

KABG300004272023



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
ADDL. MACT, BAILHONGAL**

Dated this the 20th Day of July 2023

PRESENT:

Smt. Usharani. R. B.A.L., LL.M.,
Senior Civil Judge and Addl. MACT.,
Bailhongal.

REGULAR APPEAL No.16/ 2023

Appellants: 1) Shri. Babu Dastigirsab Yaligar,
Age: 55 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

2) Shri. Mabusubani Dastigirsab Yaligar,
Age: 53 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

3) Smt. Rujeja W/o Janglisab Dalawai,
Age: 50 Years, Occ: Household work,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

(By Sri. S.J.B., Adv.)

V/s

Respondents:1) Shri. Rehamansab Nabisab Yaligar,
Age: 50 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.
Now at: Vivekananda nagar
Naragund, Dist: Gagad.

2) Smt. Goriban Nabisab Hattaragi,
Age: 60 years, Occ: Household work,
R/o: Basaveshwara Ashraya Nagar
Bailhonga. TQ: Bailhongal,
Dist: Belagavi.

3) Smt. Mahaboobisabi Nabisab Yaligar,
Age: 80 years, Occ: Household work,
R/o: Basaveshwara Ashraya Nagar
Bailhonga. TQ: Bailhongal, Dist: Belagavi.

(By Sri. B.B.D., Adv. For D1 to 3)

PARTIES TO INTERLOCUTORY APPLICATION
No.III

Applicants/

Respondents:1) Shri. Rehamansab Nabisab Yaligar,
Age: 50 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.
Now at: Vivekananda nagar,
Naragund, Dist: Gagad.

2) Smt. Goriban Nabisab Hattaragi,
Age: 60 years, Occ: Household work,
R/o: Basaveshwara Ashraya Nagar

Bailhonga. TQ: Bailhongal,
Dist: Belagavi.

3) Smt. Mahaboobisabi Nabisab Yaligar,
Age: 80 years, Occ: Household work,
R/o: Basaveshwara Ashraya Nagar
Bailhonga. TQ: Bailhongal, Dist: Belagavi.

VS

Opponents/

Appellants: 1) *Shri. Babu Dastigirsab Yaligar,*
Age: 55 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

2) Shri. Mabusubani Dastigirsab Yaligar,
Age: 53 Years, Occ: Agriculture,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

3) Smt. Rujeja W/o Janglisab Dalawai,
Age: 50 Years, Occ: Household work,
R/o: Koravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

ORDER ON IA No.III

IA No. III is filed by the respondent no 1 under Order 39 Rule 1 and 2 of CPC seeking temporary injunction against the appellants from withdrawing compensation amount deposited in LAC No. 194/2012 deposited in the court CCD no 319/2014-15 dated 13-08-2014 till disposal of the

appeal.

2. In the accompanying affidavit it is contended that suit was filed for partition and separate possession in Prl Civil Judge court in OS No.37/13. The trial court decreed the suit in OS No.37/2013 holding that the plaintiffs are entitled for half share of the suit properties. It is held that the plaintiffs are entitled for half share in RS No.14/2A+2B/2. Government acquired part of the land in RS No.14/2A+2B/2 and compensation is awarded. Acquisition proceedings is completed and award is drawn and compensation amount is deposit in the court. Enhanced compensation was also awarded in LAC No.194/2012 and compensation was enhanced.

3. The appellants are intending to withdraw the compensation amount and they have half share. Therefore it is necessary to restrain them from withdrawing and compensation amount.

4. Appellant filed objection to the IA No. III on the ground that application is false. The appellants are the owners of the property acquired and they are entitled for compensation amount. In LAC

No.194/2012 amount was awarded and respondent cannot restrain them from getting the compensation amount. Therefore IA No.3 is to be dismissed.

5. Heard the arguments of counsel for both sides. Perused documents on record.

6. The following points arise for my consideration:

1) Whether the respondent no 1 has made out prima facie case in his favour?

