

KABG700001022022



IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C. KHANAPUR.

AT : KHANAPUR.

PRESENT

SMT. ZAREENA,
B.Com., LL.B.(Spl).,
Senior Civil Judge and JMFC,
Khanapur.

Original Suit No.29/2022

Dated this the 15th day of June, 2022

Plaintiffs:-

1. Smt.Chandrakala W/o Subhaschandra Singi
and others.

V/s

Defendants:-

1. Smt.Yallavva W/o Baburao Singi
and others.

Parties common in both I.A.Nos.1 & 2

Applicants/Plaintiffs:-

1. Smt.Chandrakala W/o Subhaschandra Singi,

Age: 72 years, Occ: Nil,
R/o: Plot No.189, I Stage,
Rani Chennamma Nagar, Tilakwadi,
Belagavi, Dist: Belagavi, PIN 590 006
and others.
(By Smt.R.M.Hiremath, Advocate)

//V/s//

Opponents/Defendants No.10 to 15:-

1. Shri.Maktumsab S/o Maulali Jamadar,
Age: About 55 years, Occ: Private work,
R/o: Halashi, PIN 591 120
Tal: Khanapur, Dist: Belagavi
and 5 others.

(D-14 by Shri.G.G.Patil, Advocate
D-15 by Shri.K.G.Kallekar, Advocate)

Common Orders on I.A.Nos.1 and 2

Interim Application Nos.1 and 2 are filed by the plaintiffs Under Order 39 Rules 1 and 2 R/w Sec. 151 of C.P.C, seeking an order of ad-interim temporary injunction to restrain the Defendants No.10 to 15 from changing the identity and from alienating, transferring, encumbering and disposing off the suit property bearing G.P.No.404/1 now numbered as G.P.No.401/1/A, G.P.No.404/1B/B and G.P.No.404/2 of Halashi village in any manner whatsoever pending disposal of the suit.

2) In the supporting affidavits of both applications, plaintiffs stated that, they have filed the top noted suit against the defendants for the relief of partition and separate possession of the suit properties and also for permanent injunction against the defendants No.10 to 15 restraining them from interfering in their joint possession over the suit property bearing G.P.No.404/1 now numbered as G.P.No.401/1/A, G.P.No.404/1B/B and G.P.No.404/2 of Halashi village. They have inherited all the suit properties from their propositus Shri. Narasing S/o Varali Singi. They are having right, title and interest over the suit properties and they are in joint possession of the same.

3) It is further contended in the affidavit that false entries have been created in the GPC extracts of item Nos.3 and 4 of C-schedule properties and changes have been made behind the back of the plaintiffs and without their notice. They have not given up or transferred their rights or share in favour of anybody. Defendants No.10 to 15 who are strangers to the family of plaintiffs, by taking disadvantage of their names appearing in GPC extracts of above stated properties are trying to grab the said properties. No partition has taken place in the suit properties and as such the descendants of propositus are not entitled to alienate the property and any such purchasers are not entitled to come in joint possession of the family

property. Defendant No.15 high handedly is trying to level the land to form plots with an intention to sell the same to third parties. Similarly defendants No.10 to 14 are also trying to change the identity of the property and trying to alienate the same to third persons. If the identity of the property is changed and if defendants No.10 to 15 are allowed to alienate or create encumbrance over the property during pendency of the suit, it will lead to multiplicity of proceedings and rights of the plaintiffs will be affected. Plaintiffs have got good prima facie case in their favour and balance of convenience also tilts in their favour and if applications are not allowed, plaintiffs will be put to great loss and hardship. Hence prayed to allow the applications at I.A.Nos.1 and 2.

4) Defendant No.14 filed written statement cum objections to I.A.Nos.1 and 2 contending that applications filed by the plaintiffs are false, frivolous, vexatious and not maintainable in the eye of law. It is contended that the financial condition of the family of Baburao Narsing Singi was not good. He for repayment of hand loan and family expenses has sold backyard measuring East-West 50 feet, North-South 90 feet towards Eastern side and 100 feet towards Western side out of open space bearing G.P.No.404 of Halashi village, out of the extent of his share in favour of Mahammadummer s/o Mahammadali Jamadar and Mainudin s/o Mahammadali Jamadar under a registered sale

deed dated 27-8-1992 for a total sale consideration of Rs.5,500/-. Accordingly the possession was handed over to the purchasers and their names were entered in the panchayat records as owners and kabjedars and it was assigned numbered as 404/2. Later on the said purchasers have sold G.P.No.404/2 for a sale consideration of Rs.4,89,000/- in favour of defendant No.14 on 10-07-2019 and in pursuance of said sale deed, possession was delivered to defendant No.14 and his name was entered in the panchayat records as owner of the said property, which is measuring East-West 90 feet towards Eastern side and 100 feet towards Western side. The plaintiffs and other defendants are strangers to the family of defendant No.14 and property bearing G.P.No.404/2. They have no right, title or interest over the said property. He has contended that, he is a bonafide purchaser for value and if the suit of the plaintiffs decreed then purchased extent of G.P.No.404/2 property may be allotted to him out of the share of Baburao Narsing Singi branch and prayed to dismiss I.A.Nos.1 and 2.

