

KABI020001152018



**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE AT
BALLARI SITTING AT SIRUGUPPA**

Present: **Smt. M.D.Pavithra, B.A., LLB.**
II Addl. Senior Civil Judge, Ballari.
Sitting at Siruguppa.

O.S.No.14/2018

Dated on this the 29th day of July, 2022

Plaintiffs : Neelakanta and others

Vs.

Defendants: Shanthappa and others

ORDERS ON I.A.No.II

Petitioners/Plaintiffs:

1) Neelakanta
S/o Late Yallappa,
aged about 45 years,
R/o Chanakkanur village,
Siruguppa taluk,
Ballari District.

(By Sri.B.M.A., Advocate)

Vs.

Respondents/Defendants: -

1) Shanthappa
S/o Late Yallappa,
aged 40 years,

R/o Chanakkanur village,
Siruguppa taluk,
Ballari District.

(Defendant No.1, 16-Exparte)
(By Sri. K.S. Advo., for defendant No.2, 4 to 15, 17 &18)

ORDERS ON I.A.NO.II

The plaintiffs have filed application under Order 39 Rule 1 and 2 R/w Section 94(C) and 151 of CPC to restrain the defendant No.1 to 18 from interfering with the suit schedule property till disposal of the suit.

2. It is averred in the affidavit sub-joined to the application that, he filed the suit for permanent injunction and mandatory injunction. Defendant No.2 to 18 does not have any right, title or interest over the suit property and the defendants by showing their force, threat and influence in the politics and taking absence of the plaintiff they illegally occupied the suit property forcibly. The plaintiff is unable to restrain the illegal act of the defendants. Therefore, they occupied the suit schedule property forcibly. The defendant No.2 has started construction in the suit property without consent or knowledge of the plaintiff. The defendants without any valid right are trying to trespass into the suit property. In spite of repeated request the defendant No.2 has not stopped the illegal construction. Hence, without any other option she filed

the present suit. There is a prima facie case and balance of convenience in her favour and if interim injunction order is not granted she will be put to great hardship. Hence, this application.

3. The defendant No.6 in his written statement specifically denied the entire case of the plaintiff. He contended further that the defendant No.6 in his written statement has totally traversed the case of the plaintiff contending *inter-alia* that, he is in possession of the written statement schedule property and he also constructed a house in the said property. Hence, the present suit is not maintainable. Accordingly, the defendant No.6 prayed to dismiss the suit with cost as well as I.A.No.II.

4. The defendant No.17 in his written statement has totally traversed the plaint averments contending *inter alia* that plaintiff No.1 and defendant No.1 being the absolute owner of the written statement schedule property agreed to sell the written statement schedule property in favour of this defendant. But due to the oversight in the agreement of sale, the father name of defendant No.7 is wrongly mentioned. The plaintiff No.1 and defendant No.1 have entered into an agreement of sale with this defendant No.17 on 09.05.1996 to sell the suit schedule property for sale consideration of Rs.6,800/- and on the same day they received the full sale

consideration amount in the presence of witnesses. As on the date of agreement itself plaintiff No.1 and defendant No.1 have handover the possession of written statement schedule property to this defendant. In spite of repeated request plaintiff No.1 and defendant No.1 not performed their part of contract even after receiving the full sale consideration amount. Hence this defendant got issued legal notice to them on 07.09.2016 calling upon them to execute the registered sale deed in respect of the written statement property. Hence, defendant No.17 sought for dismissal of the suit and also sought for counterclaim to direct the plaintiff No.1 to 5 and defendant No.1 to execute the registered sale deed in favour of this defendant in respect of the written statement schedule property. He also prayed to dismiss I.A.No.II with cost.

5. Now, the points emerged for consideration of this court are as follows:

1. Whether the plaintiff has made out prima-facie case to grant temporary injunction as sought in I.A.No.II?
2. In whose favour the balance of convenience lies?
3. Who will suffer irreparable loss if temporary injunction is granted or refused?
4. What order?

