

KABG410022022020



IN THE COURT OF THE I ADDL CIVIL JUDGE,
CHIKODI.

Present: **Ashok R H**
I Addl. Civil Judge & J.M.F.C.,
Chikodi.

Dated this the 18th day of January, 2022

O.S.No.218/2020

PLAINTIFFS: 1) Vitthal s/o Ramachandra @ Ramu
Munase
R/o. Examba, Tal: Chikodi,
Dist: Belagavi and another.

(By Shri K.R. Tangade, Advocate)

//Vs//

DEFENDANT: 1) Santosh S/o Kumar Khot @ Gadeppa,
R/o. Examba, Tal: Chikodi,
Dist: Belagavi.

(By Sri. B.D. Patil, Advocate)

: ORDER ON I.A.NO.1 :

Applicant/Plaintiff: Vitthal s/o Ramachandra @ Ramu
Munase

V/s.

Opponents/Defendant: Santosh S/o Kumar Khot @
Gadeppa,

:: ORDERS ON I.A.NO.1 ::

The Plaintiffs have filed this application Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 praying for an order of ad-interim temporary injunction restraining the defendants from disturbing the peaceful possession and enjoyment of the plaintiffs over the suit property, till disposal of the suit.

2. It is the case of the plaintiffs' that the suit land consists of one shed, one big kavata tree and 20 teak wood trees and there is a pipeline also put up in the land from Dhoodhganga river and there are four water chambers. The landlord namely Dattatreya Ganesh Mutalik had handed over the possession of the suit land in favour of the plaintiffs' father namely Ramachandra @ Ramu Manase and he was cultivating the land as tenant. After the death of the said Ramachandra, his legal heirs namely Rajaram, Sakharam, Vitthal, Pundalik and Tukaram have succeeded to the said tenancy. Now, the said Rajaram and Sakharam have died, Pundalik is residing at Nashik in Maharashtra state, the plaintiffs are themselves in

possession of the suit lands. The landlord is residing in Pune and he died on 06.03.2000. In his life time he never intended to recover the possession from the plaintiff's family. The landlord namely Dattatreya Ganesh Mutalik has died leaving behind his wife, three daughters and one son. The said son namely Sharad is residing in Pune. The plaintiffs have constructed shed in the suit land and also put a pipeline from Dhoodhganga river and have spent huge amount to irrigate the suit land. In the consent deed dated 23.05.1995, the deceased Sakharam Ramachandra Munase name is shown and he was one of the partners to the part to take water to land in RS.No.24. The plaintiffs have four water chambers and they are making use of the river water to raise sugarcane crop and other crops in the suit land and they have also grown and planted teak wood trees. The plaintiffs are sending sugarcane to sugar factories i.e., Jawahar shetakari sahakari saakar kharakhand Ltd.,. Hupari. The government of Mysore Revenue department has issued Rashid patta in respect of the suit land. Thus, the plaintiffs are in exclusive possession of the suit land. The original landlord's son namely Sharad has got entered his name in the year 2010 in respect of ROR of the

suit land. The name of the plaintiffs or their forefathers were not entered in the tenancy column. The plaintiffs had filed Form no.7A before the Assistant Commissioner, Chikodi on 24.12.1998. The village accountant has visited the spot and has drawn panchanama and has submitted the report that the plaintiffs' family members are in possession of RS.No.24 measuring 02 acres 15 guntas and are growing sugarcane crops. The assistant commissioner has rejected the claim of the plaintiffs. The plaintiffs have preferred an appeal before the Hon'ble KAT Bangalore. The same was disposed off. The plaintiffs have filed a writ petition before the Hon'ble High Court of karnataka in WP.No.9627/2018 and an order of status-quo has been passed in respect of possession as well as the revenue entires until further orders. It is further pleaded that the said Dr.Sharad Dattatreya Mutalik had filed a suit bearing OS.No.10/2004 against the plaintiffs and one deceased Sakharam seeking the relief of Injunction, through his power of attorney. The said suit was dismissed. It is alleged that the said landlord has illegally executed the sale deed dated 27.03.2019 in favour of the defendant on the strength of entry of his name

in the record of rights pertaining to the suit lands without being in possession of the same. It is further alleged that the defendant, on the strength of the false sale deed, is claiming possession of suit land from the plaintiffs. They have further alleged that the defendant is trying to trespass and disposses the plaintiffs from the suit property. Hence, the plaintiffs have filed this suit against the defendant and have also filed the instant application seeking interim order of temporary injunction. It is stated in the affidavit to the application that, the plaintiffs have made out a prima-facie case, balance of convenience also lies in their favour, so does the equity. If an order of temporary injunction is not granted, the plaintiffs will be put to great loss and injury. On these grounds it is prayed to allow the application.

