

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC, KHANAPUR AT: KHANAPUR.**

P R E S E N T: Shri. Umesh S. Atnure,
B.Com.LL.B.
Prl. Civil Judge & JMFC
Khanapur.

Original Suit No.223/2013

This the 27th day of September 2014

BETWEEN:

1. Smt. Premlata W/o Changadev Patil,
Age: 59 Years, Occ: Household work,
R/o Kalmeshwar Galli, Yallur,
Tal: Dist: Belgaum.

...Plaintiff.

(By Shri.Y.G.G., Advocate)

AND:

1. Shri. Vidyadhar S/o Vishnu Patil,
Age: 45 Years, Occ: Agriculture,
R/o Iddilhond Village,
Tal: Khanapur, Dist: Belgaum.
2. Shri. Krishna S/o Kallappa Patil,
Age: 33 Years, Occ: Agriculture,
R/o Iddilhond Village,
Tal: Khanapur, Dist: Belgaum.

3. Shri. Sameer S/o Ikbaal Kittur,
Age: 29 Years, Occ: Agriculture,
R/o Halakarni Village,
Tal: Khanapur, Dist: Belgaum.

...Defendants.

(D1&D2 by Shri. C.S.H., Advocate,
D3 by Shri. A.A.N., Advocate)

I.A.No.1

Applicant/Plaintiff:

1. Smt. Premlata Wd/o Changadev Patil.

(Shri.Y.G.G., Advocate)

//Versus//

Opponent/Defendants:

1. Shri. Vidyadhar S/o Vishnu Patil & Others.

(D1&D2 by Shri. C.S.H., Advocate,
D3 by Shri. A.A.N., Advocate)

***ORDER ON I.A.No.1 FILED U/O 39 RULES 1 & 2
R/W***

151 OF CPC

The plaintiff has filed this present application praying to grant temporary injunction restraining the defendant No.3, his agents, servants or anybody

claiming on his behalf from alienating, creating, mortgaging etc suit property till disposal of the suit.

2. In the accompanying affidavit, plaintiff has contended that, she has filed this suit for the relief of declaration and consequential relief of permanent injunction in respect of suit property. The defendants No.1 and 2 were sold suit schedule property to defendant No.3 without her knowledge and consent. The suit property is her ancestral property and except her, nobody is having any right, title and interest over suit property. She further contended that original propositus by name Shamrao Laxman Patil was died in the year 1970. Her husband Changadev also died in the year 2005 leaving behind her, sons and daughters. After the death of her father-in-law, her husband's name is came to be mutated in revenue records of suit property as per M.E.No.758. In the month of July 2013, she obtained certified copy of record of rights with respect of suit property and other properties for entering her and her children name in revenue records. At that time it was came to her knowledge that the defendant No.3's name has mutated to suit schedule property. She immediately applied for certified copies of documents pertaining to suit property and at that time she came to know that the name of defendant

No.3 is entered in revenue records based on sale deed executed by defendants No.1 and 2. The defendants No.1 and 2 are no way concerned to R.S.No.28 of Iddilhond village. Entire R.S.No.28 is belonging to her family. At no point of time R.S.No.28 was subdivided in revenue records. When she obtained certified copy of revenue records of suit property, she came to know that there are two hissas made in R.S.No.28. She is in possession of entire land bearing R.S.No.28. As the sale deed executed by defendants No.1 and 2 in favour of defendant No.3 is not binding on her, defendants No.1 and 2 are not having any right, title and interest over suit property. With malafide intention by colluding with revenue authorities they have got entered their names in revenue records of R.S.No.28 and got divided R.S.No.28 as R.S.No.28/5A and thereafter they sold the same in favour of defendant No.3 on 25-9-2009 by way of registered sale deed. Based on registered sale deed, name of defendant No.3 is entered in revenue records and based on these records, defendant No.3 was trying to dispossess her from suit property and based on said bogus records, defendant No.3 is attempting to alienate suit land. If the defendant No.3 is alienated suit land, she will be put to great hardship and loss, as such she has filed this present suit and this present application

restraining the defendant No.3 from alienating the suit schedule property during the pendency of this suit.

