

IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA

Dated this the 14th day of March 2023

Present:

Sri. HAJIHUSENSAB YADAWAD B.Com, LL.B,
Civil Judge & JMFC, Siruguppa

O.S. No.54/2020

Plaintiff: **Chilakuri Veera Venkata Rama Sathish**

V/s

Defendants: **Krishna and others**

Parties to I.A.No.II

Applicant: **Chilakuri Veera Venkata Rama Sathish**
Plaintiff: **S/o Gopala Krishna,**
Aged about 34 years,
R/o Vinayaka Nagar Camp,
Deshanuru village,
Siruguppa Taluk.

(By Sri.U.C.-Advocate)

V/s

Opponents: **1. Sri.Krishna S/o Late Ramanna,**
Defendants: **Aged about 39 years,**

2. Sri. Venkatesha S/o Late Ramanna,
Aged about 37 years,

3. Sri.T. Veeresha S/o Gidda Eramma,
Aged about 38 years,

**4. Smt. V.Yankamma W/o Late
Ramanna, Aged about 60 years,**

All are R/o 2nd Ward, Deshanuru village,
Siruguppa Taluk. Ballari District.

**(By Sri.G.M.R.-Adv. for D.1 to 3, D.4
Absent & D4(a) & (b) Exparte)**

ORDERS ON I.A. No.II

The plaintiff has filed IA No.II U/O XXXIX Rule 1 and 2 R/w. Sec.151 of CPC, to restrain the defendants No.1 to 4 from alienating the suit schedule properties to 3rd parties till disposal of the suit.

2. The said application is accompanied with an affidavit of plaintiff wherein he contended that he has purchased the suit schedule property through its vendor by name D.Sadhashiva Reddy S/o Gireppa Reddy through registered sale deed dated 01.03.1999. According to the said sale-deed his name also mutated to the ROR of suit property. Therefore, he is the owner in possession of suit property. The defendants are having their landed properties towards western side of suit property. They are no way concerned to the suit property. But they are interfering the possession of

plaintiff over suit property.

3. After service of summons, the defendants have appeared and filed written statement. It is the contention of defendant No.1 to 3 that the defendant No.1 & 2 and their family members are in possession over Sy.No.857/1 measuring 1.50 acres which is abutting to the suit schedule property No.369/1. Further with respect to suit Sy.No.369, one Belagal Lingappa was adjacent land owner of Sy.No.369 who has filed suit for declaration and possession with respect to 1.20 acres of Sy.No.369/1. Further it is their contention that the defendant No.4 and her husband filed suit O.S.NO.16/1987 before this court and defendant No.4 filed separate suit in O.S.No.21/1987 against said Belagal Lingappa for the relief of bare injunction with respect to 1.50 acres out of Sy.No.857/1. Further it is stated that the above suits were clubbed together wherein common Judgment was passed by dismissing O.S.No.16/1987 and decreeing O.S.No. 21/1987. Thereafter the said Judgments were challenged in RA No.19 and 20/1992. By the said appeals the suit has been remanded back to the trail court for fresh disposal. Thereafter, O.S.No.16/1987 came to be decreed and O.S.No.21/1987 came to be dismissed. Further it was

challenged in RA No.75/2005 and RA No.76/2005, wherein the vendor of plaintiff by name Sadhashiva Reddy has purchased this property during the pendency of matter, therefore the said Sadhashiva Reddy was brought on record in RA No.19 & 20/1992 who died during the pendency of Appeal. Further it is stated that by the common Judgment dated 29.01.2009 the RA No.75/2005 came to be dismissed by confirming decree passed in O.S. No.21/1987. The RA No.76/2005 has been allowed and thereby decree passed in O.S.No.16/1987 was set-aside. Further it is contended that the legal heirs of said Sadhashivar Reddy preferred RSA No.5720/2009 before the Hon'ble High Court of Karnataka which is also came be dismissed for non-prosecution by its order dated 02.07.2018. Hence, decree passed in O.S.No.16/1987 with respect to Sy.No.369 has attained finality. Further though the counsel appear for defendant No.1 to 4, but he filed written statement of defendant No.1 to 3 only. The defendant No.4 did not file any written statement or objections during his life time. Further it is pertinent to note that during the pendency of suit, the defendant No.4 died and though the suit is for bare injunction, the legal heirs of defendant No.4 were brought on record as defendant No.4(a) and 4(b). However in spite of service of summons the legal

heirs of defendant No.4 remained absent. However, on above said contentions, the defendant No. 1 to 3 pray to dismiss the suit.

4. Heard the arguments of learned counsel appearing for the parties and perused the materials on record.

5. The points that would arise for the consideration of this court are as follows :-

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?

2. Whether balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and hardship if interim application is not allowed?

4. What Order?

6. Findings of this court on the above said 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

7. Point No.1 to 3: As these points are interconnected with each other, I have taken these points together for consideration in order to avoid repetition of facts.

