

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

PRESENT: SHRI. ANANDAPPA M.

B.A.,L.L.B.

PRL. CIVIL JUDGE & JMFC., KHANAPUR

ORIGINAL SUIT No.147/2017

DATED THIS THE 20th DAY OF APRIL, 2019

BETWEEN :

- 1. Smt. Suvarna W/o. Shivashankar Gejji**
Age: About 65 years,
Occ: Agriculture and Household,
R/o. Basavan Galli, Hosur-Shahapur,
Belagavi.
- 2. Smt. Shantawwa W/o. Malikarjun Wali**
Age: About 60 years,
Occ: Agriculture and Household,
R/o. Parishwad village,
Tal: Khanapur.
- 3. Smt. Rajeshwari D/o. Adivappa Dharwad**
Age: About 45 years,
Occ: Agriculture and Household,
R/o. Kadolkar galli,
Belagavi.

.....Plaintiffs

(By Shri. B.A.G., Advocate)

AND :

- 1. Shri. Chidanand S/o. Lingayya Kambalimath**
Age: About 52 years, Occ: Business,
R/o. Parishwad village,
Tal: Khanapur.
- 2. Shri. Suresh S/o. Lingayya Kambalimath**
Age: About 50 years, Occ: Service,
R/o. Parishwad village,
Tal: Khanapur.

...Defendants

(D1 by A.D.L., and D2 by Y.G.G., Advocates)

PARTIES TO I.A- X**Applicant/Plaintiff:**

1. **Smt. Suvarna W/o. Shivashankar Gejji
and others**

// Vs //

Opponents/Defendants:

1. **Shri. Chidanand S/o. Lingayya Kambalimath
and another**

: ORDER ON I.A-X :

The plaintiffs filed I.A-X under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C., seeking temporary injunction against the defendants, their agents, servants or anybody acting on their behalf by restraining them from changing the nature, survey number, measurements and boundaries of suit property item no.1 and 2 till the disposal of suit.

2. The power of attorney holder of plaintiff filed affidavit in support of his interim application by contending that the plaintiffs are the owners in possession over the suit property. Their grand father purchased the suit properties from its erstwhile owner Shri. Gurachayya Rachayya Kambalimath on 04.12.1924. After the purchase he came into possession over the suit properties. After the death of their grand father, their father continued in possession over the suit properties. After the death

of father of plaintiffs, the plaintiffs continued in possession over the suit property. The defendants are nowhere concerned to the suit properties. In order to gulp the suit properties the defendants filed false suit by colluding with each other in O.S. No.31/2017. Thereafter, they fraudulently compromised the said suit. Based on fraudulent decree the defendants are trying to change the nature, number, measurements and boundaries of the suit properties. The compromised decree obtained by the defendants is not binding on plaintiffs. If defendants changed the nature, number, measurements or boundaries of suit properties, the very purpose of filing the suit will be frustrated and it creates multiplicity of the proceedings between the parties. Then the plaintiffs would be put to hardship and irreparable loss which cannot be compensated by any other means. Hence, the plaintiffs filed this application.

3. The defendants appeared through their counsels and filed objections to I.A-X. The defendants denied the contentions of plaintiffs. The defendants contended that this interim application is not at all maintainable in the eyes of law when I.A-I is pending for the same relief. The defendants denied the

ownership of plaintiffs. The defendants contended that their grand father is the owner of suit properties. Thereafter, the defendants partitioned the suit properties in O.S. No.31/2017. They further contended that they are the owners of suit properties. Hence, question of change the nature, number, measurement and boundaries of suit properties does not arise. They further contended that the suit is barred by limitation. The plaintiffs have got created false documents with intend to grab the properties of defendants. Hence, they prayed to reject the said application.

4. Heard the respective counsels for both side and perused the materials placed on record.

5. My points for consideration are as under:

1. **Whether the plaintiffs prove that they have got prima facie case?**
2. **Whether the plaintiffs prove that they have got balance of convenience in their favour?**
3. **Whether the plaintiffs prove that they will be put to irreparable loss and injury if T.I is not granted in their favour?**
4. **What order?**

6. My answers to the above points are as hereunder:

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

7. **Points No.1 to 3** :- These points are interlinked with each other, to avoid the repetition of the facts and circumstances they have taken together for discussion.

8. The plaintiffs filed the present suit for the relief of declaration and permanent injunction. The plaintiffs contended that their grand father purchased the suit properties. Now, the plaintiffs are owners in possession over the suit properties. The defendants are nowhere concerned to the suit properties. In order to gulp the suit properties, the defendants by colluding with each other filed false suit in O.S. No.31/2017 and both parties compromised the said suit by allotting the suit properties between them. The said compromise petition is not binding on plaintiffs. During the pendency of suit, if defendants changed the nature, number, measurements and boundaries of suit properties it create multiplicity of the proceedings and hardship would be caused to plaintiffs.