3. The defendants No.1 and 2 are filed written statement/objection to I.A.No.1. They are contended that suit property is belonging to them and plaintiff. The propositus Shamrao Laxman Patil was died in the year 1970 and during his life time suit property was allotted to him in family partition which was held in between their bahubands. Since the date of partition, he was in possession, cultivation and enjoyment of the same. After partition, names of their father was continued in record of rights without the knowledge of their father. After death of their father, they got mutated their names in revenue records as successors. After mutating their names in revenue records, they have succeeded the suit property and they have sold the same under wrong impression to the defendant No.3 under registered sale deed dated 25-9-2009. Though they have sold suit land to defendant No.3, they never handed over possession of suit property in favour of defendant No.3 at any point of time. After execution of sale deed in favour of defendant No.3, they have intimated defendant No.3 by sending letter asking him to come and cancel registered sale deed executed by them. Though notice duly served upon the defendant

No.3, he has not turned up. The plaintiff is in actual possession and enjoyment of suit schedule property till today and they are not in possession of suit property at any point of time. They are not true owners of suit land, but plaintiff is owner of suit land and they are not at all concerned to the suit property. Hence they prayed to allow the application.

4. The defendant No.3 filed memo adopting written statement as objection to I.A.No.1. In the written statement, defendant No.3 has denied entire contention of the plaintiff. He further contended that he is the bonafide purchaser of suit land for valuable consideration of Rs.2 lakh under registered sale deed dated 25-9-2009 from defendants No.1 and 2. The plaintiff admits that one Shamrao Laxman Patil is ancestor of their family and similarly one Krishna Ningappa Patil is ancestor of family of defendants No.1 and 2. The plaintiff is most unfair and suppressing the fact that in the year 1945 in pursuance of ownership and possession over land bearing R.S.No.28/5 with the consent of both Shamrao Laxman Patil and Krishna Ningappa Patil their respectively areas were fixed and to that effect Form No.4 and 11 were brought into force under the signatures of both ancestors. As per said Forms deceased Shamrao Laxman Patil is shown to be

the owner in possession of area measuring 24 guntas in R.S.No.28/5, which is assigned as new R.S.No. 28/5B. Similarly on the basis of ownership and possession, an area measuring 3 acres 3 guntas including 14 guntas of phot kharab is shown in the name of ancestors of defendant No.1 and 2 by name Krishna Ningappa Patil and survey number is assigned as R.S.No. 25/5A and those entries were not at all challenged till today. After the death of Shamrao, deceased Changadev and other heirs of Shamrao have got certified M.E.No.758 on 17-5-1970 in respect of properties left by deceased Shamrao which includes R.S.No.28/B but does not include R.S.No.28/5A since said R.S.No.28/5A did not belong to Shamrao Laxman Patil. Said mutation entry No.758 is with full consent and with full knowledge of heirs of deceased Shamrao. The branch of deceased Krishna in respect of land bearing R.S.No.28/5A, after the death of Krishna, there are mutation entries showing the successors in the name upto defendants No.1 and 2. All these mutation entries have been acted upon on both heirs of deceased and both ancestors have shown their conduct of acceptance of such ownership and possession over their respective portions of land in R.S.No.28/5 since from the year 1945. Even parties have avail loan facilities on the basis of records, which are standing in their respective names. Since from last

68 to 70 years, nobody raised voice of ownership and possession over respective portions of land. Now the plaintiff at the instigation of defendants No.1 and 2 is raising voice by relying on some irrelevant old documents, which are not at all in force. The defendants No.1 and 2 who want to play mischief by blackmailing him and they have gone even to an extent of issuing false legal notice through their counsel on 12-9-2013 contending that he has to get honor the cheque for worth Rs.9,50,000/- said to have been issued by him to the defendants No.1 and 2. He has rightly replied to said notice through his counsel. The defendants No.1 and 2 by hiring the plaintiff and her son are trying to blackmail him by filing civil suit and challenging RTS proceedings. Till today entry of his name in revenue records remained unchallenged and now the defendants No.1 and 2 colluding with plaintiff have filed this false suit and filed this present application. The plaintiff has not made out prima-facie case and balance of convenience does not lie in her favour. Hence he prays to dismiss the application.

5. Heard arguments on both sides.

6. The following points arise for my consideration:

1. Whether plaintiff has made out prima facie case?
2. In whose favour balance of convenience lies?
3. Who will be put to irreparable loss and injury if Temporary Injunction order is not granted?
4. What order?

