulla for the relief of declaration of title and injunction on the basis of gift with respect of suit schedule property. Further it reveals that, the said Allisab Mulla was appeared in the said suit and filed the written statement and denied that he gifted the suit schedule property to the present defendants. On going through the said judgment and decree prima facie it appears that, the said suit was decreed on 03.07.2020 and declared that, the present defendants are the owners of the suit schedule property. The defendants produced M.R.No.T754/2021-22, copy of written arguments of respondents in RTS/SR/311-2023 and RRT/Dispute No.311/2023. Further the defendants produced certified copies of judgment and decree of O.S.No.232/2017 and

compromise petition of FDP No.4/2019. On going through the said documents prima facie it appears that, the said documents are not with respect of present suit schedule property.

11. As per the contentions of the parties the relationship of the parties is not in dispute. As per the RTC extract of the suit schedule property prima facie it appears that, the suit schedule property is jointly standing in the name of defendant No.1 and 2. The plaintiffs are claiming 3/5th share in the suit schedule property. The defendants have denied the share of the plaintiffs by contending that, they are the absolute owners of the suit schedule property on the basis of gift said to be executed by Allisab Mulla. The contentions raised by both the parties will be decided only after full pledge trial. As already stated the relationship of the parties is not in dispute. As per the RTC extract of the suit schedule property the said property is jointly standing in the names of defendant No.1 and 2. If during the pendency of the suit the said defendant No.1 and 2 alienated the suit schedule property to third parties it causes injustice to the plaintiffs, further it amounts to multiplicity of the

proceedings. Preserving the suit schedule property till disposal of the suit is very much necessary. Otherwise it amounts to multiplicity of the proceedings and it effects the rights of the parties. On going through the material available on record I am of the opinion that, the plaintiffs have made out prima facie case for granting the temporary injunction as prayed in IA No.I and balance of convenience lies in their favour. If the Temporary Injunction is granted no injustice will be caused to the defendant No.1 and 2. If the Temporary Injunction is not granted injustice will be caused to the plaintiffs. The advocate for plaintiffs relied the reported decisions- ILR 2007 KAR 1214 (Smt. T.K. Gowramma vs C.K. Raviprasanna and 2007(5) Kar.L.J 625 (L. Shivalingaiah vs. Panchajanya Vidya Peetha Welfare Trust (Registered) Bangalore and Ors.). On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **AFFIRMATIVE**.

12. 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 plaintiffs under
Order 39 Rule 1 & 2 of CPC is hereby
allowed.

The defendants are hereby restrained
from alienating 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 **22nd day of February 2024.**)*

Sd/-

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.