

KABG210055562022



IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE & JMFC

AT: ATHANI

DATED THIS THE 15th DAY OF JUNE 2023

: **PRESENT:**

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

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.

O.S. No.1243/2022

PLAINTIFF/s : 1) Smt. Jayashree W/o Suresh Banyagol,

Age: 39 years, Occu: H.H. work,
R/o: Bandagar Oni, Athani.
Tal. Athani, Dist. Belagavi.

2) Smt. Savita W/o Namadev Madar,

Age: 35 years, Occu: H.H. work,
R/o: Badachi,
Tal. Athani.

Vs

DEFENDANT/s : 1) Sri. Maruti Bhimappa Madar,

Age: 75 years, Occu: Agriculture,
R/o: Burlatti, Tal. Athani.

2) Smt. Nilavva W/o Maruti Madar,

Age: 63 years, Occu: H.H. work,
R/o: Burlatti, Tal. Athani.

3) Sri. Sunil Maruti Madar,

Age: 44 years, Occu: Coolie,

R/o: Ledakar colony, Athani,
Tal. Athani.

4) Sri. Bhimsen Maruti Madar,

Age: 36 years, Occu: Coolie,
R/o: Burlatti, Tal. Athani,

5) The Executive Director,

Sri. Renuka Sugars Limited, Belagavi
Division-4 Burlatti (Kokatnur).

IA.No.I

**APPLICANT/PLAINTIFFS : Smt. Jayashree W/o Suresh
Banyagol and Anr.**

(Rep. by Sri. A.M.K., Advocate)

V/s

**RESPONDENT/DEFENDANTS : Sri. Maruti Bhimappa Madar
and Ors.**

(D.1 – placed ex parte)

(D.2 to 4–Rep. by Sri. S.M.B., Advocate)

(D.5 –Rep. by Sri. M.C.D., Advocate)

ORDER ON IA.No.I

The plaintiffs have filed the IA No.I under Order 39 Rule 1 and 2 R/w Section 151 of CPC restraining the defendant No.5 from interfering with their peaceful possession and enjoyment over the suit schedule property bearing Sy.No.380/5 measuring 3 Acre situated at Kokatnur village of Athani Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff No.1 that, they have filed the present suit against the defendants for the relief of partition and separate possession with respect of suit schedule property. The defendant No.1 and 2 are the parents of plaintiffs and defendant No.3 and 4. The defendant No.5 is no way concerned to the family of plaintiffs and defendant No.1 to 4. The defendant No.3 and 4 are the brothers of plaintiffs. The defendant No.5 is the purchaser of the suit schedule property, as such he has made as a party to the present suit. The father of defendant No.1 Bhimappa Ranappa Madar died on 28.01.1979. After his death, the defendant No.1 inherited the said property as per M.E.No.2485. The suit schedule property is the ancestral property. The defendant No.1 without any legal and family necessities behind the back of the plaintiffs and without their knowledge alienated the suit schedule property to defendant No.5 on 13.05.2008 under registered sale deed for valuable consideration amount of Rs.7,35,000/-. The said sale deed is not binding on the plaintiffs. As per the sale deed M.R.No.547/2007-08 mutated. When the defendant No.5 obstructed the possession of the plaintiffs in the suit schedule property then they have obtained the documents of

the suit schedule property and they have come to know that the suit schedule property was alienated by defendant No.1 in favour of defendant No.5. The plaintiffs and defendant No.1 to 4 are the members of joint family. The plaintiffs and defendant No.1 to 4 are in actual possession and enjoyment over the suit schedule property. Till today there is no any partition has been effected between plaintiffs and defendant No.1 to 4 with respect of suit schedule property. The plaintiffs are having birth right in the suit schedule property. The plaintiffs have approached the defendants to allot their legitimate share in the suit schedule property, but the defendants have refused to allot the same. They have made out prima facie case balance of convenience lies in their favour. If the temporary injunction is granted no injustice will be caused to the defendant No.5. If the temporary injunction is not granted they will be put to loss and injury. Hence, they prays to allow the IA.

3. After registration of the suit, suit summons and IA notice issued to the defendants. The defendant No.1 served with the same. He has not appeared before the Court, hence proceeding made ex parte. The defendant No.2 to 4 are

appeared before the Court through their counsel. In spite of providing sufficient opportunities they have not filed any written statement. The defendant No.5 appeared before the Court through his counsel and filed written statement and memo adopting the same as objection to IA No.I and II.