7. My answers to above points are as under:

Point No.1: In the negative

Point No.2: In favour of defendant No.3

Point No.3: Defendant No.3

Point No.4: As per final order for following

REASONS

8. Point No.1 It is the case of the plaintiff that the defendants No.1 and 2 without her consent and knowledge have executed registered sale deed dated 25-9-2009 in favour of defendant No.3 in respect of suit land. Based on said registered sale deed dated 25-9-2009 the name of defendant No.3 is came to be entered in revenue records of suit land and till today no division is took place in R.S.No.28/5 and division which is effected in R.S.No.28/5 are false divisions and defendants were created false survey documents and now based on false sale deed, defendant No.3 is trying

to alienate suit land in favour of third parties. Hence the plaintiff has sought for temporary injunction.

9. In support of this contention, plaintiff has produced certified copy of sale deed dated 25-9-2009 and its true translation copy. The RTC extracts of R.S.No.28/5A and 28/5B, mutation register extract bearing M.R.No.49/2007-08, mutation register extract of M.R.No.H13/2011-12 and mutation register extract of M.R.No.27/2010-2011, Form No.11, copy of M.E.No.186 and P.T. sheet.

10. By perusing sale deed dated 25-9-2009 it clearly appears that the defendants No.1 and 2 were alienated land bearing r.S.No.28/5A to an extent of 3 acres 3 guntas in favour of defendant No.3. Further by perusing RTC extract of suit property, based on registered sale deed dated 25-9-2009, name of defendant No.3 is entered in RTC extract of suit land. These documents prima-facie shows that presently suit schedule property is standing in the name of defendant No.3. It is the contention of the plaintiff that the suit schedule property is her ancestral property. Except her, nobody is having any right, title and interest over suit property. Even though defendants No.1 and 2 without her knowledge and behind her back, got

alienated the suit land in favour of defendant No.3 under registered sale deed dated 25-9-2009. Said sale deed is not binding on her. The plaintiff has contended that original propositus is one Shamrao Laxman Patil. Her husband is Changadev. Original propositus was expired in the year 1970 and her husband was expired in the year 2005 by leaving behind her and her children. Her husband was succeeded suit schedule property as successor of his ancestor and as per M.E.No.758, her husband's name was mutated in revenue records and after the death of her husband, herself and her children were succeeded suit land.

11. The defendant No.3 is contending that he is bonafide purchaser and he has purchased suit land from defendants No.1 and 2 under registered sale deed dated 25-9-2009 for valuable consideration of Rs.2 lakh. It is the specific contention of the defendant No.3 that, one Shamrao Laxman Patil is ancestor of plaintiff's family and similarly Krishna Ningappa Patil is ancestor of defendants No.1 and 2's family. In the year 1945 with the consent of Shamrao Laxman Patil and Krishna Ningappa Patil, their respective shares in R.S.No.28/5 was fixed and to that effect Form No.4 and 11 were also came into existence and both ancestors were put their signatures. As per said Forms, 24 guntas in R.S.No.28/5

is assigned to Shamrao Laxman Patil and new survey number is assigned as R.S.No. 28/5B. Similarly 3 acres 3 guntas was assigned to the ancestor of defendants No.1 and 2 by name Krishna Ningappa Patil and survey number is assigned as R.S.No. 28/5A. Since then respective ancestors of plaintiff and defendants No.1 and 2 were in possession and enjoyment of suit land and after the death of Shamrao, deceased Changadev, who is husband of plaintiff and other heirs of Shamrao got certified M.E.No.758 on 17-5-1970 in respect of properties left by deceased Shamrao which includes R.S.No.28/5B but it does not include 28/5A as same was not belonging to Shamrao Laxman Patil and M.E.No.758 is effected with full consent and knowledge of heirs of deceased Shamrao. The branch of deceased Krishna was having land bearing R.S.No.28/5A and after the death of Krishna, there were mutation entries in the names of his successors and through that mutation entries, names of defendants No.1 and 2 were mutated and mutation entries have been acted upon by heirs of both deceased ancestors and since from last 70 years nobody were raised any question with regard to possession and ownership of respective shares of heirs of Shamrao and Krishna.

