



IN THE COURT OF CIVIL JUDGE AND JMFC, KITTUR

PRESENT : Smt. Farha Begum Sayed,
B.A, LL.B,
Civil Judge & JMFC, Kittur

Dated on this 22nd day of June 2024

OS. No.109/2020

- 1) Smt. Anasuya Sedeppa Tigadi,
Age:50 Years, Occ: Household work,
R/o: Naduvin Oni, Veerapur village,
Tq: Kittur, Dist: Belagavi.

Plaintiff

(By Sri. S.D. Bogur. Advocate)

V/s.

- 1) Sri. Basappa Bavanappa Baragavi,
Age:75 Years,
R/o: Naduvin Oni, Veerapur village,
Tq: Kittur, Dist: Belagavi.

Defendant

(By Sri. V.G. Bikkannavar. Advocate)

**ORDER ON I.A. NO.I, FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC.**

The application filed by the plaintiff Under Order 39 Rule 1 & 2 of CPC, seeking for temporary injunction restraining the defendant, his agents and servants or anybody acting on his behalf from interfering with peaceful possession and enjoyment of the suit property by the plaintiff till disposal of this suit.



2. Suit/application Schedule Property :-

The peace and parcel of open space bearing property No.A21/226 situated at Veerapur village of Kittur Taluk is the suit property.

- 3.** To the application U/o.39 Rules 1 and 2 of CPC, the plaintiff has sworn the affidavit, contending that the suit property was allotted to plaintiff by the Special Land Acquisition Officer in consultation with elders of the villages as plaintiff was poor, house less and landless. The plaintiff was allotted half share in the property No.A/21/226 and same is mutated by passing a resolution No.12 dated 09.07.1993 by the Gram Panchayat. After allotment, plaintiff put a hut for herself and started using and enjoying the suit property to the exclusion of others and the name of plaintiff is appearing in the Gram Panchayat records. Since the plaintiff is in use, enjoyment and possession of the suit property as an absolute owner. The defendant is the owner of property No.A/21/229 who is no way concern to the suit property of the plaintiff. The defendant is in habit of picking up the quarrels and approaching the Gram Panchayat Authorities every now and then and thereby cause inconvenience to the plaintiff. It is further submitted that the defendant is laying false claim in respect of suit property and also trying to interfere with the peaceful possession of the plaintiff. The elders of the village have



advised the defendant, but it is went in vain. Therefore, the plaintiff has filed this present suit for the relief of declaration and consequential relief of injunction and declaring that plaintiff is the absolute owner of the suit property and restrain the defendant from interfering with the peaceful possession and enjoyment over the suit property. The plaintiff has got prima facie case and the balance of convenience also lies in favour the plaintiff. If the temporary injunction is not granted, the plaintiff will be put into irreparable loss and hardship. Hence, prayed to allow the application.

4. The defendant has filed the written statement and has filed memo praying to treat the same as objections to this present IA. The defendant contended that the contents of the affidavit in support of interim application are all false, frivolous, designed vague and dubious and also not maintainable either in law or on facts of the case. The defendant has submitted that the Special land Acquisition Officer Saundatti allotted the plots in the rehabilitation area in Veerapur village, the plots were allotted to the persons who have lost their lands and houses in Malaprabha Project. The defendant is one of the allottee of the plot in rehabilitation area of Veerapur village as he has lost his land in Malaprabha project. Plaintiff is neither the allottee of the plot by the SLAO nor she has lost her properties in the said Malaprabha project. Further she is not in possession of



any plot. The plot bearing NO.A21/230 is the plot allotted to the defendant by the SLAO in the year 1975. That the plots were not allotted to the persons who are poor, landless or house less as stated by the plaintiff. That the plaintiff in the description of the suit property is claiming entire plot bearing No.A21/226 whereas in the first para of the plaint plaintiff is claiming half share in the plot bearing No.A21/226 and she has not described who is residing in another half share. That the plaintiff is relying on the alleged false resolution dated 09.07.1993 which is passed in the year 1999. But the Panchayat authorities have no right or authority to allot the plots as per their wish by passing illegal resolutions. That neither SLAO delegated his power to the Panchayat authority nor he has any power for allotment of plots. That the alleged resolutions passed by the Panchayat at the time of one Mr. V.S. Tigadi was in member of said Panchayat who is none other than the relative of plaintiff. Further there is no plot or hut of the plaintiff and she has not produced any hand sketch in order to show the existence of her alleged plot. Presently the plaintiff is residing in another house which is half kilo meter away from this rehabilitation area. Hence, the question of disturbing of plaintiff does not arise. That the plaintiff is claiming her alleged plot area in the backyard of defendant. That there is no any cause of action to file the present suit. Hence, prayed to dismiss the IA with heavy cost.



