

**IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA.**

Present: **Ashok R H**
Civil Judge & J.M.F.C.,
Siruguppa.

Dated this the 2nd day of May, 2025

O.S.No.93/2025

PLAINTIFFS: Mubarak and others

//Vs//

DEFENDANTS: M.Mymood and others

PARTIES TO I.A.NO.II

Petitioner/Ori.Plaintiffs: Mubarak and others

V/s.

Respondents/Ori.Defendants: M.Mymood and others

ORDERS ON I.A.NO.II

The Plaintiffs have filed this application under Order 39 Rules 1 and 2 R/w Section 151 of the Code of Civil Procedure, 1908 seeking an order of temporary injunction restraining the defendant No.3 from interfering with the plaintiffs possession over the schedule property, pending disposal of the suit.

2. The case of the plaintiffs' in brief is this: The plaintiffs deceased father and mother by name Handi Husenbee and Handi Karrem Sab were are having four daughters ie., plaintiff No.1 to 4 and two sons namely Handi Rafeeq Sab and Handi Nazeer Sab. The plaintiff No.5 is the widow of deceased Handi Nazeer Sab, plaintiff No.6 is the son of Handi Nazeer Sab, plaintiff No.7 is the son of Handi Rafeeq Sab. The ancestors of the plaintiffs are Handi Abdul Khader and Handi Rasoolamma. They were succeeded by Handi Fathima Bee and Handi Adoni Allabhakshi Sab. They died leaving behind Handi Husen Bee and Handi Kareem Sab. The plaintiffs are their legal heirs. The suit schedule property measuring 52 cents is the absolute property of Handi Syed Fathima Bee. She died intestate and the plaintiffs have inherited the suit schedule property and are tenants in common and are owners of the suit schedule property. The defendant No.1 who is nowhere concerned to the family of the plaintiffs, has got mutated the suit schedule property in his name

by misleading the revenue authority. The mutation order bearing No.H198/2019-20 has been made by creating false documents. The grandmother of the plaintiffs by name Handi Syed Fathimabee W/o Handi Adoni Allabhakshi Sab died on 05.11.1991. The mother of the defendant No.1 namely Fathimabee W/o Khadersab died in the year 2015. The defendant No.1, by producing the death certificate of his mother has got the mutation order. It is alleged that the defendant No.1 has executed the sale deed in favour of defendant No.2 & 3 and the property has been subdivided as Sy.No.381B measuring 0.26 cents and 381/1 measuring 0.26 cents and the record of rights presently stand in the name of defendant No.3. The defendant No.1 was never in possession of the the suit schedule property. The plaintiffs had approached the Ld Assistant Commissioner, Ballari. The learned Assistant Commissioner, in the orders, has observed that the defendant No.1 has created false documents and has

obtained the mutation in his name and directed the plaintiff No.6 to approach the court of law. The plaintiffs have issued legal notice to the defendants and a Panchayat was also held. But the defendants, with an intention to dispossess of plaintiffs from the suit schedule property attempted to trespass in to the suit schedule property. Hence, the plaintiffs have filed this suit seeking the relief of declaration of ownership, to declare the sale deeds as null and void and for permanent injunction. In the accompanying affidavit to I.A.No.II, the plaintiff No.6 has stated the case on oath and has further stated that there exists a prima facie case and balance of convenience lies in their favour and further that plaintiff's would be put to irreparable loss if temporary injunction were not granted. On these grounds it is prayed to allow the application.

3. The defendant No.2 and 3 have appeared before the court. The defendant No.3 has filed written statement which has been adopted by defendant No.2 and the same

is adopted as objections to IA No.3. All the plaintiff allegations are denied. It is specifically contended that the defendant No.3 is the absolute owner of the suit property having purchased the same under the registered sale deed dated 19.10.2020 and 21.10.2020. The suit schedule property originally belonged to the ancestors of defendant No.1. The plaintiffs are nowhere concerned to the suit property. On these grounds, it is prayed to dismiss the suit as well as IA No.II.

4. Heard the learned counsels for the plaintiffs and defendants. Perused the materials on record.

5. Based on the above contentions, the below points arise for consideration of this Court:

POINTS

1. Whether the plaintiffs prove that there exists a prima-facie case?
2. Whether the plaintiffs establishes that the balance of convenience lies in their favour?