12. In support of this contention, defendant No.3 has produced RTC extract of land bearing R.S.No.28/5A since from the year 1948-49 to till 2001-2002 wherein by perusing these RTC extracts, the name of Krishna Ningappa Patil is appearing in these RTC extracts. Further defendant No.3 has also produced RTC extracts of land bearing R.S.No.28/5B since from the year 1948-1949 to 2001-2002 and 2010-2011 wherein by perusing these RTC extracts, it appears that to an extent of 24 guntas in R.S.No.28/5B, name of one Shamrao Laxman Patil was appearing till the year 1975-76. Thereafter the name of plaintiff's husband is appearing in RTC extract of R.S.No.28/5B to an extent of 24 guntas and accordingly in the year 2010-2011, name of plaintiff's husband is appearing to an extent of 24 guntas in R.S.No.28/5B. Further the defendant No.3 has also produced copy of M.E.No.758 dated 17-3-1970. By perusing said M.E.No.758, it clearly goes to show that one Shamrao Laxman Patil was expired and land bearing R.S.No.5/17, 28/B, 28/5B, 616 and 618 are mutated in the name of successors of Shamrao Laxman Patil by name Changadev (plaintiff's husband), Malhari, Laxman, Ashok, Beby Ramchandra Patil, Chabutai and Sushma. Further M.E.No.659 is also produced by defendant No.3. By perusing the same, it appears that Krishna Ningappa Patil was expired and land bearing

R.S.No.28/5A, 28/7A, 1/10A, 4/26, 40/4 and 115/43 are mutated in the names of Kallappa, Vishnu and Krishna as legal heirs of deceased Krishna Ningappa Patil and these two persons are the fathers of defendants No.1 and 2. This mutation entry was effected on 26-4-1966. These mutation entries were not challenged by plaintiff or her husband. By perusing these documents, they prima-facie shows that mutation entries which are effected on 26-4-2006 as per M.E.No.659 and mutation entry dated 17-3-1970 as per M.E.No.758 are remained unchallenged by any of heirs of Shamrao Laxman Patil and Krishna Ningappa Patil. These RTC extracts and mutation entries which are putforth by defendant No.3 prima-facie shows that in between ancestors of plaintiff by name Shamrao Laxman Patil and ancestor of defendants by name Krishna Ningappa Patil, the mutation was effected and in the mutation, respective lands were fallen to their respective shares and as per said mutation entry, plaintiff's ancestors and defendants ancestors were in possession of lands and after death of their ancestors, the name of plaintiff's husband is entered in RTC extracts of R.S.No.28/5B as per M.E.No.758.

13. The defendants No.1 and 2 are filed their written statement/objection to I.A.No.1. They are

contended that the plaintiff is the owner of suit land and she has acquired suit land from her ancestor and based on revenue entries, they have alienated suit land in favour of defendant No.3 and when they realized that they are not owners of suit land, they have got issued letter to the defendant No.3 by registered post asking him to come forward and get cancel sale deed. In support of this contention, defendants No.1 and 2 are not put forth any prima-facie material. Further it is the contention of the plaintiff that the defendants No.1 and 2 without her knowledge and consent have alienated suit land in favour of defendant No.3. But as per M.E.No.659 and 758, the lands which are held by Krishna Ningappa Patil were succeeded by his heirs who are the father's of defendant No.1 and 2. Further lands which are held by Shamrao Laxman Patil were fallen to the share of plaintiff's husband along with other successors of deceased Shamrao Laxman Patil. These mutation entries were not set aside or not challenged by any person. Further M.E.No.758 was came to be effected on 17-3-1970 and M.E.No.659 was came to be effected on 26-4-1966. When M.E.No.758 is effected on 17-3-1970, husband of plaintiff was alive. If at all the plaintiff's husband was having right, title and interest over suit land, he would have definitely questioned the same. Further by perusing RTC extracts of

R.S.No.28/5B which are produced by defendant No.3, since from the year 1975-76 till 2010-2011, R.S.No.28/5B is standing in the name of husband of plaintiff. These documents clearly goes to show that the husband of plaintiff was knowing that he is having only 24 guntas of land in R.S.No.28/5B and 3 acres 3 guntas of land is fallen to the share of father of defendants No.1 and 2. Under such circumstances, I am of the considered view that contention of the plaintiff that till today no division was effected in R.S.No.28/5 is not acceptable one. Hence the contention of plaintiff with regard to effecting survey demarcation in R.S.No.28/5 is not acceptable one.