5. On the basis of pleadings of the parties and documents produced, following points arise for the consideration :-

POINTS

1. Whether the plaintiff has made out a prima-facie case for grant of temporary injunction?
 2. Whether the balance of convenience lies in favor of the plaintiff?
 3. Whether the plaintiff will be put to irreparable injury, if an order of Temporary Injunction is not granted?
 4. What Order?
6. My answer to the above Points are as under:-

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

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



-:: R E A S O N S ::-

- 7. Points No.1 to 3:-** I have taken these points together for common discussion as these points are interrelated. The suit of the plaintiff is for declaration and consequential relief of perpetual injunction against the defendant to restrain him from interfering with the peaceful possession & enjoyment of the plaintiff over the suit schedule property.
- 8.** It is the case of the plaintiff that, the plaintiff was allotted the suit schedule property and from the date of said allotment plaintiff is in peaceful possession and enjoyment of suit property. That the defendant highhandedly interfering with the possession of plaintiff and therefore, plaintiff is constrained to file present suit.
- 9.** Per contra the defendant has denied the entire plaint averments and submitted that plaintiff is not in possession of any property as claimed in the plaint. That plaintiff claims that the Panchayat authority granted her suit schedule property but Panchayat has no authority to grant land therefore, the claim of plaintiff is false and not maintainable.
- 10.** The plaintiff in support of her case filed the resolution dated 09.07.1999, VPC extracts and tax paid receipts. The



defendant has filed the grant certificate resolution and tax paid receipts and VPC extracts.

- 11.** The counsels for both the parties reiterated the plaint averments in their arguments.
- 12.** I have carefully perused the available material on record. As per documents filed by the plaintiff it is true that the suit schedule property is standing in the name of plaintiff. But defendant has denied the title of plaintiff and the way the plaintiff acquired the suit schedule property.
- 13.** On careful perusal of materials it is seen that a plot No.A/21/230/1 has been allotted to the defendant in the same locality. I have also perused the boundaries of suit schedule property and written statement property. The boundaries of both the properties on North-South and West are similar and only boundaries on Western side are different. However, also the plaintiff has submitted that on North of suit schedule property, the property of defendant is also situating. Hence, it is clear that the property of defendant is situating abutting to suit schedule property.
- 14.** Further, the defendant has also stressed upon the point that the plaintiff has pleaded that she was allotted only half share in plot No.A/21/226. That plaintiff has not pleaded as to whom the another half share belongs. The learned counsel for defendant argued that the plaintiff is



wrongly claiming the open backyard space of defendant as suit schedule property which is not true. The boundaries of both the properties also shows that the both the properties are abutting. The defendant claims that there is no property as shown in the plaint and the entire property is belonging to defendant alone as per the grant certificate of defendant.

15. Hence, I have perused the title document of plaintiff i.e., resolution dated:09.07.1999. In the said resolution it is concluded that since, plaintiff is a landless and homeless lady the half share in plot No.A/21/226 is allotted to the plaintiff. While going on to the correctness of said resolution it is understood that in the said resolution it is not mentioned whether said property bearing No.A/21/226 belongs to Panchayat, Government or to any private individual. It is also not mentioned that to whom another half portion belongs. Further, it is also not mentioned therein that under what authority the Panchayat has got rights to allot land to the plaintiff. Hence, under such circumstances at this stage it cannot be held that the said title document of plaintiff is valid and transfers valid title to the plaintiff over the land allotted.

16. Surprisingly in the plaint also plaintiff has concealed that to whom the another portion in property bearing No.A/21/226 belongs. As per boundaries it is seen that the



written statement property is abutting the suit schedule property. The plaintiff has also submitted that the defendant is falsely claiming his rights over the suit property. Hence, under such circumstances the order of injunction cannot be granted in favour of plaintiff and against the defendant which may cause inconvenience and hardship to the abutting owner i.e., defendant.

17. As per records of defendant it is true that the written statement property has been allotted to the defendant by SLAO in 1975 which is first in time. Hence, at this stage plaintiff has not made out any valid grounds and prima facie case to grant ad-interim relief of injunction in her favour. There is no balance of convenience in favour of plaintiff. Per contra if injunction is granted much hardship and inconvenience will cause to the defendant. Hence, the plaintiff has not made out any prima facie case or balance of convenience in her favour at this stage. However, the opinion expressed is only tentative and does not have any bearing on the merits of the case and parties have ample opportunity to prove their case in the trial. Hence, the **points No.1 to 3 are answered in the negative.**

18. **Point No.4 :-** In view of my above discussion and conclusion arrived at point No. 1 to 3, the application filed by the plaintiff is liable to be dismissed. **Accordingly, I proceed to pass the following;**



-:: O R D E R ::-

I.A. No.I filed by the plaintiff Under Order 39 Rules 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, on online computer. The same is corrected, signed and then pronounced by me in open Court on this 22nd day of June 2024)

(Smt. Farha Begum Sayed)
Civil Judge & JMFC.,
Kittur.