6. Having heard the arguments canvased by the counsel for the plaintiffs and defendants have scrutinized the documents produced before this court at this initial stage. Now, my findings on the above points are as under for the following reasons:

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:

REASONS

7. **Point No.1 to 3:-** Since these points are interconnected, I wish to treat them collectively to avoid repeated discussion and to save time of the court.

8. The plaintiff has filed the present suit for permanent and mandatory injunction at the earliest point of time and later on he got amended the plaint and inserted the relief of declaration to declare that the plaintiffs are the absolute owners of the suit schedule property by way of succession and inheritance. It is alleged in the affidavit filed along with the present application that the defendants are making attempt to interfere with their peaceful possession and enjoyment upon the suit schedule property. They pleaded that they have got half share in the suit schedule property and the defendants being the wife and children of Shanthappa who is defendant

No.1 have got equal share in the suit schedule property to an extent of 1.15 acres, the name of the plaintiff No.1 and defendant No.1 jointly forthcoming in the ROR and they got mutated their names on 22.09.2015. The plaintiffs are in peaceful possession and enjoyment of the suit property. On the other hand defendant No.6 and 17 in their written statement have totally traversed the plaint averments as well as the application averments contending *inter-alia* that they are in possession of the written statement schedule properties respectively. Defendant No.17 specifically contended that plaintiff No.1 and defendant No.1 have executed an agreement of sale. On 09.05.1996 to sell the written statement suit schedule property for consideration of Rs.6,800/- on the same day they received full sale consideration amount and this defendant also received the possession of the written statement property from the hands of plaintiff No.1 and defendant No.1. As it could be seen from the RORs pertaining to the suit schedule property, it stands in the name of the plaintiff No.1 and defendant No.1. The contents of said ROR discloses that, the suit schedule property stands in the joint of plaintiff No.1 and defendant No.1 from 2016-17. Other documents such as handwriting ROR pertaining to the year 1967 to 2000 shows that the suit schedule property stands in the name of one Shanthappa S/o Yellappa who is none other than the defendant No.1 herein. It is specific contention of the

defendant No.6 and 17 and they are in possession of the written statement schedule property and the plaintiff No.1 and defendant No.7 have handed the possession of the written statement schedule property in favour of defendant No.17 as on the same agreement dated 09.05.1996.

9. As ventilated from the pleadings, documents and materials available on record there is a clear dispute with regard to possession of the plaintiffs and defendants upon the suit schedule property, in the case on hand the evidence already been commenced and the case is posted for recording of defendants evidence. Since, there is a serious dispute with regard to possession of the plaintiffs and the defendants upon the suit schedule property, the said dispute requires detail enquiry and in the absence of complete evidence the case of the plaintiffs cannot be accepted at this stage.

10. The documents and evidence available on record at this stage are not sufficient to resolve the real controversy between the parties. Wherefore, as per the documents tabled before the the court, the possession of either the plaintiffs or the defendants cannot be ascertained at this stage. In the absence of prima facie materials it cannot decided with any decree of certainty that the prima facie and balance of convenience lies in favour of the plaintiffs. In the said circumstances, if an order of temporary injunction in terms sought is granted the

defendants will be put to great hardship. Therefore, without much pondering around these points I am inclined to hold **these points in the Negative.**

11. **Point No.4**: In view of my findings on the above points, I proceed to pass the following:

ORDER

I.A.No.II filed under Order 39 Rule 1
and 2 R/w Section 94(C) and 151 of CPC is
hereby dismissed.

No order as to cost.

(Dictated to the Stenographer transcribed by steno,
then corrected by me and then pronounced in the open
court on this the 29th day of July, 2022).

(Smt. M.D.Pavithra)

II-Addl. Senior Civil Judge, Ballari.
Sitting at Siruguppa.

(Vide detailed order pronounced
in the open court)

ORDER

I.A.No.II filed under Order
39 Rule 1 and 2 R/w Section
94(C) and 151 of CPC is hereby
dismissed.

No order as to cost.

**II-Addl. Senior Civil Judge, Ballari.
Sitting at Siruguppa.**