2) Whether the balance of convenience lies in favour of the respondent no 1 ?

3) Whether the respondent no 1 will be put to irreparable loss or injury if the T.I as sought in I.A.No. III is refused?

4) What Order or direction ?

7. My answer 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 ::

8. **Point No.1:-** Law relating to grant or refusal to grant temporary injunction has been enunciated by the Honble Supreme Court of India and Honble High Court of Karnataka in a plethora of cases. The court while exercising its discretion applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory in injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation

of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

9. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, the factual aspects of the case has to be embarked upon.

10. Under this IA no III the respondent no 1 is seeking an injunction against the appellants restraining them from withdrawing the award amount. It is contended that in OS No.37/13 the trial court decreed the suit holding that the plaintiffs are entitled for half share of the suit properties. It is held that the plaintiffs are entitled for half share in RS No.14/2A+2B/2. Government acquired part of the land in RS No.14/2A+2B/2 and compensation is awarded. Acquisition proceedings is completed and award is drawn and compensation amount is deposit in the court. Enhanced compensation was also awarded in LAC No.194/2012 and compensation was enhanced.

Per contra the appellants contend that they are the owners of the property acquired and they are entitled for compensation amount. In LAC No.194/2012 amount was awarded and respondent cannot restrain them from getting the compensation amount.

11. Perused the judgment passed in OS No.37/2013 wherein decree is passed holding that plaintiff is entitled for half share in suit properties . In the said OS 37-2013 there were two properties RS No.14/2A+2B/2 and VPC no 224 house and backyard.

12. Thus plaintiffs/ respondents are held to be entitled for half share in the suit properties. It is an ex parte decree passed as the defendants failed to appear before the trial court. Thereafter the defendants have preferred this appeal challenging the judgment and decree.

13. Thus being the case the respondents have already obtained a judgment and decree holding that they are entitled for half share in the suit properties. Thus being case the respondents are having $\frac{1}{2}$ share even in the compensation amount.

Thus the IA is filed seeking their legitimate claim.

14. No doubt the suit is filed for partition and separate possession and prima facie at this stage there is a decree holding that the applicants are entitled for half share. Thus being the case there is no prima facie case to grant the relief of permanent injunction against the appellants.

15. A coparcener or a co-owner is deemed to be in possession of every inch of the property until the shares are demarcated and there is an actual partition by metes and bounds. As at this stage no one is sure as to which portion of the property falls to whose share and since these aspects requires FDP to be completed it cannot be held that the acquired portion is the share of the appellants. Thus even in the compensation amount respondents have half share and their right cannot be curtailed. Thus respondent no 1 has proved that, there is a prima facie case in his favour and I answer point No.1 in the affirmative.

16. **Point No.2** : The respondent no 1 has proved prima facie case and balance of

convenience also lies in his favour. If the appellants withdraw the compensation amount then it would be a loss to the respondents. Thus point no 2 answered in the affirmative.

17. **Point No. 3:** The respondent no 1 has proved prima facie case and balance of convenience also lies in his favour. Thus point no 3 answered in the affirmative. To avoid mischief the temporary injunction shall be in force only for 3 months. The parties shall co operate for speedy disposal of the appeal. If appeal is not disposed of withing three months then the order on IA no II shall stand vacated automatically.

18. **Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following:

O R D E R

The application IA No.III filed by the respondent No.1 U/o.39, Rule 1 and 2 CPC., is hereby allowed.

No order as to costs.

To avoid mischief the temporary injunction granted today shall be in force only for 3 months.

Both the parties shall co operate for speedy disposal of the appeal. If appeal is not disposed of withing three months then the order on IA no II shall stand vacated automatically.

(Dictated to the stenographer, transcribed and computerized by him, then corrected and pronounced by me in the Open Court, on this the 20th day of July 2023)

(Smt.Usharani.R.)
Senior Civil Judge, Bailhongal

