

KABG210077432021



IN THE COURT OF THE PRL.CIVIL JUDGE AND J.M.F.C.,
ATHANI AT: ATHANI.

Present: Jagadeesh Biserotti.,
B.A., LL.B.(Spl.).
Prl. Civil Judge and JMFC, Athani.

Dated this day 06th February, 2023.

O.S. No. 1194/2021

1. Shri. Hanamanth Ranga Babar @ Salunke,
Age: 52 years, Occ: Ex-Serviceman,
R/o: Jambagi, Tal: Athani, Dist: Belagavi.

...Plaintiff

(Plaintiff by learned Sri. S.B.N., Adv.)

V/s

1. Shri. Vithal Ranga Babar @ Salunke,
Age: 59 years, Occ: Ex-Serviceman,
R/o: Jambagi, Tal: Athani, Dist: Belagavi.

....Defendant

(Defendant by learned Sri. V.N.S., Adv.)

I.A. No. I

1. Shri. Hanamanth Ranga Babar @ Salunke,
..... Applicant/plaintiff
v/s.
1. Shri. Vithal Ranga Babar @ Salunke,
..... Opponent/Defendant.

**ORDER ON I. A. I FILED U/ORDER XXXIX RULE 1 AND 2
OF C.P.C BY THE PLAINTIFF.**

1. The learned counsel for the plaintiff has filed I.A.No. I under order XXXIX Rule 1 and 2 of C.P.C seeking for the relief of temporary injunction to restrain the defendant from alienating, transferring or creating any encumbrance on the suit property Item no. 2 i.e., R.S. No.75/3C measuring 0.02 gunthas situated at Jambagi village in any manner, till pending disposal of the suit. The application is supported with the affidavit of the plaintiff.
2. It is stated in the affidavit accompanied to I.A No.I, that, the plaintiff and defendant are own brothers. The suit property is the ancestral property of plaintiff and defendant and they have got divided the properties oral and they are in possession and enjoyment of their properties. The defendant has executed a relinquishment deed on Rs. 50/- stamp paper in favor of the

plaintiff in respect of property VPC No. 412/A of Jambagi village, accordingly the Panchayat authority has passed a resolution on 26-08-2014 and mutated the Khata of the said property in the name of the plaintiff. The plaintiff is not reading and writing Kannada language. The defendant taking advantages of the innocence or illiteracy of the plaintiff, the defendant by obtaining the signature of the plaintiff, has created a partition deed in respect of property R.S. No. 73/3 totally measuring 1 acre, out of which to an extent of 0.38 gunta in the name of plaintiff and to an extent of 0.2 gunta in the name of defendant. On the basis of created partition deed, the defendant in collusion with the revenue official has created MR No. 9/2013-2014. It is stated that the defendant taking advantages of the khata of the property to an extent of 0.2 guntas, he started to interfere to the property of the plaintiff. In fact the plaintiff is the owner and in possession of the property R.S. No. 75/3 measuring 1.00 acre. Recently, it is noticed to the plaintiff that the defendant has got created the khata of the property illegally. Thereafter, the panchayat were held in the presence of elders of the villagers, at that time, the defendant has agreed to relinquish the property to an extent of 0.02 suit in favor of the plaintiff and he agreed that he will not obstruct to the possession of the said property. The defendant taking advantages of the khata of property, he is trying to alienate the suit property, hence the plaintiff has filed this suit for the relief of declaration and permanent injunction. If the defendant

alienates the suit property, it will cause injustice to the plaintiff, on the other hand, if I.A. No. I is allowed no loss or hardship to the defendant. The plaintiff has made out a prima-facie case and balance of convenience lies in his favour. On these reasons, the plaintiff has prayed to allow the I.A. No. I.

3. After service of summons, the defendant has appeared through his learned counsel and he has filed written statement and a memo is filed stating that written statement of the defendant is adopted as objections to I.A. No. I.
4. The defendant has contended in his written statement that averments made in the plaint are false and not admitted by the defendant.
5. It is asserted that in the presence of elders of the village, the plaintiff and defendant have entered into family settlement, as per the said settlement the plaintiff and defendant have given a Waradi on 20-07-2013 to mutate the property to an extent of 0.02 guntas and on 26-08-2014 to mutate the khata of property VPC No. 412/A in the name of plaintiff and defendant, accordingly they are the absolute owner and in possession of their properties. As per oral partition entered between the plaintiff and defendant, the defendant has relinquished the property VPC No. 412/A in favor of the plaintiff by executing a deed of relinquishment on 50/- rupees stamp paper and the

plaintiff has relinquished the property to an extent of 0.02 guntha in R.S. No. 75/3 in favor of the defendant as per oral partition and the plaintiff has received Rs. 20,000/- in the presence of witnesses, thereafter Waradi have been given to the revenue authority to mutate the name of the defendant in respect of property to an extent of 0.02 gunta. Accordingly, MR No. 9/2013-2014 has been effected. Therefore, the plaintiff has no right and interest over the property R.S. No. 75/3C measuring 0.02 gunta. The defendant has conducted a house is situated in the said property and he is residing in the house along with his family members. The plaintiff has not challenged the said mutation No. 9/2013-2014. The suit of the plaintiff is barred by law of limitation and there is no prima-facie and balance of convenience in favor of the plaintiff. The plaintiff has created a story. On these assertions, the defendant has prayed to dismiss the suit with costs of Rs. 10,000/- as well as I.A. No. I.