5) The defendant No.15 filed his written statement cum objections to I.A.No.1 contending that suit property open space bearing G.P.C.No.404/1 was purchased by father of defendants No.10 to 13 by name Maulalli Maktumsab Jamadar from Baburao Narsing Shingi under registered sale deed dated 30-7-1992 for a consideration of Rs.36,000/- and he was put in

possession of the said property. Defendant No.15 has purchased the said property from defendants No.10 to 13 under registered sale deed dated 8-3-2021 for sale consideration of Rs.12,69,000/-. By virtue of the said sale deed, defendant No.15 has become absolute owner in possession, wahiwat and enjoyment of the property bearing G.P.No.404/1, measuring East-West 46.36 meters and South-North 19.96 meters totally 845.50 sq.mtrs. He is the bonafide purchaser of said property for value. Plaintiffs have no right, title or interest over the said property. Plaintiffs have not come to the Court with clean hands and they have not made out a prima facie case for grant of TI order and prayed to dismiss the I.A.No.1 with costs.

6) Heard the arguments of both sides. Perused the entire materials placed on record.

7) On the basis of the said rival contentions, the following points arise for consideration:-

- 1. Whether the plaintiffs have made out a prima facie case ?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs ?**
- 3. Whether the plaintiffs will be put to irreparable loss, if an order of temporary injunction is not granted in their favour ?**

4. What Order ?

8) My findings on 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 the final order for
the following:-**

REASONS

9) **Point Nos.1 to 3:-** I have meticulously gone through the application, objections, documents produced before the Court and other materials placed on record from which it disclosed that, plaintiffs have come up with this suit for partition and separate possession against the defendants in respect of suit schedule properties by claiming that, they and defendants No.1 to 9 are the joint family members and legal heirs of deceased Narasing Varali Singi. Further it is their case that, after demise of said propositus, his 5 children including defendant No.5 have succeeded to the suit schedule properties and till this date, there is no partition effected among them.

10) Defendants No.10 to 15 by taking undue advantage of their names appearing in the panchayat records pertaining to schedule 'C' and item No.4 properties, are trying to alienate the properties to third persons creating false entries by changing identity of item Nos.3 and 4 schedule properties. Hence, if they succeed in alienation or by changing the identity of said Sl.Nos.3

and 4 schedule properties to anybody then it would cause hardship to the plaintiffs and also it will lead to multiplicity of the proceedings.

11) On the other hand the defendants No.14 and 15 have filed their written statement and counter to these I.A.Nos.1 and 2 by denying the alleged claim of the plaintiffs against them in respect of said properties. According to them, they are the bonafide purchasers of said properties who purchased through registered sale deed from one Baburao S/o Lagte Narasing Singi i.e. husband of defendant No.1 and father of defendants No.2 to 4. In support of their defence the defendants have produced copies of sale deeds, mutation extract of C - schedule properties.

12) Now at this stage, it is to be adjudicated in the light of the pleadings, documents of the parties whether, there exists any prima facie case against defendants No.10 to 15 and balance of convenience and hardship in favour of plaintiffs or not. In order to decide the case on merits it require trial and also it consumes time to decide whether the plaintiffs are entitled for their share in the suit schedule properties or not. Therefore, at this stage, based on the pleadings, documents, I am of the opinion that, the plaintiffs have made out existence of prima facie case against the defendants No.10 to 15. So also the balance of convenience lies in their favour. Under such circumstances, if

temporary injunction order is not passed against the defendants No.10 to 15 as sought for in the I.A.Nos.1 and 2, then certainly there are chances of changing of identity of the C-schedule item Nos.3 and 4 properties by the defendants No.10 to 15 by forming plots and also there are chances of alienation of those plots to third parties. If the defendants No.10 to 15 succeed in such attempts, then certainly the plaintiffs would be put to greater hardship and loss than the defendants No.10 to 15. so also, there are possibilities of multiplicity of proceedings. Therefore till disposal of the matter, C-schedule item No.3 and 4 properties are to be preserved intact. In view of the above facts and reasons, I hold Point Nos.1 to 3 in the Affirmative.

It is needless to say that, the above observations made are limited to the extent of these interim applications only and they shall not be construed as opinion on merits of the case which shall be decided on merits in accordance with law.

13) **Point No.4:-** In view of the discussions and reasons, the following...

ORDER

I.A.Nos.I and 2 filed by the Plaintiffs under Order 39 Rules 1 and 2 R/w Section 151 of CPC are hereby allowed.

Consequently the defendants No.10 to 15 are temporarily restrained from alienating/changing the identity of G.P.No.404/1 now numbered as G.P.No.401/1/A, G.P.No.404/1B/B and G.P.No.404/2 of Halashi village till disposal of the case.

(Partly dictated and partly directly dictated to the Stenographer on Computer, the same is revised, corrected by me and then pronounced in the Open Court on this the 15th day of June, 2022).

sd/-

(Smt. Zareena)

**Senior Civil Judge & JMFC.,
Khanapur.**