

IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA

Dated this the 08th day of September 2023

Present:

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

O.S. No. 195/2023

Plaintiff : **Shri. Amareshgouda**

V/s

Defendants: **Shri. Pampayya Swamy
and others.**

Parties to I.A.N. II

Applicant: **Shri. Amareshgouda**

Plaintiff :
(By **Sri. VPK** - Advocate)

V/s

Opponents: **Shri. Pampayya Swamy**
Defendants: **and others**

(By **Sri. VBP** - Advocate)

ORDER ON I.A. No.II.

The counsel for Plaintiff filed IA No. II U/O XXXIX Rule 1 and 2 R/w Sec. 151 of CPC seeking Temporary Injunction against defendants as not to disturb the peaceful possession

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

2. The said application is accompanied with an affidavit of Plaintiff wherein he contended that the suit schedule property is self acquired property of himself. The suit property was belong to Sanna Veerabhadra Gouda. After his demise the suit property mutated in the name of vendor of plaintiff by name **Manikya Reddy s/o. Late Sanna Veerabhadra Gouda** as per mutation 13/2007-08 dated 05/09/2007. Afterwards, the Manikya Reddy sold the suit property in favor of plaintiff through registered sale deed dated 28/10/2022 and mutation No. H35/2022-23 dated 07/12/2022 also effected into the name of plaintiff. Now the plaintiff is in possession and enjoyment over suit property. These being the facts, the defendants have no right, title or interest over suit property. But on 01/07/2023 the defendants have made illegal attempt to trespass the suit property with an intention to dispossess the plaintiff from suit property. On 01/07/2023 the plaintiff has orally lodged complainant before Siruguppa Police Station. But they did not take any steps in vies of political pressure.

Therefore, the plaintiff has approached this court for proper relief. On these grounds, the plaintiff had prayed to allow the application.

3. On the contrary, the defendant No.1, 3 and 4 have appeared through their counsel. Amongst them the defendant No.4 has filed written statement which was adopted by the defendant No.1 and 3. Further the written statement is adopted as objections to this IA by way of filing of separate memo. Till this date the summons is yet to be served upon the defendant No.2.

4. In the written statement, the defendant No.1, 3 and 4 have denied the plaint averments and denied that the suit schedule property is self acquired property of plaintiff. Further it is contended that the suit property was belong to grand father of plaintiff by name Sanna Veerabhadra Gouda who had sold the above suit property and other landed property bearing Sy No. 60 measuring 9.89 acres of Nadang village in favor of **Tumbala Matada Kedarswamy S/o. Bhadraiah Swamy of Dodda Harivana village, Adoni Mandala, Karnool District by way of registered sale deed dated 23/07/1974 and put**

him in possession over suit property. Further it is stated that the mere suit for injunction is not maintainable without seeking declaratory relief over suit property.

5. Further it is admitted that the vendor of plaintiff is the son of Sanna Veerabhadragouda, who has created records to gain the benefit under the guise of sale deed. Further it is stated that the said T.M. Kedarwasmy died on 08/09/2021 leaving behind his wife **Vishalakshi and 3 sons by name (i)T.M Guruprasa, (ii)TM Vijay Kukmar and (iii) TM Suresh Kumar.** After the demise of KM Kedarwamy all the legal heirs are in possession and enjoyment over above referred properties. The same is also under the knowledge of plaintiff. Further it is stated that **the defendants are no way concerned to the suit property.** In order to obtain false decree the plaintiff has filed suit against defendant. According the registered sale deed, it is the bounden duty of Tahasildar to transfer the mutation, but the Tahasildar has failed to perform his part of job.

6. Further it is contended that after receiving summons, the defendants have informed the same to the legal heirs of TM

Kedarswamy, then after verifying records they came to know that the suit property being transferred in favor Manikya Reddy s/o. Sanna Veeranagouda on POTHU PATTA under MR No. 13/2007-08 jdated 05/09/2007 by playing fraud and giving false information to the revenue authority. Manikya Reddy has created one subsequent registered sham and nominal sale deed dated 28/10/2022 in favor of plaintiff who is nearest relative. Accordingly, the plaintiff taking undue advantage of his name mutated in ROR of suit property, has filed false suit. Further it is stated that the plaintiff has filed a false suit against wrong persons. On these grounds the defendants prayed to dismiss the application.

i	Provision under which the application is filed	U/O 39 Rule 1 & 2 R/w Sec. 151 of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	06.07.2023
iv	Number of the application	IA No.II
v	The date on which the objections are filed by different opponents	28/07/2023
vi	The date orders passed on the said application	08.09.2023

7. I have heard the argument.

8. Upon hearing argument and on perusal of materials placed on record the following points that would arise for my consideration.

1) Whether the Plaintiff has established prima facie case?

2) Whether the balance of convenience lies in favour of Plaintiff?

3) Whether irreparable loss or hardship will be caused to the Plaintiff if injunction is not granted?

4) What order

9. My findings to the above points are as under:

Point No. 1 : **Affirmative**

Point No. 2 : **Affirmative**

Point No. 3 : **Affirmative**

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

REASONS

10. POINT Nos. 1 to 3: Since these points are inter linked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

11. This is a simple suit filed for the relief of bare injunction. It is the contention of plaintiff that he is the owner and in possession of suit property bearing Sy No. 61/B measuring 7.78 acrs of Nadang Village of Siruguppa Taluk. It is the contention of plaintiff that the suit property was belong to grand father of plaintiff by name **Sanna Veerabhadra Gouda** after his demise the vendor of plaintiff got it transferred by way of POTHU PATTA and thereafter the said Manikya Reddy has sold suit property in favor of plaintiff through registered sale deed dated 28/10/2022. Accordingly, the name of plaintiff is also mutated to the suit property. The plaintiff is the owner and is in possession over suit property. Now the defendants, who are no way concerned to the suit property, are trying to disturb the possession of plaintiff and hence the plaintiff has knocked the doors of this court for proper relief.