8. The present suit is filed for bare injunction with respect to suit schedule landed property bearing Sy.No.369 measuring 6.10 acres it is the contention of plaintiff that he has purchased the suit schedule property through its vendor by name D.Sadhashiva Reddy S/o Gireppa Reddy through registered sale deed dated 01.03.1999. According to the said sale-deed the name of plaintiff has also been mutated at column No.9 and 12 of record of right of suit schedule property. Now it is the contention of plaintiff that he is the owner and he is in possession of suit schedule property. In support of his case the plaintiff has produced the certified copy of sale-deed wherein it is clear that the plaintiff has purchased the suit property through registered sale-deed. But on the contrary, it is the contention of defendant No.1 to 3 that the defendant No.1 & 2 and their family members are in possession over Sy.No.857/1 measuring 1.50 acres which is abutting to the suit schedule property No.369/1. Further with respect to suit Sy.No.369 it is the contention of defendant No.1 to 3 that one Belagal Lingappa was

adjacent land owner of Sy.No.369 who has filed suit for declaration and possession with respect to 1.20 acres out of Sy.No.369/1. Further it is their contention that the defendant No.4 and her husband filed suit O.S.NO.16/1987 before this court and defendant No.4 filed separate suit in O.S.No.21/1987 against said Belagal Lingappa for the relief of bare injunction with respect to 1.50 acres out of Sy.No.857/1. Further it is contended that the above suits were clubbed together wherein common Judgment was passed by dismissing O.S.No.16/1987 and decreeing O.S.No. 21/1987. Thereafter the said Judgments were challenged in RA No.19 and 20/1992. By the said appeals the suits have been remanded back to the trial court for fresh disposal. Thereafter, O.S.No.16/1987 came to be decreed and O.S.No.21/1987 came to be dismissed. Further it were challenged in RA No.75/2005 and RA No.76/2005, wherein the vendor of plaintiff by name Sadhashiva Reddy has purchased this property during the pendency of matter, therefore the said Sadhashiva Reddy was brought on record in RA No.19 & 20/1992 who died during the pendency of Appeal. Further it is stated that by the common Judgment dated 29.01.2009, the RA No.75/2005 came to be dismissed by confirming decree passed in O.S. No.21/1987. The RA No.76/2005

has been allowed and thereby decree passed in O.S.No.16/1987 was set-aside. Further it is contended that the legal heirs of said Sadhashiva Reddy preferred RSA No.5720/2009 before the Hon'ble High Court of Karnataka which is also came be dismissed for non-prosecution by its order dated 02.07.2018. Hence, decree passed in O.S.No.16/1987 with respect to Sy.No.369 has attained finality. However to substantiate their contention the defendant No.1 to 3 have not filed any records before this court. Further though the same counsel appeared for defendant No.1 to 4, but he filed written statement of defendant No.1 to 3 only. The defendant No.4 did not file any written statement or objections during his life time. Further it is pertinent to note that during the pendency of suit, the defendant No.4 died and though the suit is for bare injunction, the legal heirs of defendant No.4 were brought on record as defendant No.4(a) and 4(b). However in spite of service of summons the legal heirs of defendant No.4 remained absent. Hence they were placed exparte. However, as per in the contention of the written statement of defendant No.1 to 3, it is noted that, they are not having any kind of right over suit Survey number. As per their contention, the alleged suits were filed by one Belagal Lingappa and deceased defendant No.4, hence the Judgment and decree passed in alleged

suits binds over the alleged Belagal Lingappa and deceased defendant No.4. But neither the defendant No.4 contested the suit during his life time nor his legal heirs contested the suit after his demise.

9. In support of his contention the plaintiff has produced sufficient materials and recent photographs with respect to harvesting over suit schedule property. Hence, it is a peculiar case wherein this court holds that, to safeguard the property of plaintiff, restraining the defendant No.1 to 3 and legal heirs of defendant No.4 is very much necessary. In view of above discussion, I answered Point No.1 to 3 in the Affirmative.

10. Point No.4 : In view of above discussion on Point No.1 to 3, I proceed to pass the following :-

ORDER

I.A.No.II filed by the plaintiff u/O.XXXIX Rule 1 and 2 R/w. Sec. 151 of CPC is hereby allowed.

The defendant No.1 to 3 and legal heirs of defendant No.4, their agents or anybody acting on their behalf are hereby restrained by way of permanent injunction from interfering with the

peaceful possession and enjoyment of plaintiff over
suit schedule property till disposal of the suit.

(Dictated to the stenographer directly on computer, typed by her,
corrected and then pronounced by me in the open court on this 14th **day**
of March 2023.)

(HAJIHUSENSAB YADAWAD)
Civil Judge & JMFC., Siruguppa.