6. Heard arguments.
7. The following points arise for consideration of the court.

POINTS

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

2. Whether the balance of convenience lies in favour of plaintiff?
 3. Whether the plaintiff would suffer irreparable loss or injury if the prayer of interim injunction were not granted ?
 4. What order ?
8. Findings to the above said points are as follows:
- Point No. 1 : In Affirmative.
- Point No. 2 : In Affirmative.
- Point No. 3 : In Affirmative.
- Point No. 4 : As per final order;
- REASONS**
9. **Points No.1 to 3:-** These points are inter linked with each other and requires common discussion in order to avoid the repetition of discussion. Therefore, these three points are discussed commonly.
 10. This court has already stated both parties contentions taken in the plaint and written statement filed by the defendant.
 11. In support of the case of the plaintiff, he has produced the

documents, which are **(1)** RTC of R.S. No.75/3B measuring 0.38 guntas of the year 2021-2022, which is standing in the name of plaintiff, **(2)** RTC of R.S. No. 75/3C measuring 0.02 gunta of the year 2021-2022, which is standing in the name of defendant, **(3)** Certified copy of the assessment extract of khata No.412/A of Jambagi village which is standing in the name of plaintiff of the year 2021-2022, (4) Certified copy of notice in Form No.21 dated 08-08-2013, (5) Certified copy of the application given to the Tahsildar, Athani dated 20-07-2013, (6) Certified copy of the application given by the plaintiff to mutate the khata of the property in the name of plaintiff and defendant, (7) Certified copy of MR No. 9/2013-2014, (8) Certified copy of panchayat resolution dated 26-08-2014.

12. The defendant has not produced the documents.
13. This court has perused both parties pleadings, I.A. No. I, objections to I.A. No. I and documents placed before the court. It is the specific case of the plaintiff that, the plaintiff and defendant have entered into oral partition in respect of their family properties and in the said partition the property R.S. No. 75/3 to an extent of 1 Acre is fallen to the share of the plaintiff and property VPC No. 412/A is fallen to the share of the defendant. The defendant taking the signature of the plaintiff on the paper, created a partition deed, thereby the property to an extent of 0.02 gunta is mutated in the name of defendant and

property to an extent of 0.38 gunta is mutated in the name of the plaintiff in respect of property R.S. No. 75/3. The defendant has not denied the relationship of the plaintiff and defendant. The plaintiff and defendant are own brothers. The defendant has denied the plaint allegations made against him. He prayed to dismiss the suit.

14. The defendant has not disputed that the plaintiff and defendant have entered into oral partition in respect of properties. As per case of the plaintiff, the plaintiff has got entire property R.S. No.75/3 to an extent of 1 acre and defendant has got property VPC No. 412/A. The plaintiff and defendant have admitted the oral partition, but the plaintiff has denied allotment of the property to an extent of 0.02 gunta in R.S. No.75/3 in favor of the defendant. The defendant has contended that in the partition he has got partition to an extent of 0.02 gunta and plaintiff has got property to an extent of 0.38 gunta in R.S. No. 75/3 of Jambagi village. Record reveals that the suit property R.S.No. 75/3C to an extent of 0.02 gunta is standing in the name of defendant. Admittedly, the partition entered between the plaintiff and defendant is not registered. On perusal of both parties pleadings, and documents placed before the court, prima-facie reveals that property R.S. No. 75/3 is the joint family property. The plaintiff has to prove his contention based on the evidence to be produced before the court. The defendant has contended that he is in possession and enjoyment of the suit

property and khata of the suit property has been mutated in his name as per VPC No. 9/2013-2014. The plaintiff has seriously alleged against the defendant that the defendant taking innocence and illiteracy of the plaintiff, has created the document and got mutated the khata of the suit property in his name. The allegations made by the plaintiff are to be proved before the court as per law. However, the right of the parties has to be decided and protected.