3. Whether the plaintiffs would be put to irreparable loss and injury, if temporary injunction were not to be granted?

4. What order?

6. Based on the available materials on record at this stage and the facts and circumstances of the case, this Court answers the above points as follows:

Point No.1	:	In the Negative
Point No.2	:	In the Negative
Point No.3	:	In the Negative
Point No.4	:	As per the final order for the following ;-

REASONS

7. Point No.1: The three ingredients that are to be considered while granting or rejection of injunction are a) prima facie b) balance of convenience and c) the party who will be put to irreparable loss and injury if temporary injunction is not granted. Prima facie case means that the plaintiffs case is such that it needs adjudication on merits and that there is a bonafide triable issue.

Plaintiff's case should not be such that it is liable to be rejected summarily. Further prima facie case does not mean cent percent case. Suffice to satisfy the court the existence of a triable issue. However when there is dispute with regard to the identification and boundaries to the disputed property, a strong case has to be establish in order to succeed to obtain temporary injunction.

8. In support of their case, the plaintiffs have produced the copy of genealogical tree, death certificate of Syed Haji Fathima Bee, RORs, Sale-deeds, mutation orders, endorsement issued by the revenue authorities, copy of legal notice. The defendant No.2 and 3 have not produced any documents. On perusal of the records, it is seen that the RTC pertaining to the Sy.No.381/B of Siruguppa village was entered in the name of Syed Fathima bee from 1967 to 2018. The RTC pertaining to said land reflects the name of defendant No.1 for the year 1920 and further there is also entering of MRH

No.198/2019-20. Further it is seen that the defendant No.1 has executed sale-deed dated 19.10.2020 in favour of defendant No.3 in respect of 26 cents which is numbered as Sy.No.381/B and sale-deed dated 02.07.2020 in favour of defendant No.2 in respect of 26 cents in Sy.No.381/P. The RTC also shows the entries of names of defendant No.2 and 3 in respect of 26 cents each in Sy.No.381/P and 381/B. Now the plaintiffs contend that the defendant No.1, by taking advantage of similarity in the name of his mother and the grandmother of plaintiffs, has got a false mutation order and has got mutated the property in his name and further he has sold the suit property in two portions in favour of defendant No.2 and 3. However, the mutation order is made in the year 2020 and the entries in the RTC are also made in the year 2020. The same are challenged by the plaintiffs before the court now. No doubt the plaintiff had approached the learned Assistant Commissioner, Ballari and that there is an observation

by the learned Assistant Commissioner in case No.44/2022-23 that the mutation has been obtained illegally by creating documents by the defendant No.1. Nevertheless it is a fact that there are registered sale-deeds executed infavour of defendant No.2 and 3 and the revenue records show that it is the defendant No.2 and 3 who are in possession of the suit schedule property. The revenue records are prima-facie material to prove possession. When the plaintiffs contend contrary to the entries in the revenue records, the same needs to be appreciated only based on materials and not mere allegations. The plaintiffs have not produced any materials to show that they are in physical and actual possession of the suit property as on the date of suit. At this stage, this court cannot hold a mini trial. Having observed to the extent, this court is of the opinion that the plaintiffs have not made out a prima facie case for grant of injunction as prayed. Therefore, this court has answered **Point No.1 in the Negative.**

9. Points No.2 & 3:- Balance of convenience means the comparative hardship or inconvenience that is likely to be caused from withholding the order of temporary injunction or granting it. In other words, if it is the plaintiffs who will be put to greater inconvenience if temporary injunction is not granted, the balance of convenience lies in favour of the plaintiffs. If greater inconvenience is caused to the defendant No.3 if temporary injunction is granted, then the balance of convenience lies in favour of not granting temporary injunction.

10. When the plaintiffs has failed to establish prima facie case and discussion on balance of convenience is not warranted. Nevertheless, looking into it, the revenue records reflects the name of defendant No.3 in respect of suit property. It is thus the defendant N.3 who would be put to greater inconvenience and hardship if injunction regarding possession is granted. If temporary injunction is rejected, the plaintiffs would not be put to

inconvenience or irreparable injury. For these reasons, this Court has answered **point No 2 and 3 are in the Negative.**

11. Point No.4 : In view of answer to point No.1 to 3 and for the reasons stated above, this court proceeds to pass the following;

ORDER

I.A.No.II filed by the plaintiff under Order 39 Rule 1 & 2 R/w Section 151 of C.P.C is hereby rejected. No order as to cost.

(Dictated to the stenographer, transcribed and typed by him, script corrected and then pronounced by me in the Open Court on this 2nd day of May 2025).

(Ashok R H)
Civil Judge and JMFC,
Siruguppa.