3. The defendant has resisted the application by filing written statement and objections to IA.No.1. It is contended that the description of the suit property is not correct. All the plaint averments with regard to the alleged tenancy of the suit land by the father of the plaintiffs, subsequent continuation of

possession of the suit property by the plaintiffs are all denied. It is specifically contended that the suit land originally belonged to one Dattatreya Ganesh Mutalik who was the landlord and was in exclusively possession and enjoyment and personally cultivating the land. His name was appearing in the revenue records pertaining to the suit land from 1944 to till 2001-2002. After the death of said Dattatreya Ganesh Mutalik, his legal heir namely Dr Sharad Dattatreya Mutalik was cultivating the suit land and he was paying revenue in respect of the same and he was growing sugarcane and sending same to the sugar cane factories. The name of the said Sharad has been entered in the revenue records in the year 2010. He has sold the suit land in favor of the defendant under the registered sale deed dated 27.03.2019 and thus, the defendant has acquired actual possession of the suit property. The defendant is cultivating sugarcane crops. It is alleged that the plaintiffs, being strangers to the suit property, are trying to disturb the possession of the defendant with an intention to grab the suit property. The erstwhile owner namely Dr.Sharad had filed the suit in OS.No.10/2004 against the plaintiffs and then they had stopped

the disturbance. A memo was filed and suit was not pressed. The claim of the plaintiffs was rejected by the Land Tribunal, Chikodi holding that the land was not vested with the Government of karnataka and the plaintiffs were not tenants of the suit property. The Hon'ble Karnataka Revenue Appellate Tribunal, Bangalore has rejected the claim of the plaintiffs. Subsequently the plaintiffs have approached the Hon'ble High Court of Karnataka and in the meanwhile the defendant herein has purchased the suit property and has filed application to change revenue entries to enter his name. But the plaintiffs have objected the same. It is further alleged that the plaintiffs have colluded with the revenue authorities and have planned to enter their names in respect of the suit property and that the plaintiffs have committed offences under IPC. It is further pleaded that the plaintiffs filed the written statement in OS.No.10/2004 claiming that they are the owners of the suit property by way of adverse possession. Thus the plaintiffs are not certain about their claim over the suit property. The plaintiffs have suppressed true and material facts. On these grounds the defendant has prayed to reject the application.

4. Based on the above contentions, the below points arise for consideration of this Court:

POINTS

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the plaintiffs have balance of convenience in their favour?
3. Whether the plaintiffs will be put to irreparable loss and injury if temporary Injunction is granted?
4. What order?

5. Based on the available materials on record at this stage and the facts and circumstances of the case, this Court answers the above points as follows:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per the final order
for the following ;-

: : R E A S O N S : :

6. **Point No.1:** The plaintiffs have filed the present suit seeking the relief of Permanent Injunction contending that they

are in possession of the suit property and have alleged that the defendants have caused interference. The defendant has resisted the suit contending that he has purchased the suit property.

7. In support of their case, the plaintiffs have produced the copy of the ordersheet in WP.NO.9627/2018, copy of the sale deed dated 27.03.2019 executed in favour of the defendant no.1 in respect of the suit property, copy of the plaint in OS.No.10/2004, copy of the reseedi patta, copy of the consent deed, photographs, copy of the revenue receipts, copy of the notices, copy of the sugarcane bills, copy of the acknowledgment issued by the Sadalaga police, copy of the reply given by the Public Information officer and Sub-Registrar Sadalaga. RTC extracts pertaining to the suit property. Objections given by the plaintiff no.2, letter correspondence, notices copy issued by the Tahasildar Chikodi in RTS/SR-20/2019-20, copy of the order passed by the Tahsildar Chikodi, copy of the General power of attorney, copy of the memorandum of writ petition, copy of the letters issued to the

sugarcane factories, copy of the field slips, copy of the sugarcane weight details of sugarcane, copy of the notice issued by the plaintiff to the sugarcane factories and other documents.

8. The defendants have produced copy of the reply notice, certified copy of the ordersheet produced in PC.NO.103/2021, copy of the private complaint, copy of the plaint in OS.No.10/2004, copy of the written statement in OS.no.10/2004, copy of the letter issued to the District Commissioner, Belagavi and RTC extracts and other documents.

9. Admittedly, the plaintiffs are not the original owners of the suit property. The plaintiffs claim their possessory rights over the suit property with a plea that the original landlord i.e., Dattatreya Ganesh Mutalik had handed over the possession of the suit property in favour of the plaintiffs' father. The defendant herein is none other than the purchaser of the property from the son of the said Dattatreya Ganesh Mutalik.