9. In order to prove their contentions, the plaintiffs produced the original sale deed, translated copy of sale deed, certified copies of plaint and decree in O.S. No.31/2017 and property extract. The sale deed produced by the plaintiffs clearly shows that their grand father purchased the suit properties in the year 1924. The property extract produced by the plaintiffs clearly shows that the suit properties were standing in the name of father of plaintiffs. The certificate issued by the Gram Panchayat, Parishwad village shows that during the year 2012-13 to 2016-17 the rights over the suit property has not been transferred in any favour. The certified copies of O.S. No.31/2017 shows that the defendant no.2 filed suit against defendant no.1 for partition and separate possession in respect of suit property. They compromised the said suit between them.

10. The defendants contended that their grand father was the owner of suit properties. Thereafter, the defendants partitioned the suit properties between them. Now the revenue records of suit properties are standing in their names and they are in possession over the suit properties. The defendants produced 2 certificates issued by Gram Panchayat, Parishwad.

These documents show that the suit properties are standing in the name of defendants no.1 and 2. The defendant no.1 contended that this interim application is not maintainable since I.A-I is pending for the same relief which has been filed by plaintiffs. At the time of arguments of this interim application, the plaintiff filed not pressed memo to I.A-I. Hence, I.A-I was dismissed. Further, the defendants contended that they are the owners of suit properties. The plaintiffs are nowhere concerned to the suit properties. Hence, question of changing the nature, number, measurements and boundaries of suit properties does not arise. The defendants never tried to change the nature and measurements of suit properties. In order to gulp the suit properties the plaintiffs filed false application. The plaintiffs are not at all in possession over the suit properties. Hence, they prayed to reject the said application. The defendants further contended that the suit is barred by limitation. But the plaintiffs are not seeking any relief in respect of possession over the suit properties. The contention taken by the defendants in respect of limitation and ownership shall be proved at full fledged trial. The defendants produced certificates issued by the Gram Panchayat show that the revenue records of suit properties are standing in

the names of defendants. If they changed the measurements, boundaries and number of suit properties, definitely it creates multiplicity of the proceedings and very purpose of filing the suit will be defeated.

11. The defendants contended that the area of suit properties mentioned in sale deed as Bazar oni and mentioned the area in khata extract of suit properties as Hubballiyavar oni. They further contended that the plaintiffs have not been furnished the proper description of suit properties in plaint. Hence, the plaintiffs are not entitle for the relief as prayed by them. On perusal of the sale deed produced by the plaintiffs it goes to shows that the said sale deed executed in the year 1924, approximately before 95 years. The property extract produced by the plaintiffs in respect of suit properties shows that the suit properties were standing in the name of father of plaintiffs in year 2012-13. But the defendants have not explained any reasons how the name of father of plaintiffs was entered in the revenue records of suit properties. The defendants contended that they are the owners of suit properties and suit properties are standing in their names. The contentions taken by the

defendants have to proved at full fledged trial. No doubt the revenue records of suit properties are standing in the names of defendants. If the defendants changed the nature, number, measurements and boundaries of suit properties by taking advantage of their names mentioned in revenue records, definitely it creates multiplicity of the proceedings. At this stage the documents produced by the plaintiffs show that the plaintiffs have prima facie which requires trial. Moreover, the hardship would be caused to plaintiffs if defendants changed the nature of suit properties and the purpose of filing the suit will be defeated.

12. The defendants relied on decisions published in 2015(4) KCCR 3763 (DB), 2017(4) KCCR 3428, 2011(4) Kar.L.J 657 and 2018(4) KCCR 3269. I have gone through these decisions. But the facts and circumstances of these decisions are not applicable to the case in hand.

13. The rights of parties are still under question. The facts contended by both parties shall be proved at full fledged trial. The plaintiffs established the hardship, if temporary injunction is not granted in their favour. At this juncture the plaintiffs have

made out prima facie ground as well as balance of convenience to grant temporary injunction. If temporary injunction is not granted there may be every chance that which leads to multiplicity of the proceedings and very purpose of filing the suit will be defeated. Hence, I am of the opinion that if temporary injunction is not granted hardship would be caused to plaintiffs. To avoid multiplicity of the proceedings temporary injunction is necessary. ***Hence, I answer Points No.1 to 3 are in the affirmative.***

14. Point No.4 :- For the above discussed reasons, I proceed to pass the following;

ORDER

The I.A-X filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C., is hereby allowed.

The defendants, their agents, servants or anybody acting on their behalf are restrained from changing the nature, number, measurements and boundaries of suit properties item no.1 and 2 till the disposal of suit.

(Dictated to the stenographer, transcribed by him, corrected by me and then pronounced in the open court on this 20th April, 2019)

(Anandappa M.)
Prl. Civil Judge & JMFC.,
Khanapur.