14. In this present application, plaintiff has contended that suit property is belonging to her and her husband was acquired suit property through his ancestor and after the death of her husband, she has acquired suit land. The defendants No.1 and 2 were alienated suit land in favour of defendant No.3 without her consent and knowledge. Based on sale deed dated 25-9-2009, defendant No.3 is trying to alienate suit land. As the plaintiff has produced certified copy of sale deed dated 25-9-2009 and RTC extract of suit land, they prima-facie shows that suit land was purchased by defendant No.3 from defendants No.1 and 2. By

perusing revenue records which are putforth by the defendant No.3, they clearly goes to show that father of defendants No.1 and 2 were acquired suit property through their ancestor under M.E.No.659 and said M.E. order is not at all set aside or challenged by any person. As the names of their father were appearing in RTC extract of suit land, he has purchased the same from defendants No.1 and 2 for valuable consideration. It appears that land which is belonging to defendants No.1 and 2 and they have alienated the same to defendant No.3. Now the plaintiff is contending that suit property is acquired by her through their ancestor. But her ancestor name is not appearing in revenue records of land bearing R.S.No.28/5A which are putforth by the defendant No.3. By looking to the materials which are putforth by both parties, at this pretrial stage they prima-facie shows that the defendants No.1 and 2 were acquired suit property from their ancestors and they have sold the same in favour of defendant No.3. Now the defendants No.1 and 2 are contending that they are not owners of suit land bearing R.S.No.28/5A, but the plaintiff is the owner and she has acquired suit land through her ancestor. The documents, which are putforth by the defendant No.3, are contrary to the contention taken by the plaintiff and defendants No.1 and 2. The plaintiff has not putforth any prima-facie

materials to show that her husband was acquired suit land from his ancestors. Further the M.E.No. 659 dated 26-04-1966 and M.E.No. 758 dated 17-03-1977 are not challenged either by the successors of deceased Krishna Ningappa Patil not the successors of deceased Shamrao Laxman Patil. Further the mutation order passed by the Deputy Tahasildar, dated 25-01-2011 is also not challenged by the plaintiff till today. Under such circumstances, I am of the considered view that plaintiff was failed to make out prima-facie case. Hence I answer point No.1 in negative.

15. Points No.2 and 3: The plaintiff has failed to make out prima-facie case to show that she has acquired suit land from her ancestors. Under such circumstances, balance of convenience does not lie in favour of plaintiff. Further defendant No.3 has putforth prima-facie materials to show that the defendants No.1 and 2 were owners in possession of suit land and they have alienated suit land in his favour for valuable consideration and he is the bonafide purchaser of suit land. Under such circumstances, balance of convenience lies in favour of defendant No.3 as compared to plaintiff. When the defendant No.3 has purchased suit land for valuable consideration, his name is effected in revenue records. The RTS proceedings were took place, the son of the plaintiff

was contested the RTS proceedings and the Deputy Tahsildar was passed the order for effecting the mutation in the name of the defendant No.3 based on registered sale deed. The defendant No.3 has produced copy of order passed by Deputy Tahasildar and he has also produced copy of M.E.No.27/2010-2011. By looking to these two documents, they prima-facie goes to show that based on sale deed dated 25-9-2009, name of defendant No.3 is mutated in revenue records and his name is appearing in RTC extracts of suit land. The order passed by Deputy Tahasildar is not at all challenged by neither plaintiff nor her son in any other appropriate forum. Said order passed by Deputy Tahasildar is remained unchallenged. These documents prima-facie shows that the defendant No.3 is bonafide purchaser of suit land. If he is restrained from alienating suit land, definitely he will be put to great hardship and injury. Hence I answer points No.2 and 3 in favour of defendant No.3.

16. Point No.4: In view of my above discussions, I proceed to pass the following.

ORDER

Application filed U/O 39 Rules 1 and 2 r/w section 151 of CPC at I.A.No.1 is dismissed.

No orders as to cost.

(Dictated to the Stenographer, typed by him, corrected by me and then order signed and pronounced by me in the open court this the 27th day of September 2014.)

(Umesh S. Atnure)
Prl.Civil Judge & JMFC.,
Khanapur.

Order pronounced in the open court,
vide separate order on I.A. No.1 today

ORDER

***Application filed U/O 39 Rules 1
and 2 r/w section 151 of CPC at
I.A.No.1 is dismissed.***

No orders as to cost.

Prl.Civil Judge & JMFC.,
Khanapur.