10. Looking into the materials produced by the plaintiffs, it is not in dispute that the plaintiffs herein along with the others have preferred an appeal before the Hon'ble High Court of

Karnataka in WP.No.9627/2018 against the order passed by Hon'ble KAT, Bangalore in Appeal No.396/2011 and an order of status-quo regarding possession as well as revenue entries was passed. The plaintiffs have made available the copy of the sale deed executed in favour of the defendant in respect of the suit property. The recitals of the said sale deed goes to show that the defendant has purchased the suit property for a sale consideration under a registered deed. Looking into the orders passed in RTS/SR-20/2019-20 dated 18.12.2019 by the Tahsildar, Chikodi, it is forthcoming that the Tahsildar, Chikodi has also ordered for maintaining status-quo. The plaintiffs have produced a document said to be a panchanama conducted by the Revenue inspector and village accountant in respect of land bearing RS.No.24 measuring 02 acres 15 guntas which is to the effect that the plaintiff and his brothers are in possession of the suit property since 40 to 45 years. But it is important to consider that the claim of the plaintiffs' over the suit property made before the Tahsildar, Chikodi has not been allowed. It is also admitted by the plaintiff that the Assistant Commissioner as well as the Deputy Commissioner, Belagavi has rejected the

plaintiffs' claim. As such, the said panchanama as relied by the plaintiffs at this stage, cannot be considered to accept that the plaintiffs are in durable possession of the suit property. That apart, the said document is dated 19.02.2001. The plaintiffs have filed this suit in the year 2020. It is incumbent on the plaintiffs to produce documents as they stand as on the date of the suit. Looking into the other documents also, the consent deed produced by the plaintiffs does not make a substantial document to prove actual and durable possession over the suit property as on the date of the suit.

11. On perusal of the RTC pertaining to the suit property as on the date of filing of the suit, the same reveals the name of the Dr. Sharad Dattatreya Mutalik i.e., vendor of the defendant who is none other than the son of the original landlord. The defendant has contended that as the plaintiffs have objected the change of revenue entries his name has not been yet entered in the said records.

12. The plaintiffs have produced field slips that reveal the name of the plaintiff no.1 in respect of Sy.No.24. The defendant

has also produced certain documents in support of his case. Looking into the same, the defendant no.3 in OS.No.10/2004, who is none other than the plaintiff herein had filed the written statement wherein it is contended that the plaintiff no.1 and his family members are in possession of the property and have perfected their title adverse to the owner and have become owners of the suit property on the basis of adverse possession. Thus, it is seen that the plaintiffs herein had claimed their ownership over the property on the strength of adverse possession. But the plaintiffs herein have not taken a similar plea. The plaintiffs have claimed their right under tenancy through their father. Thus, as argued by the learned counsel for the defendant, there appears two stand of the plaintiffs.

13. On perusal of the RTC produced by the defendant, the name of Mutalik Dattatreya Ganesh is entered in respect of the suit property for the year 1965 to 2002. Even in the cultivators column, it is entered as 'self'. But the plaintiffs contend that it is their father who was cultivating the suit lands. The contention of the plaintiff is contrary to the entries in the revenue records.

However, in the RTC extract pertaining to the year 1999 to 2000-01, the name of Tukaram S/o Ramachandra @ Ramu Munase is found. But the same is not sufficient to hold that the plaintiffs have been in possession of the suit property since their father. On perusal of the revenue paid receipts, it is forthcoming that the revenue have been paid in the name of Dr.Sharad Dattatreya Mutalik. Under the facts of the case, it is not suffice for the plaintiffs to merely plead and superficially make out a case but to establish a strong case as the defendant against whom they have sought for an order of Injunction has a registered sale deed in his favour. The plaintiffs must show the existence of a strong prima facie so as to grant an order of injunction restraining the owner himself from the suit property. Admittedly the defendant herein holds a registered title deed in respect of the suit property executed by the son of the original landlord. The claim of the plaintiffs before the revenue authorities has been rejected. The plaintiffs have suppressed the fact that they had claimed their title over the property by way of adverse possession in original suit filed by the defendant's vendor. This amounts to suppression of material facts. There are

no materials to show the actual and durable possession of the plaintiffs' over the suit property as on the date of the suit. The photographs do not make substantial material. Having observed to this extent, this court is cautious that at this stage, there cannot be a mini trial and expression on merits of the case. Considering all these aspects, at this stage, in view of the status-quo order that has been passed by the Hon'ble High Court of karnataka in WP.NO.9627/2018, this court is of the considered opinion that the plaintiffs have not produced sufficient material to show that there exists prima facie case. Hence, this court has answered Point No.1 in the **Negative**.

14. **Points No.2 & 3:-** As the plaintiffs have failed to establish the existence of the prima facie which is the harbinger for grant of temporary injunction, determining the aspects of balance of convenience and irreparable loss is not warranted. Moreover, an order of status-quo passed by the Hon'ble High court of Karnataka is in force. Therefore, if the plaintiffs were to be in possession of the property, the same status has to be maintained in compliance of the order passed in Writ Petition. Thus, it is

not a case herein that rejection of temporary injunction would result in greater inconvenience and irreparable injury to the plaintiffs. Hence this court has answered Points No.2 and 3 in the **Negative**.

15. **Point No.4:-** In view of the above answers and by considering the facts and circumstances of the case, this court proceeds to pass the following;-

:: O R D E R ::

I.A.No.I filed by the plaintiffs under Order
39 Rule 1 & 2 R/w S 151 of C.P.C is hereby
rejected. No order as to costs.

(Dictated to the stenographer, transcribed and typed by her, script corrected and then pronounced by me in the Open Court on this 18th day of January 2022)

Sd/-

(Ashok R H)
I Addl Civil Judge & JMFC,
Chikodi.