In the written statement the defendant No.5 denied the entire case of the plaintiffs and further contended that this Court has no pecuniary jurisdiction to entertain the suit. The suit schedule property is valued more than Rs.20 lakhs. The defendant No.5 is the bonafide purchaser of the suit schedule property from the defendant No.1. The defendant No.5 is in actual possession and enjoyment of the suit schedule property as on the date of the sale deed. As per registered sale deed dated.13.05.2008 the defendant No.5 is in actual possession and enjoyment of the suit schedule property. The defendant No.5 has constructed structures in the suit schedule property and now the defendant No.5 running sugar factory in the said property. The defendant No.1 alienated the property to defendant No.5 for valuable consideration amount of Rs.7,35,000/- for their legal and family necessities. Accordingly he received the said amount. The plaintiffs have not in joint possession and enjoyment of the suit schedule

property. They have no any right over the suit schedule property. The defendant No.1 is the Karta of the joint family. For his legal and family necessities he alienated the said property. The plaintiffs have not made out prima facie case and balance of convenience not lies in their favour. If the temporary injunction is granted the defendants will be put to hardship. If the temporary injunction is not granted no injustice will be caused to the plaintiffs. As such, they prays 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 **NEGATIVE**

Point No.2 : In the **NEGATIVE**

Point No.3 : In the **NEGATIVE**

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 defendant No.1 and 2 are the parents of plaintiffs and defendant No.3 and 4. The defendant No.5 is the purchaser of the suit schedule property. The suit schedule property is the ancestral and joint family property of plaintiffs and defendant No.1 to 4. The plaintiffs and defendant No.1 to 4 are in joint possession and enjoyment of the suit schedule property. The defendant No.1 without any family and legal necessities alienated the suit schedule property in favour of defendant No.5 under registered sale deed for valuable consideration amount of Rs.7,35,000/-. The said sale deed is not binding on them. They have birth right in the suit schedule property. The defendant No.5 is trying to interfere with their peaceful possession and enjoyment over the suit schedule property. The plaintiffs have approached the defendant No.1 to 4 to

allot their legitimate share. But the defendants refused to allot the same. As such, they have filed the present suit and prays to decree the suit.

8. The contention of the defendant No.5 is that, the defendant No.5 is the bonafide purchaser of the suit schedule property. He had purchased the same for valuable consideration amount of Rs.7,35,000/- under registered sale deed dated.13.05.2008 from defendant No.1. As on the date of purchase the defendant No.5 is in possession and enjoyment of the suit schedule property by constructing sugar factory and other structures. The plaintiffs and defendant No.1 to 4 are not in possession and enjoyment of the same. As such, he prays to dismiss the suit.

9. I have perused the material available on record. The contention of the plaintiffs is that, they are in joint possession and enjoyment of the suit schedule property. The defendant No.5 is illegally interfering with their possession and enjoyment over the suit schedule property. At this stage the plaintiffs produced RTC extract of suit schedule property bearing Sy.No.380/5. On going through the same prima facie

it appears that the suit schedule property is standing in the name of defendant No.5. The plaintiffs produced certified copy of M.R.No.547/2007-08. On going through the same prima facie it appears that, on the basis of registered sale deed the name of defendant No.5 mutated in the RTC extract of suit schedule property. The plaintiffs produced certified copy of M.E.No.2485. On going through the same prima facie it appears that after the death of father of the defendant No.1 the name of defendant No.1 was entered in the RTC extract of suit schedule property. Further the plaintiffs produced xerox copy of registered sale deed dated.13.05.2008. It is not in dispute that the defendant No.1 alienated the suit schedule property in favour of defendant No.5. Only contention of the plaintiffs is that, without any legal and family necessities the defendant No.1 alienated the suit schedule property to defendant No.5 behind their back. Under such circumstances prima facie it appears that, the alienation of the suit schedule property in favour of defendant No.1 is not in dispute. On going through the copy of the registered sale deed at Page No.3 prima facie it appears that, as on the date of the sale deed possession of the suit schedule property handed over to the defendant No.5. As per RTC extract of suit schedule

property prima facie it appears that, the defendant No.5 is in possession and enjoyment of the suit schedule property. At this stage the plaintiffs have not produced any documents before the Court to show that the plaintiffs are in possession and enjoyment of the suit schedule property.

10. It is the suit for partition and separate possession filed by the plaintiffs against the defendants with respect of suit schedule property. Whether the plaintiffs are having any right over the suit schedule property will be decided only after full pledge trail. At this stage prima facie it appears that, the defendant No.5 is in possession and enjoyment of the suit schedule property. Under such circumstances I am of the opinion that, the plaintiffs have not made out prima case on IA No.I for granting the temporary injunction. If the temporary injunction is granted the defendant No.5 will be put to hardship. If the temporary injunction is not granted as prayed in IA No.1 no injustice will be caused to the plaintiffs. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

11. 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 R/w Section 151 of CPC
is hereby dismissed.

No order as to costs.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **15th day of June 2023.**)*

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