

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE, GOKAK

PRESENT:

SRI. VEERESH KUMAR C.K. B.A.L, LL.M, CC in Cyber Laws.
Principal Civil Judge,
Gokak.

O.S.No.182/2020

Date Of Order: 5th day of January, 2021.

Plaintiffs :

Santosh Sadashiva Mavarkar,
Age: 32 years, Occ: Business,
R/o: Dhor Galli, Gokak, Tq: Gokak.
& 3 others.
(By Sri. D.B.A., Advocate.)

// Vs. //

Defendant No.7 :

Sadanand Laxman Mavarkar,
Age: 58 yrs, Occ: Business,
R/o: Dhor Galli, Shindikuta, Gokak.
(Defendant No.7 by Sri. S.B.K., Advocate.)
(Defendant No.5 was placed exparte.)

Orders on I A No.1.

Plaintiffs have filed I.A. No.1 U/o.39 Rule 1 and 2 R/w 151 of CPC seeking temporary Injunction against defendant No.7 restraining from constructing any building in the suit property Sl.No.1 bearing CTS No.4939 till disposal of the suit.

2. The case of the plaintiffs is that;

The suit properties are ancestral joint family properties of the plaintiffs and defendants. The propositus Laxman died in the year 2004 and his wife by name Putalabai died in the year 2013 leaving behind the father of the plaintiff by name Sadashiva and defendant No.1 to 8. The defendant No.9 is also daughter of deceased Sadashiva. The plaintiffs and defendants are in joint possession of the suit property. There is no partition in between plaintiffs and defendants even to this day and they are in joint possession in the

suit property. The defendant No.7 without effecting partition to the suit property trying is construct a building in the suit property bearing CTS No.4939 which is situated within the Gokak city limits. Though the plaintiff requested the defendant No.7 from restraining himself from constructing any structure in the suit property but the defendant No.7 did not heed to any request of the plaintiff and continued to construct a building in the property bearing CTS No.4939.

In the application accompanying affidavit it is also stated that the defendant No.7 is illegally constructing on the suit schedule A property which is against the interest of the plaintiff. If the said construction is continued then the interest of the plaintiffs would be destroyed. The purpose of the suit would be frustrated. It is also stated that plaintiffs have got the prima facie case and the balance of convenience in their favour and thereby prayed to allow the IA No.I.

3. IA No.I is preferred only against the defendant No.7 and the defendant No.7 is served, the defendant No.5 is placed exparte. The appearance date of defendant No.1 to 4, 6, 8 & 9 is fixed on 29-01-2021. As the plaintiffs and defendant No.7 insisting for disposal of IA No.I. Hence, the IA No.I is taken immediately for disposal as the TI is operating only against the defendant No.7.

4. The defendant No.7 having entered appearance through his counsel and has filed written statement and also filed memo to treat the written statement as objections to the I.A.No.1.

In the written statement/objections the defendant No.7 has entirely denied the averments of the plaint. Even the genealogy shown by the plaintiffs is contended to be false and same is disputed

by the defendant No.7. It is contended that the suit property bearing CTS No.4939 is exclusive property of defendant No.7 by way of the family settlement. The said property totally measuring 503.96 Sq.ft out of it 300 Sq.ft area was purchased by the defendant No.7 in the name of his wife by way of registered sale deed dtd: 22-01-2008 accordingly her name was mutated to the suit property. By way of a family settlement the defendant No.7 and his wife transferred 240 Sq.ft out of 300 Sq.ft of CTS No.4936 to the father of the present plaintiff No.1 & 3 and late husband of plaintiff No.4 and in return the deceased Sadashiva i.e., husband of plaintiff No.4 and all the sisters together have transferred the present suit property bearing CTS No.4939 exclusively to defendant No.7. The said properties were exchanged in the year 2011. By the mutual transfers late Sadashiva's name was mutated to CTS No.4936 and defendant No.7's name was mutated to the property bearing CTS No.4939. The parties have acted upon such arrangement and since last 9 years the plaintiffs family and defendant No.7's family have been living separately and enjoying their respective properties peacefully. The said mutation had never been challenged by either of the parties. The name of the defendant No.7 is appearing in the property bearing CTS No.4939 is exclusive owner of the property. The plaintiffs are no way concerned to the said property. The father of plaintiff No.1 & 3 and husband of plaintiff No.4 passed away and the plaintiff No.1 & 3 have got mutated their names to the property bearing CTS No.4936 in the year 2015. Since then the plaintiffs have never objected to the ownership and possession of the defendant No.7 with respect to the property bearing CTS No.4939. Since then all the parties are enjoying their respective properties peacefully.

The property bearing CTS No.4936 given to the plaintiffs has not been included by the present plaintiffs as the suit schedule property and the same is considered as their exclusive property and the property which has been transferred to defendant No.7 is considered as an ancestral property. The plaintiffs are misleading the Court and have not come with the clean hands to the Court.