15. As noticed and discussed above, the above referred properties are belonging to the family of the plaintiff and defendant and allotment of the shares in respect of the property R.S. No. 75/3 is in dispute. Under these facts and circumstances, it is to be inquired that as to whether the suit property was allotted in the name of the defendant in the oral partition and property to an extent of 0.38 gunthas was allotted to the plaintiff in the partition. Unless the evidence of the parties, at this stage it is not just and proper to hold that the suit property was allotted in the name of the defendant as per oral partition. The plaintiff has claimed right, title and interest over the suit property. He has produced the above referred revenue and Panchayat documents which prima-facie reveals that property belongs to the family of the plaintiff and defendant. The contention of the plaintiff and defendant has to be appreciated after the evidence of the parties.

16. It is relevant to note that, as per **Order 39 Rule 1 and 2 of C.P.C**, which is states as under.

1. Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,] the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 1 [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

17. As per sub-Rule 1(a) of rule 1 of Order 39, ***by any party to the suit***, can seek order of temporary injunction, if the property is dispute in a suit in danger of being wasted, damaged or ***alienated by any party to the suit*** or wrongfully sold in a execution of a decree, Thus, it is clear that the plaintiff is party to the suit, she can seek an order of temporary injunction in respect of restraining the party from alienating the suit properties, which are subject matter of the suit. Under such circumstances the application filed by the plaintiff is maintainable as per Order 39 Rule 1(a) of C.P.C. If the defendants alienates, the suit properties, it will create multiplicity of proceedings and rights of the parties will affect and it will cause inconvenience to the party to adjudicate his/her rights. The properties are subject matter of this suit.
18. This court has relied the decision passed in the case of ***Shri Prakash Gobindram Ahuja vs Shri Ganesh Pandharinath Dhonde***, by the Honble Bombay High Court, APPEAL FROM ORDER NO.256 OF 2013, dated ***4 October, 2016***, where in at para no. 128 it is observed and held as under,

128. Now, without referring to those two legal premises, if we once again come to the question whether Section 52 of TP Act grants adequate protection so as to refuse the relief of temporary injunction or in the alternate, to call upon the party seeking order of temporary injunction to show that provisions of Section 52 of TP Act do not afford adequate protection, as stated in question No.(III) referred for our reference, then it has to be stated that, in addition to the protection referred above, which order of temporary injunction affords, the necessary advantage of order of temporary injunction is also that, it avoids multiplicity of proceedings and brings an end to further complications, which advantage Doctrine of Lis Pendens does not have. The order of injunction stops the party at the threshold itself from creating third party interests in the suit property. **In absence thereof, not only the party to the suit but even alienee may also keep on creating further third party interest, thereby defeating plaintiff's rights endlessly. Moreover, if such alienee changes the nature of the suit property by carrying out**

construction thereon and if he or others claiming through him asserts that he/they are bonafide purchasers for value and without notice, his interests in the suit property and the equities created in his favour, may defeat the plaintiff's equitable right to get the specific performance of the suit property and thereby frustrate the very object of the suit itself. It is, therefore, always desirable to take fullest care of the plaintiff's interest and right in the suit property vis-a-vis such transfer by granting relief of temporary injunction, as Section 52 conspicuously lags behind in granting such protection or making improvement therein by spending huge amount.

19. This court has gone through the above decision, the principles stated in the above stated decision are applicable tot this case. As discussed above, the suit property Item no. 2 is subject matter of the suit and the plaintiff is claiming the share in the said property. Under these facts and circumstances of the case, if the said property alienates by the defendant, it will create the multiplicity of proceedings and it is necessary to avoid the multiplicity of

proceedings and protect the rights of the parties. On the other hand, if the defendant restrained from alienating suit property Item no. 2 or creating the charges or mortgaging the suit property Item no. 2 in any manner, there is no hardship or injustice to the defendant, otherwise it will defeat the claim of the plaintiff. The plaintiff is seeking relief through the suit property Item no. 2, hence, it is just and necessary to consider the relief sought in IA.No.I to avoid the multiplicity of proceedings.

20. After perusing the pleadings and documents placed on record by the both parties. This court holds that, the plaintiff has made out a prima-facia case and balance of convenience lies in favor plaintiff. When there is prima - facia and balance of convenience is in favor of plaintiff, the plaintiff is entitle for the temporary injunction as sought in the I.A. No.1. In view of the above reasons and discussions, this court answers ***Points No.1 to 3 in Affirmative.***

21. **Point No.4:-** In view of findings on above points and having regard to the facts and circumstances of the case, This court proceeds to pass the following;-

ORDER

The I. A. No.I filed U/o 39 Rule 1 and 2 filed by the plaintiff is hereby allowed.

The defendant is hereby restrained from alienating or transferring and creating the encumbrance in respect of the suit property Item no. 2 in favor of third parties in any manner by way of temporary injunction till disposal of the suit.

No order as to cost.

(Dictated to Stenographer, transcribed and typed by her, corrected by me and then pronounced it in open court this the **06th day of February, 2023**).

sd/-
[Jagadeesh Biserotti]
Prl.Civil Judge and J.M.F.C.,
Athani.