12. On the contrary it is very interesting to note that the defendants are contended that the grand father of plaintiff by name **Sanna Veerabhadra Gouda** sold the suit property along with another land in favor of **Tumbala Matada Kedarswamy S/o. Bhadracharya Swamy of Dodda Harivana village, Adoni**

Mandala, Karnool District by way of registered sale deed dated 23/07/1974 and put him in possession over suit property. Further it is the contention of defendants that, the said T.M. Kedarwasmy died on 08/09/2021 leaving behind his wife **Vishalakshi and 3 sons by name (i)T.M Guruprasa, (ii)TM Vijay Kukmar and (iii) TM Suresh Kumar.** After the demise of KM Kedarwamy all the legal heirs are in possession and enjoyment over suit property. They themselves have admitted that they are not in possession and they are concerned to the suit property.

13. On careful perusal of written statement it is noted that at **Page No.4 para (c) of** written statement the defendants have contended at last line as **“.... now they are (the legal heirs of T.M. Kedarswamy) in lawful possession and enjoyment of said properties** (i.e. suit property and another property which was purchased by T.M. Kedarswamy from the grand father of plaintiff). Further contended that the suit is not maintainable without seeking relief of declaration. Further it is their contention that the plaintiff who is subsequent purchaser

would not get better title over suit property by way of subsequent sale deed.

14. In support of their contention the counsel for defendants submitted the following decisions reported in;

(i) 2010(4) Civil Court Cases 146 (SC) between Atla Sidda Reddy V/s Busi Subba Reddy and others wherein at para No.11 it is held as under;

“ Specific Relief Act 1963 Sec. 34: Declaratory suit- Two sale deed prior in time prevails. -At the time of execution of second sale deed vendor had already divested herself of title to the suit properties- person purchasing property through subsequent sale deed gets no title – Suit rightly dismissed.

And (ii) 2010(4) Civil Court Cases 079 (BOMBAY) between Naraya Madhavrao Warkhinde and others v.s Mogiya Layla wherein at para No.9 it is held as under;

“ Transfer of Property Act, 1882, Sec. 48: Sale deed- Two sale deed by the same vendor – Sec. 48 of the Act ordains to accept supremacy of the former sale deed in all the terms that the later – transferor cannot prejudice the rights of transferee by any subsequent dealing with the property”.

15 The above decisions deals with the two transactions with respect to one property. In the present case the plaintiff contending to be the owner of suit property by sale deed

dated 28/10/2022. However on the contrary it is the contention of defendants that the grand father of plaintiff has sold entire suit survey number 60B measuring 9.89 acres in favor of one T.M. Kedarswamy who is no where connected to neither the plaintiff nor the defendants. It is very interesting to note that the defendants are pretending and defending the person who is not available before this court. Indirectly they are supporting the legal heirs of deceased TM Kedarwamy. No doubt, according to the above sale deeds, the former sale deed prevails. But it is with respect to title of suit property. But the present suit is not filed with respect to title over suit property. It is filed only with respect to possession over suit property. If at all the legal heirs of T.M. Kedarswamy had better title than the plaintiff, the they may come forward to get their relief by proper way.

16. However, it is well established principle of law that the relief of declaration is must when there is cloud on the title of party. **However, at this stage** there is no cloud pointed out on the title of suit property. Hence, the contention of defendants could not be taken into consideration.

17. However, at **Page No. 4 para No.(c)** the defendants have contended that the legal heirs of TM Kedarswamy are in possession over suit property and they are not in possession over it. The said contention itself is sufficient to this court at this stage to pass the order on application. According to the defendants they are not in possession over suit property and the legal heirs of TM Kedar Swamy are in possession over suit property. Hence, if at all the present application is allowed, then it will bind the defendants only and not the legal heirs of TM Kedar Swamy. Therefore, at this stage this court finds no hurdle to pass order in favor of plaintiff as if the same is allowed, then it will bind on the defendants only but not the legal heirs of Kedar Swamy who are alleged to be in possession over suit property. Therefore, preserving the property in tack till the disposal of suit is very much essential at this stage. Therefore, in the interest of justice and equity restraining the Defendants from disturbing the possession of plaintiff over suit schedule property is very much necessary. At this stage the Plaintiff has established prima-facie case and balance of convenience is also in his favour. If the application is allowed

then there will be no prejudice cause to the Defendant. Hence,
I answer **Point Nos.1 to 3** in the **Affirmative**.

18. POINT No. 4: In view of my answer on Point No.1 to 3, I
proceed to pass the following;

ORDER

**The IA No.II filed by the Plaintiffs U/O 39
Rule 1 and 2 R/w Sec.151 of CPC is hereby
allowed.**

**The Defendant No.1, 3 and 4 are hereby
restrained from disturbing the possession of suit
schedule property by any means or mode till the
disposal of the suit.**

No order as to costs.

(Directly typed by me on computer, corrected and then pronounced by me in
open Court, on this 08th day of September, 2023)

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