The plaintiffs have undertaken the construction work in the property bearing CTS No.4936. The defendant No.7 also undertaken the construction as per the amicable transfer. The present suit is filed by the plaintiffs only with the intention to harass the defendants. Except property bearing CTS No.4936 and 4939 there is no partition in the remaining properties. Rest of the properties remain in joint possession. The plaintiffs have not included the property bearing R.S.No.138/5 plot No.9D as a suit properties in the present suit. The defendant No.7 being from poor family and is sole bread earner by running a flour mill and due to heavy rains in the last rainy season his house had collapsed. The survey was conducted by officers of the CMC, Gokak and as per the due process and verifications of the documents the Govt., sanctioned the funds and thereafter the defendant No.7 has undertaken the present construction. The completion of the construction is very much required for the shelter of the family of the defendant No.7. If the work is held up the amount sanctioned by the Govt., will be withdrawn and the defendant No.7 would be put to heavy and irreparable loss and which cannot be compensated in terms of money. If the present construction is not completed then there is a chance of collapse of the half constructed portion in the coming rainy season and again the defendant No.7 will put to irreparable loss,

which cannot be compensated in terms of money. Thereby, prayed for dismissal of the present application.

5. On the basis of plaint averments, written statement and affidavit in support of I.A.No.1 and objections to the same, the points that arise for consideration are as follows;

- 1) *Whether the plaintiff has made out prima facie case?*
- 2) *Whether the balance of convenience lies in favour of plaintiff ?*
- 3) *Whether the plaintiff would suffer irreparable loss if the order of temporary injunction is rejected?*
- 4) *What order?*

6. Heard the arguments of learned counsel for the plaintiff and defendant No.7. Perused the materials on record.

7. The above points for consideration are answered as follows:

Point No.1: In the Negative.

Point No.2: In the Negative.

Point No.3: In the Negative.

Issue No.4: As per final Order for the following:-

: REASONS :

8. Points No.1 to 3 :- Since these point are interlinked to each other and to avoid the repetition of facts they are taken together for discussion at one stretch.

It is pertinent to note the undisputed facts emanating from pleadings are; the plaintiffs and defendant No.7 are related to each other. Even the other defendants are also related to each other. There has been no partition between the parties. The defendant No.7 is

making construction in the suit schedule property, precisely item No.2 of the schedule, bearing CTS No.4939.

9. As per the documents produced by the plaintiffs at the time of filing of the suit, a photograph in regard to the said property is produced. Wherein, it is visible that there is half constructed portion and some of the construction materials are stored on the site. Defendant No.7 has produced the property extract of the said property which is standing in the name of the defendant No.7. The photograph of the suit property can also be seen. The tax paid receipts are also produced by the defendant No.7 with respect to the said property of the year 2019. The property card by the City Survey Office is also produced by the defendant No.7, wherein on 01-08-2011 the said property is mutated in the name of the defendant No.7. As per entry in the said card dtd: 22-12-2016 the defendant No.7 is shown as the possessor of the said property. Even the city survey sketch is also produced by defendant No.7.

On careful perusal of those documents it is clearly visible that since 01-08-2011 the name of the defendant No.7 is appearing in the records pertaining to the said property. Even in the property extract of the said property the name of the defendant No.7 is seen as the owner but not plaintiffs and other defendants. There is need for full-fledged trial to adjudicate whether the said property is joint family property or the exclusive property of the defendant No.7. However, at this stage on careful perusal of the documents produced by the defendant No.7 it goes to show that the defendant No.7 is in possession since long time and the records are in his name. In that event no fault could not found on defendant No.7 for having the construction on the said property. Absolutely no prima facie case

made out by the plaintiffs to halt the construction of the defendant No.7 over the said property.

10. The plaintiffs mere pleading that the balance of convenience and irreparable loss in their favour has not specially stated how the balance of convenience is in their favour nor has produced any documents to support the same. There is absolutely no ground made out by the plaintiffs that they would face irreparable loss in the event of construction by the defendant No.7 in the said property. Admittedly, there are other suit properties available for partition.

On the contrary the defendant No.7 has contended that due to heavy rains the said property had collapsed in the year 2019. The copy of the panchanama and the application claiming the compensation for the collapse of the house by the rains are produced by the defendant No.7. Even the extract of the website of Govt. of Karnataka, under Rajeev Gandhi housing corporation Ltd., is produced. Which goes to show that the defendant No.7 has applied for compensation for construction of the house due to flood affect 2019. Which also has the beneficiary code bearing No.1642942. The said extract also has the photograph of defendant No.7 with half constructed house. These documents would support the contention of defendant No.7 that if the present construction on the said property is halted then the defendant No.7 would deprived of compensation by the government for construction of the house. By virtue of the above the balance of convenience is in favour of defendant No.7. If the construction is stopped then the defendant No.7 would face irreparable loss. As a result, the points No.1 to 3 are answered accordingly.

11. On Point No.4: For the reasons stated and the discussions made above, proceed to pass the following;

ORDER

I A No.1 U/o. 39 Rule 1 and 2 R/w 151 of

CPC, filed by the plaintiffs is dismissed.

(Directly Dictated to the Stenographer on computer, typed by him, corrected and then pronounced in the Open Court, by me, on this 5th day of January, 2021.)

(Veeresh Kumar C.K.)
Principal Civil Judge,
Gokak.